FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS JULY 1, 2014, TO DECEMBER 31, 2014

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MEMBERS OF THE FEDERAL TRADE COMMISSION
DURING THE PERIOD
JULY 1, 2014 TO DECEMBER 31, 2014

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Appointed August 28, 1988.

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FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS
JULY 1, 2014, TO DECEMBER 31, 2014

IN THE MATTER OF

TECNICA GROUP, SPA

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

Docket No. C-4475; File No. 121 0004
Complaint, July 3, 2014 – Decision, July 3, 2014

This consent order addresses Tecnica Group SpA.'s agreement with Marker Völkl (International) GmbH not to compete for the services of athlete endorsers and not to compete for the services of employees. The complaint alleges that both the athlete non-compete agreement and the employee non-compete agreement violate Section 5 of the Federal Trade Commission Act. The consent order prohibits Tecnica from, directly or indirectly, entering into, or attempting to enter into, an agreement with a ski equipment competitor to forbear from competing for U.S. athletes to sign endorsement contracts for the company's ski equipment, and from entering into an agreement with a ski equipment competitor to forbear from competing for the services of any U.S. employee.

Participants

For the *Commission*: *Joseph Baker, Jennifer Nagle*, and *Mark Taylor*.

For the *Respondent*: *Arnold & Porter, LLP*.

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 ("Commission"), having reason to believe that Tecnica Group SpA., a corporation, hereinafter sometimes referred to as "respondent," has violated the provisions of said Act, and it appearing to the Commission that a proceeding

in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Nature of the Case

1. This action addresses anticompetitive conduct in the ski equipment industry. Beginning in or about 2004, Tecnica Group, SpA. ("Tecnica") and its rival Marker Völkl GmbH ("Marker Völkl") agreed not to compete with one another for the endorsement services of ski athletes. In 2007, the companies further agreed not to compete for employees. Both agreements are unfair methods of competition, and violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

The Respondent

2. Respondent Tecnica is a corporation organized, existing, and doing business under and by virtue of the laws of Italy, with its office and principal place of business located at Via Fante d'Italia, 56 - 31040 - Giavera del Montello (TV), Italy. Tecnica manufactures, markets, and sells skis (Nordica and Blizzard brands) and ski boots (Nordica and Tecnica brands). Tecnica sells its skis and ski boots in or into the United States.

3. At all times relevant herein, Tecnica has been, and is now, a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. The acts and practices of Tecnica, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

The Ski Equipment Businesses of Tecnica and Jarden/Marker Völkl

5. For many years, Tecnica specialized in the manufacture and sale of ski boots. Tecnica acquired the Nordica ski equipment unit from Benetton Group SpA. in 2003. The Nordica unit manufactured and sold both skis and ski boots.

6. Tecnica acquired a second ski manufacturer, Blizzard GmbH, in 2006. Currently, Tecnica is the fourth largest seller of skis in the United States.

7. Jarden Corporation ("Jarden"), through its subsidiaries Marker Völkl and K2 Inc., manufactures, markets, and sells skis (Völkl and K2 brands) and ski bindings (Marker brand). Jarden acquired Marker Völkl and K2 Inc. in 2007. Jarden is the leading seller of skis in the United States.

8. In 1992, Tecnica and Marker Völkl began collaborating in the marketing and distribution of certain complementary ski equipment: Völkl brand skis, and Tecnica brand ski boots. Initially, these companies were not competitors: Tecnica did not have a ski product; Marker Völkl did not have a ski boot product.

9. The ski brands later acquired by Tecnica (Nordica and Blizzard brands) were not included in the Tecnica/Marker Völkl collaboration. That is, Tecnica independently manufactures, markets, and distributes Nordica skis and Blizzard skis in competition with Völkl skis.

10. Tecnica and Marker Völkl terminated their collaboration in the United States in 2008, and in other regional markets over the period 2008 through 2010.

Competition for Ski Athlete Endorsements

11. The most effective and most costly tool for marketing ski equipment consists of securing endorsements from prominent ski athletes. Endorsers include world class and professional athletes who compete in organized ski competitions (such as the World Cup and the Olympics), "junior" athletes who show the potential to develop into world class athletes, skiers whose performance attracts significant media attention (such as extreme skiers), and other "opinion leaders" (such as ski instructors and ski patrollers).

12. Endorsement agreements between a ski equipment company and a ski athlete are typically of short duration, and are subject to renewal. Commonly, the ski athlete: (i) authorizes the company to use the athlete's name and likeness in promotions and in advertisements, (ii) agrees to use and promote the company's

equipment on an exclusive basis, (iii) agrees to display the company's equipment when the athlete can attract media exposure, such as by taking the skis to the podium when receiving a medal, and/or (iv) agrees to appear at promotional events on behalf of the company. The association of a ski equipment brand with a prominent ski athlete generates sales, goodwill, and other benefits for the company.

13. As consideration for the ski athlete's endorsement services, the ski equipment company commonly provides the ski athlete with monetary compensation (keyed to the athlete's success in competitions), support services at competitions, free or discounted equipment, and/or travel expenses.

14. Ordinarily, ski equipment companies compete with one another to secure the endorsement services of prominent ski athletes. At the expiration of an endorsement agreement, a ski athlete can be induced to switch from one company to another in return for greater compensation, in much the same way that an employee can be induced to change employers in return for a higher salary or better benefits.

15. Endorsement agreements are the primary source of income for professional ski athletes. Among professional skiers, the common wisdom is: To make money in this sport, ski fast – and endorsement deals may follow.

The Anticompetitive Agreements

16. In or about 2004, Tecnica and Marker Völkl agreed not to compete with one another to secure the endorsement services of ski athletes. Specifically, Tecnica agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Völkl brand skis or who was otherwise claimed by Marker Völkl. Marker Völkl agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Nordica brand skis or who was otherwise claimed by Tecnica.

17. In 2005, Blizzard GmbH and Marker Völkl agreed not to compete with one another to secure the endorsement services of ski athletes. Specifically, Blizzard GmbH agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed

Völkl brand skis or who was otherwise claimed by Marker Völkl. Marker Völkl agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Blizzard brand skis or who was otherwise claimed by Blizzard GmbH.

18. In or about January 2007, shortly after Tecnica's acquisition of Blizzard GmbH – executives of Tecnica met with executives of Marker Völkl to review the inter-company collaboration and the non-compete agreements. Tecnica and Marker Völkl reaffirmed that the companies would not compete with one another to secure the endorsement services of ski athletes. Tecnica and Marker Völkl intended that these athlete non-compete agreements would enable them to avoid bidding up the cost of securing athlete endorsements.

19. At the January 2007 meeting, Tecnica and Marker Völkl also agreed to expand the scope of their non-compete agreements. Tecnica and Marker Völkl agreed not to compete for the services of any employee. Specifically, Tecnica agreed not to solicit, recruit, or contract with any employee of Marker Völkl. Marker Völkl agreed not to solicit, recruit, or contract with any employee of Tecnica. Tecnica and Marker Völkl intended that this employee non-compete agreement would enable them to avoid bidding up the salaries paid to employees.

20. In furtherance of the athlete non-compete agreement and the employee non-compete agreement, executives of Tecnica and Marker Völkl communicated the terms of these agreements to company managers with responsibility for recruiting ski athletes and for hiring employees.

21. Christoph Bronder, the President and Chief Executive Officer of Marker Völkl, aggressively policed the Tecnica/Marker Völkl non-compete agreements, and complained to Tecnica when he detected a potential violation.

22. The restraints on competition agreed to by Tecnica and Marker Völkl were not reasonably necessary for the formation or efficient operation of the collaboration between the companies. The ski businesses of Tecnica (the Nordica and Blizzard brands) were at all times outside of and apart from the collaboration. Consequently, the restraints did not align the disparate incentives

of the companies in a manner that promoted the cognizable efficiency goals of the collaboration. Also, the restraints adversely affected competition for – and the compensation available to – athletes and employees whose services were unrelated to the collaboration.

23. Tecnica's conduct, as alleged herein, had the purpose, capacity, tendency, and likely effect of (i) restraining competition unreasonably, (ii) harming the economic interests of ski athletes, and (iii) harming the economic interests of the affected employees of Tecnica and Marker Völkl.

Violations Alleged

24. As set forth in paragraphs 16 through 23 above, Tecnica and Marker Völkl agreed to restrain competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

25. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this third day of July, 2014, issues its complaint against respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the Tecnica Group, SpA ("Tecnica"), a corporation, hereinafter sometimes referred to as "Respondent," and Respondent having

been furnished thereafter with a copy of a draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondent had violated said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. Respondent Tecnica is a corporation organized, and existing and doing business under and by virtue of the laws of Italy, with its office and principal place of business located at Via Fante d'Italia, 56 - 31040 - Giavera del Montello (TV), Italy.

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

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" means the Tecnica Group, SpA., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by it, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Commission" means the Federal Trade Commission.

C. "Agreement" means any agreement, arrangement, contract, combination, or understanding, formal or informal, written or unwritten, direct or indirect, between two or more Persons.

D. "Endorsement Agreement" means an Agreement between a Ski Company and a living natural person providing in part that, for consideration, (1) the Ski Company is authorized to utilize the name and/or likeness of the living natural person in connection with the advertisement, promotion, or sale of Ski Equipment, and/or (2) the living natural person will use and promote the Ski Company's Ski Equipment; for the avoidance of doubt, the following Agreements are not Endorsement Agreements for the purposes of this Order: (1) any Agreement between Respondent and a living natural person who is an employee of Respondent at the time he or she enters into the Agreement; (2) any Agreement between Respondent and another Ski Company in connection with the exclusive licensing of intellectual property relating to Ski Equipment; or (3) any exclusive Agreement between Respondent and a retailer and/or distributor of Ski Equipment that is not a Ski Company.

E. "Person" means any living natural person, corporate entity, sole proprietorship, partnership, association, joint venture, or trust.

F. "Ski Company" means any Person that, for the purpose of sale, resale, distribution, or marketing in or into the United States, manufactures Ski Equipment or causes Ski Equipment to be manufactured, and includes all the directors, officers, employees, consultants, agents and representatives of the Ski Company acting on behalf of or at the direction of the Ski Company; for the avoidance of doubt, "Ski Company" does not include: (1) any employee of Respondent to the extent he or she is acting on his or her own behalf; or (2) ski teams or ski pools.

G. "Ski Equipment" means alpine snow skis, ski boots, or ski bindings.

H. "U.S. Skier" means any living natural person who is engaged or has engaged in the sport of alpine skiing, and who, at the time the Ski Companies enter into an Agreement that, but for the proviso in Paragraph II.A. of this Order, would be prohibited by Paragraph II.A. of this Order, is:

1. a citizen or permanent resident alien (as defined by the US Citizenship and Immigration Services) of the United States;

2. a member of the U.S. Ski and Snowboard Association;

3. a member of the U.S. Ski Team;

4. a representative of the United States at the NorAm Cup, the World Cup, or any competition sanctioned by the International Ski Federation; or

5. a representative of the United States at the Winter Olympics.

I. "U.S. Employee" means any living natural person who is a citizen or permanent resident alien (as defined by the US Citizenship and Immigration Services) of the United States or whose principal place of employment is within the United States.

II.

IT IS FURTHER ORDERED that in connection with the business of manufacturing, distributing, marketing, or selling Ski Equipment in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, Respondent shall cease and desist from, directly or indirectly, or through any corporate or other device:

A. Inviting, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, soliciting, or otherwise facilitating any Agreement, either express or implied, with any Ski Company or Ski Companies (other than Respondent) to forbear from soliciting, cold calling, recruiting, hiring, contracting with, or otherwise competing for any U.S. Skier to be a party to an Endorsement Agreement.

Provided, however, that Respondent may enter into, attempt to enter into, or comply with a written agreement with any other Ski Company or Ski Companies to forbear from competing for any U.S. Skier to be a party to an Endorsement Agreement that (1) is reasonably related to a lawful joint venture agreement, or lawful merger, acquisition or sale agreement; and (2) is reasonably necessary to achieve such agreement's procompetitive benefits.

B. Inviting, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, soliciting, or otherwise facilitating any Agreement, either express or implied, with any Ski Company or Ski Companies (other than Respondent)

to forbear from soliciting, cold calling, recruiting, hiring, contracting with, or otherwise competing for any U.S. Employee of a Ski Company.

Provided, however, that Respondent may enter into, attempt to enter into, or comply with a written agreement with any other Ski Company or Ski Companies to forbear from competing for any U.S. Employee of a Ski Company that (1) is reasonably related to a lawful joint venture agreement, or lawful merger, acquisition or sale agreement; and (2) is reasonably necessary to achieve such agreement's procompetitive benefits.

Provided, further, that Respondent may enter into, attempt to enter into, or comply with written agreements with any other Ski Company or Ski Companies to forbear from competing for any employee of a Ski Company if such agreement: (1) is in settlement of a bona fide dispute relating to the enforcement of an employee's non- compete or non-solicitation agreement with the Respondent or the other Ski Company; or (2) is included in non-disclosure or confidentiality agreements that Respondent has entered into in connection with conducting due diligence relating to a proposed and bona fide merger, acquisition, or consolidation.

III.

IT IS FURTHER ORDERED that:

A. Within sixty (60) days after the date the Order is issued, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the Respondent has complied, is complying, and will comply with this Order.

B. One (1) year after the date the Order is issued, annually for the next two (2) years on the anniversary of the date the Order is issued, and at other times as the

Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which Respondent has complied and is complying with the Order.

IV.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of the Respondent;

B. Any proposed acquisition, merger or consolidation of the Respondent; or

C. Any other change in the Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in the Respondent.

V.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Respondent relating to any matters contained in this Order; and

B. Upon five (5) days' notice to the Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order shall terminate on July 3, 2034.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, an agreement containing consent order ("Agreement") from Marker Völkl (International) GmbH ("Marker Völkl") and a separate Agreement from Tecnica Group SpA. ("Tecnica"). Marker Völkl and Tecnica are hereinafter sometimes referred to collectively as "Respondents."

Respondents are manufacturers of various types of ski equipment. The Agreements settle charges that Marker Völkl and Tecnica both violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by agreeing with each other not to compete for the services of athlete endorsers and not to compete for the services of employees.

The Agreements have been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreements and comments received, and will decide whether it should withdraw from the Agreements or make final the orders contained in the Agreements.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the proposed orders. It is not intended to constitute an official interpretation of the Agreements and proposed orders, or in any way to modify their terms.

The proposed orders are for settlement purposes only and do not constitute an admission by the Respondents that they violated the law or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

The Complaints

This action addresses anticompetitive conduct in the ski equipment industry. The allegations of the Complaints are summarized below.

Background

Marker Völkl and Tecnica manufacture, market, and sell ski equipment. The most effective and most costly tool for marketing ski equipment consists of securing endorsements from prominent ski athletes.

Endorsement agreements between a ski equipment company and a ski athlete are typically of short duration, and are subject to renewal. Commonly, the ski athlete: (i) authorizes the company to use the athlete's name and likeness in promotions and in advertisements, (ii) agrees to use and promote the company's equipment on an exclusive basis, (iii) agrees to display the company's equipment when the athlete can attract media exposure, such as by holding up the skis at the end of a race, or taking the skis to the podium when receiving a medal, and/or (iv) agrees to appear at promotional events on behalf of the company. The association of a ski equipment brand with a prominent ski athlete generates sales, goodwill, and other benefits for the company.

As consideration for the ski athlete's endorsement services, the ski equipment company commonly provides the ski athlete with monetary compensation (keyed to the athlete's success in competitions), support services at competitions, free or discounted equipment, and/or travel expenses.

Ordinarily, ski equipment companies compete with one another to secure the endorsement services of prominent ski athletes. At the expiration of an endorsement agreement, a ski athlete can be induced to switch from one company to another in

return for greater compensation, in much the same way that an employee can be induced to change employers in return for a higher salary or better benefits.

Endorsement agreements are the primary source of income for professional ski athletes.

The Marker Völkl/Tecnica Collaboration

In 1992, Marker Völkl began collaborating with Tecnica in the marketing and distribution of certain complementary ski equipment: Völkl brand skis, and Tecnica brand ski boots. Initially, these companies were not competitors: Tecnica did not have a ski; Marker Völkl did not have a ski boot.

In 2003, Tecnica acquired the Nordica ski equipment unit from Benetton Group SpA. Nordica manufactured and sold both skis and ski boots. Tecnica acquired a second ski manufacturer, Blizzard GmbH ("Blizzard"), in 2006.

The ski brands acquired by Tecnica (Nordica and Blizzard brands) were not included in the Marker Völkl/Tecnica collaboration. That is, Tecnica independently manufactures, markets, and distributes Nordica skis and Blizzard skis, in competition with Völkl skis.

The Challenged Conduct

Marker Völkl and Tecnica agreed not to compete with one another to secure the services of ski athletes and employees.

Beginning in or about 2004, Marker Völkl and Tecnica agreed not to compete with one another to secure the endorsement services of ski athletes. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Tecnica's skis, or who was otherwise claimed by Tecnica. Tecnica agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Marker Völkl's skis, or who was otherwise claimed by Marker Völkl.

In 2007, Marker Völkl and Tecnica agreed to expand the scope of their non-compete agreements. Marker Völkl and

Tecnica agreed not to compete for the services of any employee. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with any employee of Tecnica. Tecnica agreed not to solicit, recruit, or contract with any employee of Marker Völkl.

Marker Völkl and Tecnica intended that these non-compete agreements would enable them to avoid bidding up (i) the cost of securing athlete endorsements, and (ii) the salaries paid to employees.

Respondents' conduct had the purpose, capacity, tendency, and likely effect of (i) restraining competition unreasonably, (ii) harming the economic interests of ski athletes, and (iii) harming the economic interests of the affected employees of Marker Völkl and Tecnica.

Legal Analysis

The Complaint alleges that both the athlete non-compete agreement and the employee non-compete agreement violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

These agreements are appropriately analyzed under the framework articulated by the Commission in the *Polygram* case.[1] Agreements between competitors not to compete for professional services, for employees, or for other inputs, are presumptively anticompetitive or inherently suspect, if not *per se* unlawful.[2]

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[1] *In the Matter of Polygram Holding, Inc., et al.*, 136 F.T.C. 310 (F.T.C. 2003), *aff'd*, 416 F.3d 29 (D.C. Cir. 2005). *See also North Texas Specialty Physicians v. FTC, 528 F.3d 346 (5th Cir. 2008); In the Matter of Realcomp II Ltd., A Corp.*., 2009-2 Trade Cas. (CCH) ¶ 76784 (F.T.C. Oct. 30, 2009).

[2] *See*, *e.g.*, *United States v. Brown*, 936 F.2d 1042 (9th Cir. 1991); *Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co*., 334 U.S. 219, 235 (1948). *See also Todd v. Exxon Corp*., 275 F.3d 191, 198 (2d Cir. 2001) (stating that *per se* rule would "likely apply" to allegations of actual agreement among competitors to fix employee salaries); *Knevelbaard v. Kraft Foods, Inc*., 232 F.3d 979, 988-89 (9th Cir. 2000) ("Most courts understand that a buying cartel's low prices are illegal . . . . Clearly mistaken is the occasional court that considers low buying prices pro-competitive or that thinks sellers receiving illegally low prices do not suffer antitrust injury."); *NBA v. Williams*, 45 F.3d 684, 687 (2d Cir. 1995) ("Absent justification under the Rule of Reason or some defense, employers who compete for labor may not agree among themselves to purchase that labor only on certain specified terms and conditions . . . Such conduct

When an agreement is deemed inherently suspect, a party may avoid summary condemnation under the antitrust laws by advancing a legitimate (cognizable and plausible) efficiency justification for the restraint.[3]

Here, the Commission finds reason to believe that the athlete non-compete agreement and the employee non-compete agreement serve no pro-competitive purpose. More specifically, these restraints are not reasonably necessary for the formation or efficient operation of the marketing collaboration between Marker Völkl and Tecnica. That the restraints are, at a minimum, overbroad is demonstrated by the fact that the agreements adversely affect competition for – and the compensation available to – athletes and employees who have no relationship with the collaboration.[4] Further, Respondents cannot plausibly claim that the restraints serve to align the incentives of the companies in a manner that promotes the cognizable efficiency goals of their collaboration. Rather, the ski businesses of Tecnica (the Nordica and Blizzard brands) were at all times outside of and apart from the collaboration.[5] In sum, the Respondents did not provide evidence demonstrating why Marker Völkl and Tecnica cannot

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would be *per se* unlawful."); *Vogel v. Am. Soc'y of Appraisers*, 744 F.2d 598, 601 (7th Cir. 1984) (Posner, J.) ("[B]uyer cartels, the object of which is to force the prices that suppliers charge the members of the cartel below the competitive level, are illegal *per se*."); *U.S. v. eBay*, 968 F. Supp. 2d 1030 (N.D. Cal. 2013) (denying defendant's motion to dismiss government's claim that an agreement between employers not to solicit or hire each other's employees was a naked restraint of trade subject to *per se* or quick look analysis).

These cases must be distinguished from (1) non-compete agreements between employers and their employees and (2) a no-hire agreement between the seller of a business and its buyer. Non-compete or no-hire agreements in those contexts do not generally receive *per se* condemnation to the extent that the courts deem the restraints ancillary to a legitimate and procompetitive transaction.

[3] *PolyGram Holding, Inc. v. FTC*, 416 F.3d 29, 35-36 (D.C. Cir. 2005).

[4] *Cf.*, Federal Trade Comm'n and U.S. Dep't of Justice, *Antitrust Guidelines for Collaborations Among Competitors* (2000) § 3.36(b).

[5] *See In the Matter of Polygram Holding, Inc., et al.*, 136 F.T.C. 310, 322, 357-63 (F.T.C. 2003).

cooperate in the marketing of certain ski products, yet at the same time compete for the services of endorsers and employees.

The athlete non-compete agreement and the employee non-compete agreement serve to protect Marker Völkl and Tecnica from the rigors of competition, with no advantage to consumer welfare. The justifications for the non-compete agreements proffered by the Respondents were neither supported by the evidence nor cognizable under the antitrust laws. Because there is no plausible and cognizable efficiency rationale for the non-compete agreements, these inherently suspect agreements constitute unreasonable restraints on trade, and are properly judged to be illegal.

The Proposed Orders

The proposed Orders are designed to remedy the unlawful conduct charged against Respondents in the Complaints and to prevent the recurrence of such conduct.

The proposed Orders enjoin Marker Völkl and Tecnica from, directly or indirectly, entering into, or attempting to enter into, an agreement with a ski equipment competitor to forbear from competing for U.S. athletes to sign endorsement contracts for the company's ski equipment. The proposed Orders also enjoin Marker Völkl and Tecnica from entering into an agreement with a ski equipment competitor to forbear from competing for the services of any U.S. employee. A proviso to the cease and desist requirements allows reasonable restraints ancillary to a legitimate joint venture.

The proposed Orders will expire in 20 years.

Complaint

IN THE MATTER OF

MARKER VÖLKL (INTERNATIONAL) GMBH

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

Docket No. C-4476; File No. 121 0004
Complaint, July 3, 2014 – Decision, July 3, 2014

This consent order addresses Marker Völkl (International) GmbH's agreement with Tecnica Group SpA. not to compete for the services of athlete endorsers and not to compete for the services of employees. The complaint alleges that both the athlete non-compete agreement and the employee non-compete agreement violate Section 5 of the Federal Trade Commission Act. The consent order prohibits Marker Völkl from, directly or indirectly, entering into, or attempting to enter into, an agreement with a ski equipment competitor to forbear from competing for U.S. athletes to sign endorsement contracts for the company's ski equipment, and from entering into an agreement with a ski equipment competitor to forbear from competing for the services of any U.S. employee.

Participants

For the *Commission*: *Joseph Baker, Jennifer Nagle*, and *Mark Taylor*.

For the *Respondent*: *Andrew Berg, Greenberg Traurig, LLP*.

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 ("Commission"), having reason to believe that Marker Völkl (International) GmbH ("Marker Völkl"), a corporation, hereinafter sometimes referred to as "respondent," has violated the provisions of said Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Nature of the Case

1. This action addresses anticompetitive conduct in the ski equipment industry. Beginning in or about 2004, Marker Völkl and its rival Tecnica Group, SpA. ("Tecnica") agreed not to compete with one another for the endorsement services of ski athletes. In 2007, the companies further agreed not to compete for employees. Both agreements are unfair methods of competition, and violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

Marker Völkl

2. Marker Völkl is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Ruessenstrasse 6, 6341 Baar, Switzerland. Marker Völkl manufactures, markets, and sells skis (under the Völkl brand) and ski bindings (under the Marker brand). Marker Völkl sells its skis and ski bindings in or into the United States. Since 2007, Marker Völkl has been a wholly-owned subsidiary of its parent, Jarden Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 555 Theodore Fremd Avenue, Rye, New York 10580.

3. At all times relevant herein, Marker Völkl has been, and is now, a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. The acts and practices of respondent, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

The Ski Equipment Businesses of Marker Völkl and Tecnica

5. Marker Völkl manufactures, markets, and sells skis (Völkl brand) and ski bindings (Marker brand).

6. For many years, Tecnica specialized in the manufacture and sale of ski boots. Tecnica acquired the Nordica ski equipment

unit from Benetton Group SpA. in 2003. The Nordica unit manufactured and sold both skis and ski boots.

7. Tecnica acquired a second ski manufacturer, Blizzard GmbH, in 2006. Currently, Tecnica, is the fourth largest seller of skis in the United States.

8. In 1992, Tecnica and Marker Völkl began collaborating in the marketing and distribution of certain complementary ski equipment: Völkl brand skis, and Tecnica brand ski boots. Initially, these companies were not competitors: Tecnica did not have a ski product; Marker Völkl did not have a ski boot product.

9. The ski brands later acquired by Tecnica (Nordica and Blizzard brands) were not included in the Tecnica/Marker Völkl collaboration. That is, Tecnica independently manufactures, markets, and distributes Nordica skis and Blizzard skis in competition with Völkl skis.

10. Tecnica and Marker Völkl terminated their collaboration in the United States in 2008, and in other regional markets over the period 2008 through 2010.

Competition for Ski Athlete Endorsements

11. The most effective and most costly tool for marketing ski equipment consists of securing endorsements from prominent ski athletes. Endorsers include world class and professional athletes who compete in organized ski competitions (such as the World Cup and the Olympics), "junior" athletes who show the potential to develop into world class athletes, skiers whose performance attracts significant media attention (such as extreme skiers), and other "opinion leaders" (such as ski instructors and ski patrollers).

12. Endorsement agreements between a ski equipment company and a ski athlete are typically of short duration, and are subject to renewal. Commonly, the ski athlete: (i) authorizes the company to use the athlete's name and likeness in promotions and in advertisements, (ii) agrees to use and promote the company's equipment on an exclusive basis, (iii) agrees to display the company's equipment when the athlete can attract media exposure, such as by taking the skis to the podium when receiving

a medal, and/or (iv) agrees to appear at promotional events on behalf of the company. The association of a ski equipment brand with a prominent ski athlete generates sales, goodwill, and other benefits for the company.

13. As consideration for the ski athlete's endorsement services, the ski equipment company commonly provides the ski athlete with monetary compensation (keyed to the athlete's success in competitions), support services at competitions, free or discounted equipment, and/or travel expenses.

14. Ordinarily, ski equipment companies compete with one another to secure the endorsement services of prominent ski athletes. At the expiration of an endorsement agreement, a ski athlete can be induced to switch from one company to another in return for greater compensation, in much the same way that an employee can be induced to change employers in return for a higher salary or better benefits.

15. Endorsement agreements are the primary source of income for professional ski athletes. Among professional skiers, the common wisdom is: To make money in this sport, ski fast—and endorsement deals may follow.

The Anticompetitive Agreements

16. In or about 2004, Marker Völkl and Tecnica agreed not to compete with one another to secure the endorsement services of ski athletes. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Nordica brand skis or who was otherwise claimed by Tecnica. Tecnica agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Völkl brand skis or who was otherwise claimed by Marker Völkl.

17. In 2005, Marker Völkl and Blizzard GmbH agreed not to compete with one another to secure the endorsement services of ski athletes. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Blizzard brand skis or who was otherwise claimed by Blizzard GmbH. Blizzard GmbH agreed not to solicit, recruit, or contract

with a ski athlete who previously endorsed Völkl brand skis or who was otherwise claimed by Marker Völkl.

18. In or about January 2007 – shortly after Tecnica's acquisition of Blizzard GmbH – executives of Marker Völkl met with executives of Tecnica to review the inter-company collaboration and the non-compete agreements. Marker Völkl and Tecnica reaffirmed that the companies would not compete with one another to secure the endorsement services of ski athletes. Marker Völkl and Tecnica intended that these athlete non-compete agreements would enable them to avoid bidding up the cost of securing athlete endorsements.

19. At the January 2007 meeting, Marker Völkl and Tecnica also agreed to expand the scope of their non-compete agreements. Marker Völkl and Tecnica agreed not to compete for the services of any employee. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with any employee of Tecnica. Tecnica agreed not to solicit, recruit, or contract with any employee of Marker Völkl. Marker Völkl and Tecnica intended that this employee non-compete agreement would enable them to avoid bidding up the salaries paid to employees.

20. In furtherance of the athlete non-compete agreements and the employee non-compete agreement, executives of Marker Völkl and Tecnica communicated the terms of these agreements to company managers with responsibility for recruiting ski athletes and for hiring employees.

21. Christoph Bronder, the President and Chief Executive Officer of Marker Völkl, aggressively policed the Marker Völkl/Tecnica non-compete agreements, and complained to Tecnica when he detected a potential violation.

22. The restraints on competition agreed to by Marker Völkl and Tecnica were not reasonably necessary for the formation or efficient operation of the collaboration between the companies. The ski businesses of Tecnica (the Nordica and Blizzard brands) were at all times outside of and apart from the collaboration. Consequently, the restraints did not align the disparate incentives of the companies in a manner that promoted the cognizable efficiency goals of the collaboration. Also, the restraints

adversely affected competition for – and the compensation available to – athletes and employees whose services were unrelated to the collaboration.

23. Marker Völkl's conduct, as alleged herein, had the purpose, capacity, tendency, and likely effect of (i) restraining competition unreasonably, (ii) harming the economic interests of ski athletes, and (iii) harming the economic interests of the affected employees of Marker Völkl and Tecnica.

Violations Alleged

24. As set forth in paragraphs 16 through 23 above, Marker Völkl and Tecnica agreed to restrain competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

25. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this third day of July, 2014, issues its complaint against respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of Marker Völkl (International) GmbH ("Marker Völkl"), a corporation, hereinafter sometimes referred to as "Respondent," and Respondent having been furnished thereafter with a copy of a draft of Complaint that counsel for the Commission proposed to

present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondent had violated said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. Respondent Marker Völkl is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland with its office and principal place of business located at Ruessenstrasse 6, 6341 Baar, Switzerland. Marker Völkl is a wholly-owned subsidiary of its parent, Jarden Corporation, which is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 555 Theodore Fremd Avenue, Rye, New York 10580.

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

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" means Marker Völkl (International) GmbH, its directors, officers, employees, agents, representatives, successors, and assigns, and includes its parent, all subsidiaries, divisions, groups, and affiliates controlled by them, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Commission" means the Federal Trade Commission.

C. "Agreement" means any agreement, arrangement, contract, combination, or understanding, formal or informal, written or unwritten, direct or indirect, between two or more Persons.

D. "Endorsement Agreement" means an Agreement between a Ski Company and a living natural person providing in part that, for consideration, (1) the Ski Company is authorized to utilize the name and/or likeness of the living natural person in connection with the advertisement, promotion, or sale of Ski Equipment, and/or (2) the living natural person will use and promote the Ski Company's Ski Equipment; for the avoidance of doubt, the following Agreements are not Endorsement Agreements for the purposes of this Order: (1) any Agreement between Respondent and a living natural person who is an employee of Respondent at the time he or she enters into the Agreement; (2) any Agreement between Respondent and another Ski Company in connection with the exclusive licensing of intellectual property relating to Ski Equipment; or (3) any exclusive Agreement between Respondent and a retailer and/or distributor of Ski Equipment that is not a Ski Company.

E. "Person" means any living natural person, corporate entity, sole proprietorship, partnership, association, joint venture, or trust.

F. "Ski Company" means any Person that, for the purpose of sale, resale, distribution, or marketing in or into the United States, manufactures Ski Equipment or causes Ski Equipment to be manufactured, and includes all the directors, officers, employees, consultants, agents and representatives of the Ski Company acting on behalf of or at the direction of the Ski Company; for the avoidance of doubt, "Ski Company" does not include: (1) any employee of Respondent to the extent he or she is acting on his or her own behalf; or (2) ski teams or ski pools.

G. "Ski Equipment" means alpine snow skis, ski boots, or ski bindings.

H. "U.S. Skier" means any living natural person who is engaged or has engaged in the sport of alpine skiing, and who, at the time the Ski Companies enter into an Agreement that, but for the proviso in Paragraph II.A. of this Order, would be prohibited by Paragraph II.A. of this Order, is:

1. a citizen or permanent resident alien (as defined by the US Citizenship and Immigration Services) of the United States;

2. a member of the U.S. Ski and Snowboard Association;

3. a member of the U.S. Ski Team;

4. a representative of the United States at the NorAm Cup, the World Cup, or any competition sanctioned by the International Ski Federation; or

5. a representative of the United States at the Winter Olympics.

I. "U.S. Employee" means any living natural person who is a citizen or permanent resident alien (as defined by the US Citizenship and Immigration Services) of the United States or whose principal place of employment is within the United States.

II.

IT IS FURTHER ORDERED that in connection with the business of manufacturing, distributing, marketing, or selling Ski Equipment in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, Respondent shall cease and desist from, directly or indirectly, or through any corporate or other device:

A. Inviting, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, soliciting, or otherwise facilitating any Agreement, either express or implied, with any Ski Company or Ski Companies (other than Respondent) to forbear from soliciting, cold calling, recruiting, hiring, contracting with, or otherwise competing for any U.S. Skier to be a party to an Endorsement Agreement.

Provided, however, that Respondent may enter into, attempt to enter into, or comply with a written agreement with any other Ski Company or Ski Companies to forbear from competing for any U.S. Skier to be a party to an Endorsement Agreement that (1) is reasonably related to a lawful joint venture agreement, or lawful merger, acquisition or sale agreement; and (2) is reasonably necessary to achieve such agreement's procompetitive benefits.

B. Inviting, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, soliciting, or otherwise facilitating any Agreement, either express or implied, with any Ski Company or Ski Companies (other than Respondent)

to forbear from soliciting, cold calling, recruiting, hiring, contracting with, or otherwise competing for any U.S. Employee of a Ski Company.

Provided, however, that Respondent may enter into, attempt to enter into, or comply with a written agreement with any other Ski Company or Ski Companies to forbear from competing for any U.S. Employee of a Ski Company that (1) is reasonably related to a lawful joint venture agreement, or lawful merger, acquisition or sale agreement; and (2) is reasonably necessary to achieve such agreement's procompetitive benefits.

Provided, further, that Respondent may enter into, attempt to enter into, or comply with written agreements with any other Ski Company or Ski Companies to forbear from competing for any employee of a Ski Company if such agreement: (1) is in settlement of a bona fide dispute relating to the enforcement of an employee's non- compete or non-solicitation agreement with the Respondent or the other Ski Company; or (2) is included in non-disclosure or confidentiality agreements that Respondent has entered into in connection with conducting due diligence relating to a proposed and bona fide merger, acquisition, or consolidation.

III.

IT IS FURTHER ORDERED that:

A. Within sixty (60) days after the date the Order is issued, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the Respondent has complied, is complying, and will comply with this Order.

B. One (1) year after the date the Order is issued, annually for the next two (2) years on the anniversary of the date the Order is issued, and at other times as the

Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which Respondent has complied and is complying with the Order.

IV.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of the Respondent;

B. Any proposed acquisition, merger or consolidation of the Respondent; or

C. Any other change in the Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in the Respondent.

V.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Respondent relating to any matters contained in this Order; and

B. Upon five (5) days' notice to the Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order shall terminate on July 3, 2034.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, an agreement containing consent order ("Agreement") from Marker Völkl (International) GmbH ("Marker Völkl") and a separate Agreement from Tecnica Group SpA. ("Tecnica"). Marker Völkl and Tecnica are hereinafter sometimes referred to collectively as "Respondents."

Respondents are manufacturers of various types of ski equipment. The Agreements settle charges that Marker Völkl and Tecnica both violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by agreeing with each other not to compete for the services of athlete endorsers and not to compete for the services of employees.

The Agreements have been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreements and comments received, and will decide whether it should withdraw from the Agreements or make final the orders contained in the Agreements.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the proposed orders. It is not intended to constitute an official interpretation of the Agreements and proposed orders, or in any way to modify their terms.

The proposed orders are for settlement purposes only and do not constitute an admission by the Respondents that they violated the law or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

The Complaints

This action addresses anticompetitive conduct in the ski equipment industry. The allegations of the Complaints are summarized below.

Background

Marker Völkl and Tecnica manufacture, market, and sell ski equipment. The most effective and most costly tool for marketing ski equipment consists of securing endorsements from prominent ski athletes.

Endorsement agreements between a ski equipment company and a ski athlete are typically of short duration, and are subject to renewal. Commonly, the ski athlete: (i) authorizes the company to use the athlete's name and likeness in promotions and in advertisements, (ii) agrees to use and promote the company's equipment on an exclusive basis, (iii) agrees to display the company's equipment when the athlete can attract media exposure, such as by holding up the skis at the end of a race, or taking the skis to the podium when receiving a medal, and/or (iv) agrees to appear at promotional events on behalf of the company. The association of a ski equipment brand with a prominent ski athlete generates sales, goodwill, and other benefits for the company.

As consideration for the ski athlete's endorsement services, the ski equipment company commonly provides the ski athlete with monetary compensation (keyed to the athlete's success in competitions), support services at competitions, free or discounted equipment, and/or travel expenses.

Ordinarily, ski equipment companies compete with one another to secure the endorsement services of prominent ski athletes. At the expiration of an endorsement agreement, a ski athlete can be induced to switch from one company to another in

return for greater compensation, in much the same way that an employee can be induced to change employers in return for a higher salary or better benefits.

Endorsement agreements are the primary source of income for professional ski athletes.

The Marker Völkl/Tecnica Collaboration

In 1992, Marker Völkl began collaborating with Tecnica in the marketing and distribution of certain complementary ski equipment: Völkl brand skis, and Tecnica brand ski boots. Initially, these companies were not competitors: Tecnica did not have a ski; Marker Völkl did not have a ski boot.

In 2003, Tecnica acquired the Nordica ski equipment unit from Benetton Group SpA. Nordica manufactured and sold both skis and ski boots. Tecnica acquired a second ski manufacturer, Blizzard GmbH ("Blizzard"), in 2006.

The ski brands acquired by Tecnica (Nordica and Blizzard brands) were not included in the Marker Völkl/Tecnica collaboration. That is, Tecnica independently manufactures, markets, and distributes Nordica skis and Blizzard skis, in competition with Völkl skis.

The Challenged Conduct

Marker Völkl and Tecnica agreed not to compete with one another to secure the services of ski athletes and employees.

Beginning in or about 2004, Marker Völkl and Tecnica agreed not to compete with one another to secure the endorsement services of ski athletes. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Tecnica's skis, or who was otherwise claimed by Tecnica. Tecnica agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Marker Völkl's skis, or who was otherwise claimed by Marker Völkl.

In 2007, Marker Völkl and Tecnica agreed to expand the scope of their non-compete agreements. Marker Völkl and

Tecnica agreed not to compete for the services of any employee. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with any employee of Tecnica. Tecnica agreed not to solicit, recruit, or contract with any employee of Marker Völkl.

Marker Völkl and Tecnica intended that these non-compete agreements would enable them to avoid bidding up (i) the cost of securing athlete endorsements, and (ii) the salaries paid to employees.

Respondents' conduct had the purpose, capacity, tendency, and likely effect of (i) restraining competition unreasonably, (ii) harming the economic interests of ski athletes, and (iii) harming the economic interests of the affected employees of Marker Völkl and Tecnica.

Legal Analysis

The Complaint alleges that both the athlete non-compete agreement and the employee non-compete agreement violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

These agreements are appropriately analyzed under the framework articulated by the Commission in the *Polygram* case.[1] Agreements between competitors not to compete for professional services, for employees, or for other inputs, are presumptively anticompetitive or inherently suspect, if not *per se* unlawful.[2]

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[1] *In the Matter of Polygram Holding, Inc., et al.*, 136 F.T.C. 310 (F.T.C. 2003), *aff'd*, 416 F.3d 29 (D.C. Cir. 2005). *See also North Texas Specialty Physicians v. FTC, 528 F.3d 346 (5th Cir. 2008); In the Matter of Realcomp II Ltd., A Corp.*., 2009-2 Trade Cas. (CCH) ¶ 76784 (F.T.C. Oct. 30, 2009).

[2] *See*, *e.g.*, *United States v. Brown*, 936 F.2d 1042 (9th Cir. 1991); *Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co*., 334 U.S. 219, 235 (1948). *See also Todd v. Exxon Corp*., 275 F.3d 191, 198 (2d Cir. 2001) (stating that *per se* rule would "likely apply" to allegations of actual agreement among competitors to fix employee salaries); *Knevelbaard v. Kraft Foods, Inc*., 232 F.3d 979, 988-89 (9th Cir. 2000) ("Most courts understand that a buying cartel's low prices are illegal . . . . Clearly mistaken is the occasional court that considers low buying prices pro-competitive or that thinks sellers receiving illegally low prices do not suffer antitrust injury."); *NBA v. Williams*, 45 F.3d 684, 687 (2d Cir. 1995) ("Absent justification under the Rule of Reason or some defense, employers who compete for labor may not agree among themselves to purchase that labor only on certain specified terms and conditions . . . Such conduct

When an agreement is deemed inherently suspect, a party may avoid summary condemnation under the antitrust laws by advancing a legitimate (cognizable and plausible) efficiency justification for the restraint.[3]

Here, the Commission finds reason to believe that the athlete non-compete agreement and the employee non-compete agreement serve no pro-competitive purpose. More specifically, these restraints are not reasonably necessary for the formation or efficient operation of the marketing collaboration between Marker Völkl and Tecnica. That the restraints are, at a minimum, overbroad is demonstrated by the fact that the agreements adversely affect competition for – and the compensation available to – athletes and employees who have no relationship with the collaboration.[4] Further, Respondents cannot plausibly claim that the restraints serve to align the incentives of the companies in a manner that promotes the cognizable efficiency goals of their collaboration. Rather, the ski businesses of Tecnica (the Nordica and Blizzard brands) were at all times outside of and apart from the collaboration.[5] In sum, the Respondents did not provide evidence demonstrating why Marker Völkl and Tecnica cannot cooperate in the marketing of

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would be *per se* unlawful."); *Vogel v. Am. Soc'y of Appraisers*, 744 F.2d 598, 601 (7th Cir. 1984) (Posner, J.) ("[B]uyer cartels, the object of which is to force the prices that suppliers charge the members of the cartel below the competitive level, are illegal *per se*."); *U.S. v. eBay*, 968 F. Supp. 2d 1030 (N.D. Cal. 2013) (denying defendant's motion to dismiss government's claim that an agreement between employers not to solicit or hire each other's employees was a naked restraint of trade subject to *per se* or quick look analysis).

These cases must be distinguished from (1) non-compete agreements between employers and their employees and (2) a no-hire agreement between the seller of a business and its buyer. Non-compete or no-hire agreements in those contexts do not generally receive *per se* condemnation to the extent that the courts deem the restraints ancillary to a legitimate and procompetitive transaction.

[3] *PolyGram Holding, Inc. v. FTC*, 416 F.3d 29, 35-36 (D.C. Cir. 2005).

[4] *Cf.*, Federal Trade Comm'n and U.S. Dep't of Justice, *Antitrust Guidelines for Collaborations Among Competitors* (2000) § 3.36(b).

[5] *See In the Matter of Polygram Holding, Inc., et al.*, 136 F.T.C. 310, 322, 357-63 (F.T.C. 2003).

certain ski products, yet at the same time compete for the services of endorsers and employees.

The athlete non-compete agreement and the employee non-compete agreement serve to protect Marker Völkl and Tecnica from the rigors of competition, with no advantage to consumer welfare. The justifications for the non-compete agreements proffered by the Respondents were neither supported by the evidence nor cognizable under the antitrust laws. Because there is no plausible and cognizable efficiency rationale for the non-compete agreements, these inherently suspect agreements constitute unreasonable restraints on trade, and are properly judged to be illegal.

The Proposed Orders

The proposed Orders are designed to remedy the unlawful conduct charged against Respondents in the Complaints and to prevent the recurrence of such conduct.

The proposed Orders enjoin Marker Völkl and Tecnica from, directly or indirectly, entering into, or attempting to enter into, an agreement with a ski equipment competitor to forbear from competing for U.S. athletes to sign endorsement contracts for the company's ski equipment. The proposed Orders also enjoin Marker Völkl and Tecnica from entering into an agreement with a ski equipment competitor to forbear from competing for the services of any U.S. employee. A proviso to the cease and desist requirements allows reasonable restraints ancillary to a legitimate joint venture.

The proposed Orders will expire in 20 years.

Complaint

IN THE MATTER OF

AMERICAN PLASTIC LUMBER, INC.

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

Docket No. C-4478; File No. 132 3200
Complaint, July 24, 2014 – Decision, July 24, 2014

This consent order addresses American Plastic Lumber, Inc.'s green claims made while promoting its plastic lumber products. The complaint alleges that the post-consumer recycled plastic in Respondent's products was substantially less than Respondent represented. The consent order prohibits Respondent from making representations regarding the recycled content, the post-consumer recycled content, or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence.

Participants

For the *Commission*: *Robert M. Frisby.*

For the *Respondent*: *James A. Kaminski, Hughes & Bentzen, PLLC.*

COMPLAINT

The Federal Trade Commission, having reason to believe that American Plastic Lumber, Inc., a corporation ("Respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent American Plastic Lumber, Inc. is a California corporation with its principal office or place of business at 3867 Dividend Drive, Suite B, Shingle Springs, California 95682.

2. Respondent has advertised, offered for sale, sold, and distributed plastic lumber products, including picnic tables, benches, trash receptacles, wheel stops, and speed bumps, to end-use consumers and businesses in the construction industry.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Since at least June 2011, Respondent has disseminated advertisements and promotional materials for plastic lumber products, including but not necessarily limited to the attached Exhibits A and B. These materials contain the following statements:

a. "American Plastic Lumber is made from recycled milk jugs . . ."

"APL's HDPE products are made of high-density polyethylene (HDPE), UV-inhibited pigment systems, foaming compounds and selected process additives. The HDPE raw material is derived from post-consumer bottle waste, such as milk and detergent bottles. . . . with the resulting finished product containing over 90% recycled plastic by weight[.]"

(Exhibit A, excerpt from www.american-plasticlumber.com)

b. "And finally, because plastic lumber is made from recycled plastic milk jugs, it is the environmentally responsible solution to all of your lumber needs."

(Exhibit B, brochure)

5. A consumer acting reasonably under the circumstances is likely to interpret the representations described in Paragraph 4 to mean that American Plastic Lumber or the recycled plastic in American Plastic Lumber is all or virtually all post-consumer recycled content such as milk jugs or detergent bottles.

6. From June 2011 to June 2013, the post-consumer recycled plastic in Respondent's products was substantially less than Respondent represented. During this period, Respondent's products, on average, contained about 79% post-consumer content. During this period, about 8% of Respondent's sales were

products with zero post-consumer content and about 7% were products with only 15% post-consumer content.

False or Misleading Claims

7. In connection with the advertising, promotion, offering for sale, or sale of plastic lumber products, Respondent has represented, directly or indirectly, expressly or by implication, that:

a. Its products are all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and

b. The recycled plastic in its products is all or virtually all post-consumer recycled content such as milk jugs or detergent bottles.

8. In fact:

a. Respondent's products are not all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and

b. The recycled plastic in its products is not all or virtually all post-consumer recycled content such as milk jugs or detergent bottles.

9. The representations set forth in Paragraph 7 are false or misleading, or were not substantiated at the time the representations were made.

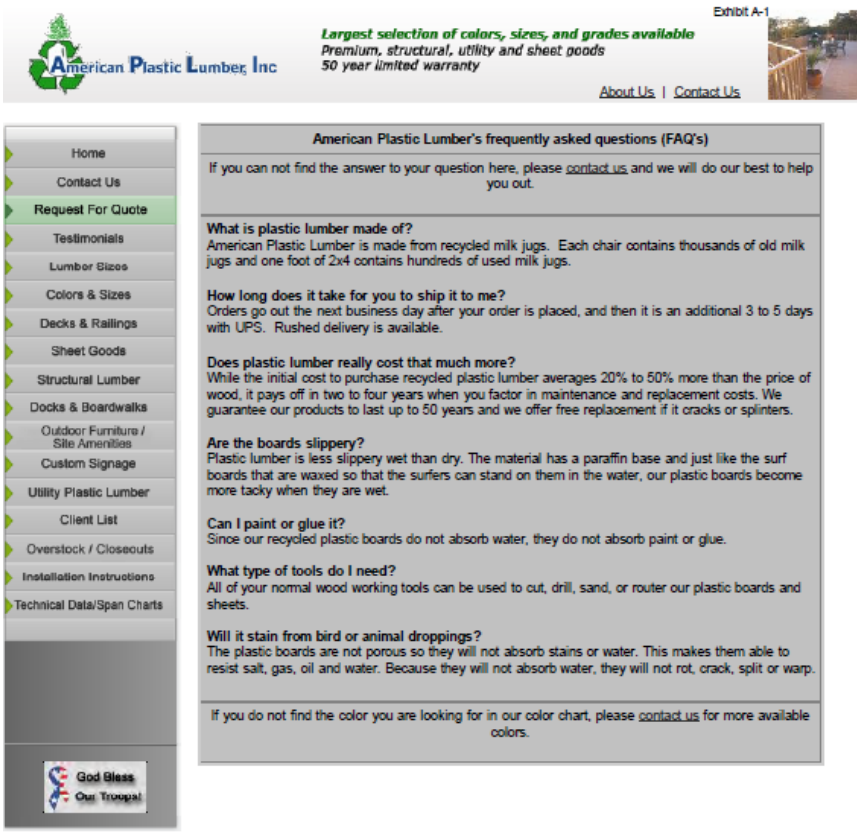
Violations of Section 5

10. The acts and practices of Respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twenty-fourth day of July, 2014, has issued this Complaint against Respondent.

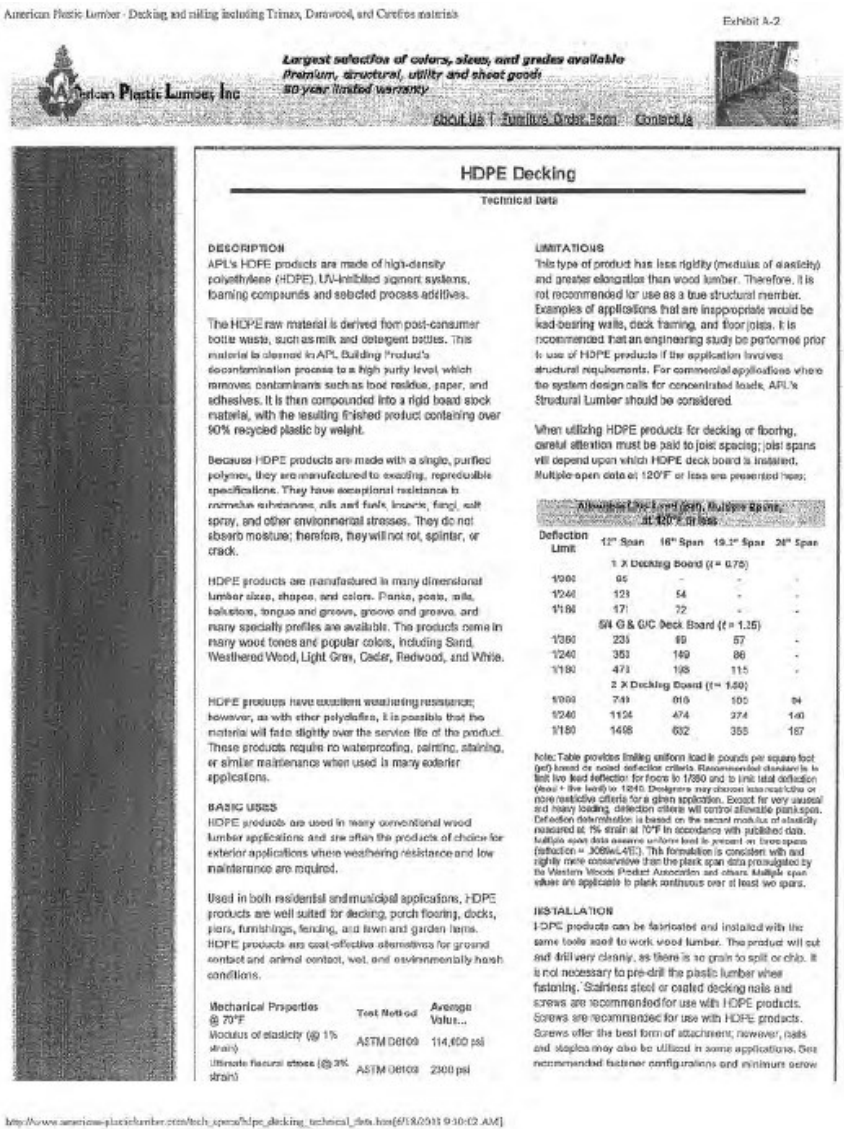
By the Commission.

Exhibit A-1



Complaint

Exhibit A-2



American Plastic Lumber - Decking and railing including Trimax, Durawood, and Certified materials

Exhibit A-2

American Plastic Lumber, Inc

Largest selection of colors, sizes, and grades available
Premium, structural, utility and sheet goods
50-year limited warranty

About Us | Furniture Order Form | Contact Us

HDPE Decking

Technical Data

DESCRIPTION

APL's HDPE products are made of high-density polyethylene (HDPE), UV-inhibited pigment systems, foaming compounds and selected process additives.

The HDPE raw material is derived from post-consumer bottle waste, such as milk and detergent bottles. This material is cleaned in APL Building Product's decontamination process to a high purity level which removes contaminants such as food residue, paper, and adhesives. It is then compounded into a rigid board stock material, with the resulting finished product containing over 90% recycled plastic by weight.

Because HDPE products are made with a single, purified polymer, they are manufactured to exacting, reproducible specifications. They have exceptional resistance to corrosive substances, oils and fuels, insects, fungi, salt spray, and other environmental stresses. They do not absorb moisture; therefore, they will not rot, splinter, or crack.

HDPE products are manufactured in many dimensional lumber sizes, shapes, and colors. Planks, posts, rails, balusters, tongue and groove, groove and groove, and many specialty profiles are available. The products come in many wood tones and popular colors, including Sand, Weathered Wood, Light Gray, Cedar, Redwood, and White.

HDPE products have excellent weathering resistance; however, as with other polyolefins, it is possible that the material will fade slightly over the service life of the product. These products require no waterproofing, painting, staining, or similar maintenance when used in many exterior applications.

BASIC USES

HDPE products are used in many conventional wood lumber applications and are often the products of choice for exterior applications where weathering resistance and low maintenance are required.

Used in both residential and municipal applications, HDPE products are well suited for decking, porch flooring, docks, piers, furnishings, fencing, and lawn and garden items. HDPE products are cost-effective alternatives for ground contact and animal contact, wet, and environmentally harsh conditions.

Mechanical Properties @ 70°F	Test Method	Average Value...
Modulus of elasticity (@ 1% strain)	ASTM D6109	114,600 psi
Ultimate flexural stress (@ 3% strain)	ASTM D6109	2300 psi

LIMITATIONS

This type of product has less rigidity (modulus of elasticity) and greater elongation than wood lumber. Therefore, it is not recommended for use as a true structural member. Examples of applications that are inappropriate would be load-bearing walls, deck framing, and floor joists. It is recommended that an engineering study be performed prior to use of HDPE products if the application involves structural requirements. For commercial applications where the system design calls for concentrated loads, APL's Structural Lumber should be considered.

When utilizing HDPE products for decking or flooring, careful attention must be paid to joist spacing; joist spans will depend upon which HDPE deck board is installed. Multiple-span data at 120°F or less are presented here:

Allowable Live Load (psf), Multiple Spans, at 120° or less

Deflection Limit	12" Span	16" Span	19.2" Span	24" Span
1 X Decking Board (t = 0.75)				
1/360	95	-	-	-
1/240	123	54	-	-
1/180	171	72	-	-
5/4 G & GC Deck Board (t = 1.25)				
1/360	235	89	57	-
1/240	353	149	86	-
1/180	473	198	115	-
2 X Decking Board (t= 1.50)				
1/360	749	316	185	84
1/240	1124	474	274	140
1/180	1498	632	365	187

Note: Table provides limiting uniform load in pounds per square foot (psf) based on noted deflection criteria. Recommended deflection is to limit live load deflection for floors to 1/360 and to limit total deflection (dead + live load) to 1/240. Designers may choose less restrictive or more restrictive criteria for a given application. Except for very unusual and heavy loading, deflection criteria will control allowable plank span. Deflection determination is based on the secant modulus of elasticity measured at 1% strain at 70°F in accordance with published data. Multiple span data assume uniform load is present on three spans (deflection = .0069wL4/EI). This formulation is consistent with and slightly more conservative than the plank span data promulgated by the Western Woods Product Association and others. Multiple span values are applicable to plank continuous over at least two spans.

INSTALLATION

HDPE products can be fabricated and installed with the same tools used to work wood lumber. The product will cut and drill very cleanly, as there is no grain to split or chip. It is not necessary to pre-drill the plastic lumber when fastening. Stainless steel or coated decking nails and screws are recommended for use with HDPE products. Screws are recommended for use with HDPE products. Screws offer the best form of attachment; however, nails and staples may also be utilized in some applications. See recommended fastener configurations and minimum screw

Exhibit B

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 a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violations of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts

necessary to establish jurisdiction; 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 Federal Trade Commission Act, and that a 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 thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Plastic Lumber, Inc. is a California corporation with its principal office or place of business at 3867 Dividend Drive, Suite B, Shingle Springs, California 95682.

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

ORDER

DEFINITIONS

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

A. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

B. "Competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of

relevant and reliable scientific evidence, to substantiate that a representation is true.

C. Unless otherwise specified, "respondent" means American Plastic Lumber, Inc., a corporation, and its successors and assigns.

I.

IT IS ORDERED that respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or package, shall not make any representation, in any manner, expressly or by implication, about:

A. The recycled content of any product or package;

B. The post-consumer recycled content, such as milk jugs or detergent bottles, of any product or package; or

C. The environmental benefit of any product or package;

unless such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates that the representation is true. If, in general, experts in the relevant scientific fields would conclude it is necessary, such evidence must be competent and reliable scientific evidence. For any representation that a product or package contains recycled content, such evidence must show that any recycled content in such product or package is composed of materials that have been recovered or otherwise diverted from the waste stream.

II.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent must maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about

which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "American Plastic Lumber, Inc., Docket No. C-4478."

V.

IT IS FURTHER ORDERED that respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, all reports required by this Part shall also be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "American Plastic Lumber, Inc., Docket No. C-4478."

VI.

This order will terminate on July 24, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from American Plastic Lumber, Inc., a corporation ("Respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter addresses allegedly deceptive green claims that Respondent made while promoting its plastic lumber products. According to the FTC complaint, Respondent represented that: (1) its products are all, or virtually all, post-consumer recycled

content such as milk jugs or detergent bottles; and (2) the recycled plastic in its products is all, or virtually all, post-consumer recycled content such as milk jugs or detergent bottles. The complaint also alleged that, from June 2011 to June 2013, the post-consumer recycled plastic in Respondent's products was substantially less than Respondent represented -- on average about 79% post-consumer content. According to the complaint, during this period, about 8% of Respondent's sales were products with zero post-consumer content, and about 7% were products with only 15% post-consumer content. Thus, the complaint alleges that both of the above claims were false, misleading, or unsubstantiated in violation of Section 5(a) of the FTC Act.

The proposed consent order contains several provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Part I prohibits Respondent from making representations regarding the recycled content, the post-consumer recycled content, or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence. Part I further provides that if, in general, experts in the relevant scientific field would conclude it necessary, such evidence must be competent and reliable scientific evidence. Consistent with the Guides for the Use of Environmental Marketing Claims ("Green Guides"), 16 C.F.R. § 260.13(b), Part I specifically requires Respondent to substantiate recycled content claims by demonstrating that such content is composed of materials that were recovered or otherwise diverted from the waste stream.

Parts II through VI are reporting and compliance provisions. Part II requires Respondent to keep (and make available to the Commission on request): copies of advertisements and promotional materials containing the representations covered by the order; materials relied upon in disseminating those representations; and evidence that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations. Part III requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. It also requires Respondent to maintain and

make available to the FTC all acknowledgments of receipt of the order. Part IV requires notification to the FTC of changes in corporate status. Part V mandates that Respondent submit an initial compliance report to the FTC and subsequent reports requested by the FTC. Part VI is a provision terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed consent order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

FANDANGO, LLC

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

Docket No. C-4481; File No. 132 3089
Complaint, August 13, 2014 – Decision, August 13, 2014

This consent order addresses Fandango, LLC's security in the development and maintenance of its mobile application. The complaint alleges that Fandango deceived consumers regarding the security it provided for ticket purchases made through Fandango Movies for iOS. The complaint further alleges that attackers could, in connection with attacks that redirect and intercept network traffic, decrypt, monitor, or alter any of the information transmitted from or to Fandango Movies for iOS, including the consumer's credit card number, security code, expiration date, billing zip code, email address, and password. The consent order requires Fandango to (1) address security risks related to the development and management of new and existing products and services for consumers, and (2) protect the security, integrity, and confidentiality of covered information, whether collected by Fandango or input into, stored on, captured with, or accessed through a computer using Fandango's products or services. The order also prohibits Fandango from misrepresenting the extent to which Fandango or its products or services maintain and protect the privacy, security, confidentiality, or integrity of covered information.

Participants

For the *Commission*: *Jarad Brown* and *Nithan Sannappa.*

For the *Respondent*: *Jim Halpert, DLA Piper LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Fandango, LLC ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Fandango, LLC ("Fandango") is a Delaware limited liability company with its principal office or place of business at 12200 W. Olympic Boulevard, Suite 400, Los Angeles, CA 90064.

2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

RESPONDENT'S BUSINESS PRACTICES

3. Fandango provides a website and mobile applications that allow consumers to purchase movie tickets and view showtimes, trailers, and reviews.

4. Fandango launched its Fandango Movies application for Apple, Inc.'s iOS operating system in March 2009. In December 2010, Fandango launched an iPad version of the application. Fandango distributes the application through the iTunes App Store, where it describes the application as the "#1 movie ticketing app featured in Apple commercials." The iTunes App Store lists Fandango Movies among the top 10 free applications in the Entertainment category. The application has been downloaded over 18.5 million times.

5. Although the Fandango Movies application is free to install and use, Fandango charges a service fee when a consumer uses the application to purchase a movie ticket. As of August 2013, 20 percent of Fandango's total ticket sales were from its iOS mobile applications.

6. Fandango Movies allows consumers to purchase movie tickets regardless of whether the consumer has a Fandango account. When a consumer purchases tickets, the application provides a choice of payment methods, including an option to pay by credit card. Consumers can choose to save their credit card information on the device for future use. Each time a user purchases tickets after entering a credit card number or selecting a card previously saved on the device, Fandango Movies transmits the consumer's credit card information, including card number, security code, expiration date, and billing zip code, to Fandango's servers. If a consumer chooses to create or log into a Fandango account through the Fandango Movies application, the application transmits the consumer's authentication credentials, including email address and password, to Fandango's servers.

SECURE SOCKETS LAYER CERTIFICATE VALIDATION

7. Consumers frequently use mobile applications on public Wi-Fi networks in venues such as coffee shops, shopping centers, and airports. Consumers may use the Fandango Movies application in such public environments. Indeed, during its launch, Fandango marketed the Fandango Movies application as a way for consumers "to access movie and theater information 'on the go', [and] buy tickets in seconds for more than 16,000 screens across the U.S."

8. Online services often use the Secure Sockets Layer ("SSL") protocol to establish authentic, encrypted connections with consumers. In order to authenticate and encrypt connections, SSL relies on electronic documents called SSL certificates.

9. In the context of mobile applications, an online service (*e.g.*, Fandango) presents an SSL certificate to the application on a consumer's device (*e.g.*, Fandango Movies) to vouch for its identity. The application must then validate the SSL certificate – in effect verifying the identity of the online service – to ensure that the application is connecting to the genuine online service. After completing this process, the online service and the application on the consumer's device can establish a secure connection that is both authenticated and encrypted.

10. If the application fails to perform this process, an attacker could position himself between the application on the consumer's device and the online service by presenting an invalid certificate to the application. The application would accept the invalid certificate and establish a connection between the application and the attacker, allowing the attacker to decrypt, monitor, or alter all communications between the application and the online service. This type of attack is known as a "man-in-the-middle attack." Neither the consumer using the application nor the online service could feasibly detect the attacker's presence.

11. On many public Wi-Fi networks, attackers can use well-known spoofing techniques to facilitate man-in-the-middle attacks.

12. To protect against these attacks, the iOS operating system provides developers with application programming interfaces ("APIs") that allow applications to create secure connections using SSL. By default, these APIs validate SSL certificates and reject the connection if the SSL certificate presented to the application is invalid.

13. The iOS developer documentation warns developers against disabling the default validation settings or otherwise failing to validate SSL certificates, explaining that this "eliminates any benefit you might otherwise have gotten from using a secure connection. The resulting connection is no safer than sending the request via unencrypted HTTP because it provides no protection from spoofing by a fake server."

14. Application developers can easily test for and identify SSL certificate validation vulnerabilities using free or low-cost, publicly available tools.

FANDANGO'S SECURITY FAILURES

15. From March 2009 to March 2013, the Fandango Movies application for iOS failed to validate SSL certificates, overriding the defaults provided by the iOS APIs.

16. Before March 2013, Fandango did not test the Fandango Movies application to ensure that the application was validating SSL certificates and securely transmitting consumers' sensitive personal information. Although Fandango commissioned limited security audits of its applications starting in 2011, more than two years after the release of its iOS application, respondent limited the scope of these security audits to issues presented when the "code is decompiled or disassembled," *i.e.*, threats arising only from attackers who had physical access to a device. As a result, these audits did not assess whether the iOS application's transmission of information, including credit card information, was secure.

17. Moreover, Fandango does not have a clearly publicized and effective channel for receiving security vulnerability reports, and instead relies upon its general Customer Service system to escalate security vulnerability reports to the proper employees. In

December 2012, a security researcher informed respondent through its Customer Service web form that its iOS application was vulnerable to man-in-the-middle attacks because it did not validate SSL certificates. Because the security researcher's message included the term "password," Fandango's Customer Service system flagged the message as a password reset request and replied with an automated message providing the researcher with instructions on how to reset passwords. Fandango's Customer Service system then marked the security researcher's message as "resolved," and did not escalate it for further review.

18. After Commission staff contacted respondent, Fandango tested the Fandango Movies application for iOS and confirmed that the application failed to validate SSL certificates. Fandango discovered that the vulnerability also affected a separate iOS movie ticketing application that Fandango developed and hosted for a third party. Within three weeks of being contacted by Commission staff, respondent issued an update to both iOS applications that enabled SSL certificate validation by restoring the iOS API default settings, thereby correcting the security vulnerability.

19. Respondent engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security in the development and maintenance of its mobile application, including:

a. Overriding the default SSL certificate validation settings provided by the iOS APIs without implementing other security measures to compensate for the lack of SSL certificate validation;

b. Failing to appropriately test, audit, assess, or review its applications, including failing to ensure that the transmission of sensitive personal information was secure; and

c. Failing to maintain an adequate process for receiving and addressing security vulnerability reports from third parties.

20. As a result of these failures, attackers could have, in connection with attacks that redirect and intercept network traffic, decrypted, monitored, or altered any of the information transmitted from or to the application, including the consumer's credit card number, security code, expiration date, billing zip code, email address, and password. The misuse of credit card information and authentication credentials can lead to identity theft and financial harm, the compromise of personal information maintained on other online services, and related consumer harms.

21. Fandango could have prevented these vulnerabilities and ensured the secure transmission of consumers' sensitive personal information, including credit card information, at virtually no cost by simply implementing the default SSL certificate validation settings.

FANDANGO'S PRIVACY AND SECURITY REPRESENTATIONS

22. Fandango disseminated or caused to be disseminated to consumers the following in-app representation regarding the security of credit card and account information stored on and transmitted through the application:

> Your Fandango iPhone Application allows you to store your credit card and Fandango account information on your device so you can conveniently purchase movie tickets. Your information is securely stored on your device and transferred with your approval during each transaction.

23. When a consumer selects the option to "Buy" a ticket using the Fandango Movies application, respondent disseminated or caused to be disseminated the following in-app representation regarding the security of the transaction before presenting the consumer with the option to pay by entering – and if desired, storing on the device for future use – the consumer's credit card information:

> You don't need an account to securely purchase tickets.

FANDANGO'S DECEPTIVE REPRESENTATIONS

24. As described in Paragraphs 22 and 23, Fandango represented, expressly or by implication, that it provides reasonable and appropriate security for ticket purchases made through the Fandango Movies application for iOS.

25. In truth and in fact, as set forth in Paragraphs 7 – 21, in many instances, Fandango did not provide reasonable and appropriate security for ticket purchases made through the Fandango Movies application for iOS. Therefore, the representation set forth in Paragraph 24 was false or misleading.

26. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this thirteenth day of August, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeny not participating.

DECISION AND ORDER

The Federal Trade Commission ("Commission" or "FTC"), 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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45 *et seq*.;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 FTC Act, and that a 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 thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Fandango, LLC ("Fandango") is a Delaware limited liability company with its principal office or place of business at 12200 W. Olympic Boulevard, Suite 400, Los Angeles, CA 90064.

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

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "respondent" shall mean Fandango, LLC and its successors and assigns.

B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

C. "Covered information" shall mean information from or about an individual consumer, including but not limited to (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver's license or other state-issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) a persistent identifier, such as a customer number held in a "cookie," a static Internet Protocol ("IP") address, a mobile device ID, or processor serial number; (j) precise geo-location data of an individual or mobile device, including GPS-based, WiFi-based, or cell-based location information; or (k) an authentication credential, such as a username or password.

D. "Computer" shall mean any desktop, laptop computer, tablet, handheld device, telephone, or other electronic product or device that has a platform on which to download, install, or run any software program, code, script, or other content and to play any digital audio, visual, or audiovisual content.

E. "Client software" shall mean any program or application developed by respondent or any corporation, subsidiary, division, or affiliate owned or controlled by respondent, that is installed locally on a consumer's computer and that communicates with a server.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondent, shall not misrepresent

in any manner, expressly or by implication, the extent to which respondent or its products or services maintain and protect the privacy, security, confidentiality, or integrity of any covered information.

II.

IT IS FURTHER ORDERED that respondent shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive security program that is reasonably designed to (1) address security risks related to the development and management of new and existing products and services for consumers, and (2) protect the security, integrity and confidentiality of covered information, whether collected by respondent or input into, stored on, captured with, or accessed through a computer using respondent's products or services. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the covered information, including:

A. the designation of an employee or employees to coordinate and be accountable for the security program;

B. the identification of material internal and external risks to the security, confidentiality, and integrity of covered information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, whether such information is in respondent's possession or is input into, stored on, captured with, or accessed through a computer using respondent's products or services, and assessment of the sufficiency of any safeguards in place to control these risks.

C. at a minimum, this risk assessment required by Subpart B should include consideration of risks in each area of relevant operation, including, but not limited to, (1) employee training and management, including in secure engineering and defensive programming; (2)

product design and development; (3) secure software design, development, and testing; (4) review, assessment, and response to third-party security vulnerability reports, and (5) prevention, detection, and response to attacks, intrusions, or systems failures;

D. the design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures, including through reasonable and appropriate software security testing techniques;

E. the development and use of reasonable steps to select and retain service providers capable of maintaining security practices consistent with this order, and requiring service providers by contract to implement and maintain appropriate safeguards; and

F. the evaluation and adjustment of respondent's security program in light of the results of the testing and monitoring required by subpart B, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its security program.

III.

IT IS FURTHER ORDERED that, in connection with its compliance with Part II of this order, for any product or service offered through client software, respondent shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. Professionals qualified to prepare such Assessments shall be: a person qualified as a Certified Secure Software Lifecycle Professional (CSSLP) with experience in secure mobile programming; or as a Certified Information System Security Professional (CISSP) with professional experience in the Software Development Security domain and secure mobile programming;

or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The reporting period for the Assessments shall cover: (1) the first one hundred eighty (180) days after service of the order for the initial Assessment; and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

A. set forth the specific controls and procedures that respondent has implemented and maintained during the reporting period;

B. explain how such safeguards are appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the covered information;

C. explain how the safeguards that have been implemented meet or exceed the protections required by Part II of this order; and

D. certify that respondent's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of covered information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request. Unless otherwise directed by a representative of the Commission, the initial Assessment, and any subsequent Assessments requested, shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement,

Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of Fandango, LLC.*, FTC File No. 1323089. Provided, however, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

IV.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of:

A. for a period of three (3) years after the date of preparation of each Assessment required under Part III of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of the respondent, including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials relating to respondent's compliance with Parts II and III of this order, for the compliance period covered by such Assessment;

B. unless covered by IV.A, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all other documents relating to compliance with this order, including but not limited to:

1. all advertisements and promotional materials containing any representations covered by this order, as well as all materials used or relied upon in making or disseminating the representation; and

2. any documents, whether prepared by or on behalf of respondent, that contradict, qualify, or call into question respondent's compliance with this order.

V.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future subsidiaries, current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current subsidiaries and personnel within thirty (30) days after service of this order, and to such future subsidiaries and personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

VI.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of Fandango, LLC*, FTC File No. 1323089. *Provided, however*, that in lieu of overnight courier, notices may be sent by first-class

mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

VII.

IT IS FURTHER ORDERED that respondent within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VIII.

This order will terminate on August 13, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. any Part in this order that terminates in fewer than twenty (20) years;

B. this order's application to any respondent that is not named as a defendant in such complaint; and

C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis to Aid Public Comment

By the Commission, Commissioner McSweeny not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, a consent order applicable to Fandango, LLC ("Fandango").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Fandango provides a website and mobile applications that allow consumers to purchase movie tickets and view showtimes, trailers, and reviews. Fandango's mobile application for iOS ("Fandango Movies") has been downloaded over 18.5 million times and accounts for approximately 20% of all of Fandango's ticket sales.

The Commission's complaint alleges that Fandango deceived consumers regarding the security it provided for ticket purchases made through Fandango Movies for iOS. Specifically, the complaint alleges that Fandango engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security in the development and maintenance of its mobile application, including:

(1) overriding the mobile operating system default settings that would have secured the transmission of sensitive personal information to and from the mobile application;

(2) failing to appropriately test, audit, assess, or review its applications, including failing to ensure that the transmission of sensitive personal information was secure; and

(3) failing to maintain an adequate process for receiving and addressing security vulnerability reports from third parties.

The complaint further alleges that, due to these failures, attackers could, in connection with attacks that redirect and intercept network traffic, decrypt, monitor, or alter any of the information transmitted from or to Fandango Movies for iOS, including the consumer's credit card number, security code, expiration date, billing zip code, email address, and password. The complaint alleges that the misuse of these types of sensitive personal information can lead to identity theft and financial harm, the compromise of personal information maintained on other online services, and related consumer harms. Furthermore, the complaint alleges that Fandango did not have a clearly publicized channel for receiving security vulnerability reports, and as a result, failed to receive a security researcher's report regarding this vulnerability.

The proposed order contains provisions designed to prevent Fandango from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Fandango from misrepresenting the extent to which Fandango or its products or services maintain and protect the privacy, security, confidentiality, or integrity of covered information. Part II of the proposed order requires Fandango to (1) address security risks related to the development and management of new and existing products and services for consumers, and (2) protect the security, integrity, and confidentiality of covered information, whether collected by Fandango or input into, stored on, captured with, or accessed through a computer using Fandango's products or services. The security program must contain administrative, technical, and physical safeguards appropriate to Fandango's size and complexity, nature and scope of its activities, and the

sensitivity of the covered information. Specifically, the proposed order requires Fandango to:

- designate an employee or employees to coordinate and be accountable for the information security program;

- identify material internal and external risks to the security, confidentiality, and integrity of covered information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, whether such information is in Fandango's possession or is input into, stored on, captured with, accessed or transmitted through a computer using Fandango's products or services, and assess the sufficiency of any safeguards in place to control these risks;

- consider risks in each area of relevant operation, including but not limited to (1) employee training and management, including in secure engineering and defensive programming; (2) product design and development; (3) secure software design, development, and testing; and (4) review, assessment, and response to third-party security vulnerability reports; and (5) prevention, detection, and response to attacks, intrusions, or system failures;

- design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures, including through reasonable and appropriate software security testing techniques;

- develop and use reasonable steps to select and retain service providers capable of maintaining security practices consistent with the order, and require service providers by contract to implement and maintain appropriate safeguards; and

- evaluate and adjust its security program in light of the results of testing and monitoring, any material changes to Fandango's operations or business arrangement, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of its security program.

Part III of the proposed order requires Fandango to obtain, for any product or service offered through client software, within the first one hundred eighty (180) days after service of the order and on a biennial basis thereafter for a period of twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) it has in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of covered information is protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires Fandango to retain documents relating to its compliance with the order. The order requires that all materials relied upon to prepare the assessments required by Part III of the order be retained for a three-year period, and that other documents, such as advertisements and promotional materials covered by the order, be retained for a five-year period. Part V requires dissemination of the order to all current and future subsidiaries, current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII requires Fandango to submit a compliance report to the FTC within 60 days, and periodically thereafter as requested. Part VIII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

CREDIT KARMA, INC.

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

Docket No. C-4480; File No. 132 3091
Complaint, August 13, 2014 – Decision, August 13, 2014

This consent order addresses Credit Karma, Inc.'s security for its website and mobile application that allow consumers to monitor and evaluate their credit and financial status. The complaint alleges that Credit Karma engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security in the development and maintenance of its mobile application. The complaint further alleges that, due to these failures, attackers could, in connection with attacks that redirect and intercept network traffic, decrypt, monitor, or alter any of the information transmitted from or to the application, including Social Security numbers, dates of birth, "out of wallet" information, and credit report information. The consent order requires Credit Karma to (1) address security risks related to the development and management of new and existing products and services for consumers, and (2) protect the security, integrity, and confidentiality of covered information, whether collected by Credit Karma or input into, stored on, captured with, or accessed through a computer using Credit Karma's products or services. The order also prohibits Credit Karma from misrepresenting the extent to which Credit Karma or its products or services maintain and protect the privacy, security, confidentiality, or integrity of covered information.

Participants

For the *Commission*: *Jarad Brown* and *Nithan Sannappa.*

For the *Respondent*: *Reed Freeman, Morrison & Foerster LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Credit Karma, Inc. ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Credit Karma, Inc. ("Credit Karma") is a Delaware corporation with its principal office or place of business at 115 Sansome Street, Suite 400, San Francisco, CA 94104.

2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

RESPONDENT'S BUSINESS PRACTICES

3. Credit Karma provides a website and mobile application that allow consumers to monitor and evaluate their credit and financial status. Credit Karma allows consumers to access credit scores and credit reports, and a "Credit Report Card" summarizing key credit report metrics, and also offers credit monitoring.

4. The Credit Karma Mobile application – available for Apple, Inc.'s iOS operating system since July 2012 and Google, Inc.'s Android operating system since February 2013 – allows consumers to access their credit score, monitor their credit score history, access their "Credit Report Card," access a summary of the accounts on their credit report, including specific account names and balances, and obtain notifications regarding significant changes in their credit report.

5. Both the iTunes App Store and the Google Play Store list Credit Karma Mobile among the top 10 free applications in the Finance category. The application has been downloaded over one million times.

6. When a consumer creates an account through the Credit Karma Mobile application, the application transmits sensitive personal information to Credit Karma, including the consumer's email address, password, security question and answer, first name, last name, date of birth, street address, apartment number, city, zip code, phone number, and Social Security Number. During the account creation process, the application also transmits the consumer's answers to "out of wallet" questions, which are multiple choice questions validating the consumer's identity (*e.g.*, questions about a past mortgage provider or the payment amount on a loan).

7. Credit Karma outsourced the software development of both the iOS and Android versions of the Credit Karma Mobile application to application development firms that acted as its service providers and agreed to certain product security requirements.

SECURE SOCKETS LAYER CERTIFICATE VALIDATION

8. Consumers frequently use mobile applications on public Wi-Fi networks in venues such as coffee shops, shopping centers, and airports. Consumers may use the Credit Karma Mobile application in such public environments. Indeed, Credit Karma marketed Credit Karma Mobile on the iTunes App Store and the Google Play Store as a way for consumers to get "free on-the-go credit monitoring."

9. Online services often use the Secure Sockets Layer ("SSL") protocol to establish authentic, encrypted connections with consumers. In order to authenticate and encrypt connections, SSL relies on electronic documents called SSL certificates.

10. In the context of mobile applications, an online service (*e.g.*, Credit Karma) presents an SSL certificate to the application on a consumer's device (*e.g.*, Credit Karma Mobile) to vouch for its identity. The application must then validate the SSL certificate – in effect verifying the identity of the online service – to ensure that the application is connecting to the genuine online service. After completing this process, the online service and the application on the consumer's device can establish a secure connection that is both authenticated and encrypted.

11. If the application fails to perform this process, an attacker could position himself between the application on the consumer's device and the online service by presenting an invalid certificate to the application. The application would accept the invalid certificate and establish a connection between the application and the attacker, allowing the attacker to decrypt, monitor, or alter all communications between the application and the online service. This type of attack is known as a "man-in-the-middle attack." Neither the consumer using the application nor the online service could feasibly detect the attacker's presence.

12. On many public Wi-Fi networks, attackers can use well-known spoofing techniques to facilitate man-in-the-middle attacks.

13. To protect against these attacks, the iOS and Android operating systems provide developers with application programming interfaces ("APIs") that allow applications to create secure connections using SSL. By default, these APIs validate SSL certificates and reject the connection if the SSL certificate presented to the application is invalid.

14. The developer documentation for both iOS and Android warns developers against disabling the default validation settings or otherwise failing to validate SSL certificates. The iOS documentation explains that failing to validate SSL certificates "eliminates any benefit you might otherwise have gotten from using a secure connection. The resulting connection is no safer than sending the request via unencrypted HTTP because it provides no protection from spoofing by a fake server." Similarly, the Android documentation states that an application that does not validate SSL certificates "might as well not be encrypting [the] communication, because anyone can attack [the application's] users at a public Wi-Fi hotspot . . . [and] the attacker can then record passwords and other personal data."

15. Application developers can easily test for and identify SSL certificate validation vulnerabilities using free or low-cost, publicly available tools.

CREDIT KARMA'S SECURITY FAILURES

16. From July 18, 2012 to January 2013, the Credit Karma Mobile application for iOS failed to validate SSL certificates, overriding the defaults provided by the iOS APIs. On or around January 1, 2013, a Credit Karma user informed respondent that its iOS application was vulnerable to man-in-the-middle attacks because it did not validate SSL certificates. Respondent's in-house security engineers issued an update to the application in January 2013 that enabled SSL certificate validation by restoring the iOS API default settings.

17. During the iOS application's development, Credit Karma had authorized its service provider, the application development firm, to use code that disabled SSL certificate validation "in testing only," but failed to ensure this code's removal from the production version of the application. As a result, the iOS application shipped to consumers with the SSL certificate validation vulnerability. Credit Karma could have identified and prevented this vulnerability by performing an adequate security review prior to the iOS application's launch. In February 2013, one month after addressing the vulnerability in its iOS application, Credit Karma launched the Android version of its application, again without first performing an adequate security review or at least testing the application for previously identified vulnerabilities. As a result, like the iOS application before it, the Android application failed to validate SSL certificates, overriding the defaults provided by the Android APIs.

18. Credit Karma did not perform an adequate security review of the Credit Karma Mobile application until after Commission staff contacted respondent. At that time, Credit Karma's in-house security team performed a basic, low-cost security review of both the iOS and Android versions of the application over the course of several hours.

19. Through the security review, respondent discovered that its service provider had introduced the same SSL certificate validation vulnerability into its Android application that respondent had been warned about and remedied in its iOS application just one month earlier. Respondent issued an update to the Android application in March 2013, enabling SSL certificate validation by restoring the Android API default settings. Credit Karma could have prevented the re-introduction of this vulnerability in the Android version of its application had it performed an adequate security review prior to launch or at least tested the application for previously identified vulnerabilities.

20. Through the security review, respondent's in-house security team also discovered that the iOS application was storing authentication tokens and passcodes on the device in an insecure manner, contrary to security requirements that the application development firm had agreed to implement (*i.e.*, encrypting this information with the "keychain" API provided by the iOS

operating system). Credit Karma could have ensured the implementation of its product security requirements by providing reasonable oversight of its service providers during the development process and performing an adequate security review of its application prior to launch.

21. Respondent engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security in the development and maintenance of its mobile application, including:

a. Overriding the default SSL certificate validation settings provided by the iOS and Android APIs without implementing other security measures to compensate for the lack of SSL certificate validation;

b. Failing to appropriately test, audit, assess, or review its applications, including failing to ensure that the transmission of sensitive personal information was secure; and

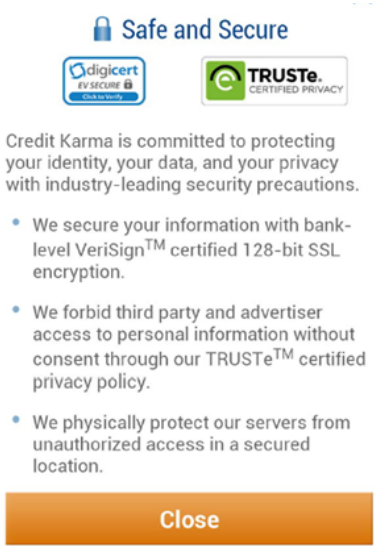
c. Failing to reasonably and appropriately oversee its service providers' security practices.

22. As a result of these failures, attackers could, in connection with attacks that redirect and intercept network traffic, decrypt, monitor, or alter any of the information transmitted from or to the application, including Social Security numbers, dates of birth, "out of wallet" information, and credit report information. Attackers also could intercept a consumer's authentication credentials, allowing an attacker to log into the consumer's Credit Karma web account to access the consumer's credit score and a more complete version of the consumer's credit report. The misuse of these types of sensitive personal information can lead to identity theft, including existing and new account fraud, the compromise of personal information maintained on other online services, and related consumer harms.

23. Credit Karma could have prevented these vulnerabilities and ensured the secure transmission of consumers' sensitive personal information by performing basic, low-cost security reviews, such as the one described in paragraph 18.

CREDIT KARMA'S PRIVACY AND SECURITY REPRESENTATIONS

24. Since the launch of the Credit Karma Mobile application on iOS and Android, Credit Karma disseminated or caused to be disseminated to consumers the following in-app representation when a consumer created an account using the application:



25. Since at least the launch of the Credit Karma Mobile application on iOS and Android, Credit Karma disseminated or caused to be disseminated to consumers the following representation in its privacy policy:

> We enable our servers with Secure Socket Layer (SSL) technology to establish a secure connection between your computer and our servers, creating a private session.

CREDIT KARMA'S DECEPTIVE REPRESENTATIONS (Count 1)

26. As described in Paragraph 24, Credit Karma has represented, expressly or by implication, that it is committed to protecting Credit Karma Mobile application users' identity, data, and privacy with reasonable and appropriate security practices.

27. In truth and in fact, as set forth in Paragraphs 16 – 23, Credit Karma failed to protect Credit Karma Mobile application users' identity, data, and privacy with reasonable and appropriate security practices. Therefore, the representation set forth in Paragraph 26 was false or misleading.

(Count 2)

28. As described in Paragraphs 24 and 25, Credit Karma has represented, expressly or by implication, that the Credit Karma Mobile application transmits consumers' sensitive personal information over secure SSL connections.

29. In truth and in fact, as set forth in Paragraphs 8 – 19, the Credit Karma Mobile application did not transmit consumers' sensitive personal information over secure SSL connections. Therefore, the representation set forth in Paragraph 28 was false or misleading.

30. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this thirteenth day of August, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeny not participating.

DECISION AND ORDER

The Federal Trade Commission ("Commission" or "FTC"), 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 complaint

that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45 *et seq*.;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 FTC Act, and that a 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 thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Credit Karma, Inc. ("Credit Karma") is a Delaware corporation with its principal office or place of business at 115 Sansome Street, Suite 400, San Francisco, CA 94104.

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

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "respondent" shall mean Credit Karma, Inc. and its successors and assigns.

B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

C. "Covered information" shall mean information from or about an individual consumer, including but not limited to (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver's license or other state-issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) credit report information; (j) a persistent identifier, such as a customer number held in a "cookie," a static Internet Protocol ("IP") address, a mobile device ID, or processor serial number; (k) precise geo-location data of an individual or mobile device, including GPS-based, WiFi-based, or cell-based location information; (l) an authentication credential, such as a username or password; or (m) any communications or content that is input into, stored on, captured with, or accessed through a computer, including but not limited to contacts, emails, SMS messages, photos, videos, and audio recordings.

D. "Computer" shall mean any desktop, laptop computer, tablet, handheld device, telephone, or other electronic product or device that has a platform on which to download, install, or run any software program, code, script, or other content and to play any digital audio, visual, or audiovisual content.

E. "Client software" shall mean any program or application developed by respondent or any corporation, subsidiary, division, or affiliate owned or controlled by respondent, that is installed locally on a consumer's computer and that communicates with a server.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondent, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent or its products or services maintain and protect the privacy, security, confidentiality, or integrity of any covered information.

II.

IT IS FURTHER ORDERED that respondent shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive security program that is reasonably designed to (1) address security risks related to the development and management of new and existing products and services for consumers, and (2) protect the security, integrity, and confidentiality of covered information, whether collected by respondent or input into, stored on, captured with, or accessed through a computer using respondent's products or services. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the covered information, including:

A. the designation of an employee or employees to coordinate and be accountable for the security program;

B. the identification of material internal and external risks to the security, confidentiality, and integrity of covered information that could result in the unauthorized

disclosure, misuse, loss, alteration, destruction, or other compromise of such information, whether such information is in respondent's possession or is input into, stored on, captured with, or accessed through a computer using respondent's products or services, and assessment of the sufficiency of any safeguards in place to control these risks.

C. at a minimum, the risk assessment required by Subpart B should include consideration of risks in each area of relevant operation, including, but not limited to, (1) employee training and management, including in secure engineering and defensive programming; (2) product design, development and research; (3) secure software design, development, and testing; (4) review, assessment, and response to third-party security vulnerability reports, and (5) prevention, detection, and response to attacks, intrusions, or systems failures;

D. the design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures, including through reasonable and appropriate software security testing techniques;

E. the development and use of reasonable steps to select and retain service providers capable of maintaining security practices consistent with this order, and requiring service providers by contract to implement and maintain appropriate safeguards;

F. the evaluation and adjustment of respondent's security program in light of the results of the testing and monitoring required by subpart B, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its security program.

III.

IT IS FURTHER ORDERED that, in connection with its compliance with Part II of this order, for any product or service offered through client software, respondent shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. Professionals qualified to prepare such Assessments shall be: a person qualified as a Certified Secure Software Lifecycle Professional (CSSLP) with experience in secure mobile programming; or as a Certified Information System Security Professional (CISSP) with professional experience in the Software Development Security domain and secure mobile programming; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The reporting period for the Assessments shall cover: (1) the first one hundred eighty (180) days after service of the order for the initial Assessment; and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

A. set forth the specific controls and procedures that respondent has implemented and maintained during the reporting period;

B. explain how such safeguards are appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the covered information;

C. explain how the safeguards that have been implemented meet or exceed the protections required by Part II of this order; and

D. certify that respondent's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of covered information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request. Unless otherwise directed by a representative of the Commission, the initial Assessment, and any subsequent Assessments requested, shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of Credit Karma, Inc.*, FTC File No. 1323091. *Provided, however*, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

IV.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of:

A. for a period of three (3) years after the date of preparation of each Assessment required under Part III of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of the respondent, including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials relating to respondent's compliance with Parts II and III of this order, for the compliance period covered by such Assessment;

B. unless covered by IV.A, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all other documents relating to

compliance with this order, including but not limited to:

1. all advertisements and promotional materials containing any representations covered by this order, as well as all materials used or relied upon in making or disseminating the representation; and

2. any documents, whether prepared by or on behalf of respondent, that contradict, qualify, or call into question respondent's compliance with this order.

V.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future subsidiaries, current and future principals, officers, directors, and managers having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current subsidiaries and personnel within thirty (30) days after service of this order, and to such future subsidiaries and personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

VI.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty

(30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of Credit Karma, Inc.*, FTC File No. 1323091. *Provided, however*, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

VII.

IT IS FURTHER ORDERED that respondent, within one hundred twenty (120) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VIII.

This order will terminate on August 13, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. any Part in this order that terminates in fewer than twenty (20) years;

B. this order's application to any respondent that is not named as a defendant in such complaint; and

C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeny not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, a consent order applicable to Credit Karma, Inc. ("Credit Karma").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Credit Karma operates a website and mobile application that allow consumers to monitor and evaluate their credit and financial status. Through its service, consumers can access their credit scores, credit reports, a "Credit Report Card" summarizing key credit report metrics, and obtain credit monitoring.

The Commission's complaint alleges that Credit Karma deceived consumers regarding its commitment to industry-leading security practices and its transmission of consumers' sensitive

personal information over secure connections. Specifically, the complaint alleges that Credit Karma engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security in the development and maintenance of its mobile application, including:

(1) overriding the mobile operating system default settings that would have secured the transmission of sensitive personal information to and from the mobile application;

(2) failing to appropriately test, audit, assess, or review its applications, including failing to ensure that the transmission of sensitive personal information was secure; and

(3) failing to reasonably and appropriately oversee its service providers' security practices.

The complaint further alleges that, due to these failures, attackers could, in connection with attacks that redirect and intercept network traffic, decrypt, monitor, or alter any of the information transmitted from or to the application, including Social Security numbers, dates of birth, "out of wallet" information, and credit report information. The complaint also alleges that attackers could intercept a consumer's authentication credentials, allowing an attacker to log into the consumer's Credit Karma web account to access the consumer's credit score and a more complete version of the consumer's credit report. The complaint alleges that the misuse of these types of sensitive personal information can lead to identity theft including existing and new account fraud, the compromise of personal information maintained on other online services, and related consumer harms.

The proposed order contains provisions designed to prevent Credit Karma from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Credit Karma from misrepresenting the extent to which Credit Karma or its products or services maintain and protect the privacy, security, confidentiality, or integrity of covered information. Part II of the proposed order requires Credit Karma to (1) address security risks

related to the development and management of new and existing products and services for consumers, and (2) protect the security, integrity, and confidentiality of covered information, whether collected by Credit Karma or input into, stored on, captured with, or accessed through a computer using Credit Karma's products or services. The security program must contain administrative, technical, and physical safeguards appropriate to Credit Karma's size and complexity, nature and scope of its activities, and the sensitivity of the covered information. Specifically, the proposed order requires Credit Karma to:

- designate an employee or employees to coordinate and be accountable for the information security program;

- identify material internal and external risks to the security, confidentiality, and integrity of covered information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, whether such information is in Credit Karma's possession or is input into, stored on, captured with, accessed or transmitted through a computer using Credit Karma's products or services, and assess the sufficiency of any safeguards in place to control these risks;

- consider risks in each area of relevant operation, including but not limited to (1) employee training and management, including in secure engineering and defensive programming; (2) product design, development and research; (3) secure software design, development, and testing; and (4) review, assessment, and response to third-party security vulnerability reports; and (5) prevention, detection, and response to attacks, intrusions, or system failures;

- design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures, including through reasonable and appropriate software security testing techniques;

- develop and use reasonable steps to select and retain service providers capable of maintaining security practices consistent with the order, and require service providers by contract to implement and maintain appropriate safeguards; and

- evaluate and adjust its security program in light of the results of testing and monitoring, any material changes to Credit Karma's operations or business arrangement, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of its security program.

Part III of the proposed order requires Credit Karma to obtain, for any product or service offered through client software, within the first one hundred eighty (180) days after service of the order and on a biennial basis thereafter for a period of twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) it has in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of covered information is protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires Credit Karma to retain documents relating to its compliance with the order. The order requires that all materials relied upon to prepare the assessments required by Part III of the order be retained for a three-year period, and that other documents, such as advertisements and promotional materials covered by the order, be retained for a five-year period. Part V requires dissemination of the order to all current and future subsidiaries, current and future principals, officers, directors, and managers having responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII requires Credit Karma to submit a compliance report to the FTC within 120 days, and periodically thereafter as requested. Part VIII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

Analysis to Aid Public Comment

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

GMR TRANSCRIPTION SERVICES, INC.; AJAY PRASAD; AND SHREEKANT SRIVASTAVA

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

Docket No. C-4482; File No. 122 3095
Complaint, August 14, 2014 – Decision, August 14, 2014

This consent order GMR Transcription Services, Inc.'s practices to protect consumers' personal information from unauthorized access. The complaint alleges that engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for consumers' personal information. The complaint further alleges that as a result of these security failures files were publicly available, and were accessed, using a major search engine. The consent order requires respondents to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The order also prohibits respondents from misrepresenting the extent to which respondents use, maintain, and protect the privacy, confidentiality, security, or integrity of personal information collected from or about consumers.

Participants

For the *Commission*: *Kandi Parsons* and *Alain Sheer.*

For the *Respondents*: *Barry Coburn, Kimberly Jandrain, Lloyd Lui*, and *Monica Seaman, Coburn & Greenbaum PLLC.*

COMPLAINT

The Federal Trade Commission, having reason to believe that GMR Transcription Services, Inc., Ajay Prasad, and Shreekant Srivastava have violated the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

Complaint

1. GMR Transcription Services, Inc. ("GMR"), is a California corporation with its principal office at 2512 Chambers Road, Suite 206, Tustin, CA 92780.

2. Respondent Ajay Prasad is president of respondent GMR and owns 80% of the company. He has authority to control the conduct of respondent GMR. Individually or in concert with others he formulates, directs, or controls the policies, acts, or practices of respondent GMR, including the acts or practices alleged in this complaint. His principal office or place of business is the same as respondent GMR.

3. Respondent Shreekant Srivastava is vice president of respondent GMR and owns 20% of the company. He has authority to control the conduct of respondent GMR. Individually or in concert with others he formulates, directs, or controls the policies, acts, or practices of respondent GMR, including the acts or practices alleged in this complaint. His principal office or place of business is the same as respondent GMR.

4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act.

5. At all relevant times, respondents have been in the business of transcribing digital audio files ("audio files") for individuals and businesses in a variety of professions and industries. Respondents' customers include: university students and faculty; well-known corporations (including retailers, insurers, and telecom and financial service providers); government agencies; and health care providers and hospitals.

6. Respondents conduct their transcription business almost entirely online using: respondents' own computers and devices; various websites; and computers and devices leased from third-party service providers that are operated by or for respondents (collectively, "respondents' computer network").

7. In conducting business, respondents rely almost exclusively on independent service providers to transcribe audio files that respondents assign to them. Respondents:

a. assign non-medical audio file transcriptions to at least 100 independent typists located in North America; and

b. automatically assigned all medical audio file transcriptions to Fedtrans Transcription Services, Inc. ("Fedtrans"), between at least January 1, 2009, and May 1, 2012. Fedtrans, which is located in India, assigned respondents' files to independent typists to transcribe.

8. At all relevant times, respondents' transcription process began when a customer logged in to one of respondents' websites and uploaded an audio file to a leased server located on respondents' computer network. Based on the type of file, respondents assigned the audio file to one of their independent typists or Fedtrans. After being notified of the assignment, the typist or Fedtrans logged in to the website and downloaded the file. Fedtrans followed a similar process through which an independent typist downloaded the file from Fedtrans' computer network. After downloading it, the typist converted the audio file into a Microsoft Word file ("transcript file") and then followed the reverse process to upload it back to respondents' computer network. Afterwards, respondents either emailed the transcript file to the customer or notified the customer to retrieve the file from respondents' computer network.

9. Audio files and transcript files can include sensitive information from or about consumers, including children. This information can include, but is not limited to: names, dates of birth, addresses, email addresses, telephone numbers, Social Security numbers, driver's license numbers, tax information, medical histories, health care providers' examination notes, medications, and psychiatric notes (collectively, "personal information").

10. Since at least 2006, respondents have disseminated or caused to be disseminated privacy policies and statements, including, but not necessarily limited to, the following statements regarding the privacy and security of personal information:

- Why GMR Transcription Services? . . . Security Measures to Protect Your Confidentiality.

- Each transcriptionist within the GMR community is required to sign a Confidentiality Agreement prior to working for us. This is kept on file. You can be assured that the materials going through our system are highly secure and are never divulged to anyone.

(**Exhibit A**: www.gmrtranscription.com (from 2006 through 2013)).

- HIPAA Compliant Medical Transcription Service

(**Exhibit B:** www.gmrmedicaltranscription.com (from 2006 through May 2012)).

- It is often asked what one needs to be careful while choosing an outsourcing transcription company. In the medical industry, security and privacy are extremely important. In outsourcing arrangements with services and healthcare vendors, you can check the vendor's expertise and credibility by HIPAA compliance. Amongst all the rules that are stipulated by HIPAA, ones concerned with security, health care compliance and privacy are deemed to be important by outsourcing experts. The benefits include giving greater accuracy, data security, and absolute privacy for all of their patient's (sic) records and documents. Look for a company that is HIPAA compliant and takes proper measures to ensure security, health care compliance and privacy. A good company will make sure that the sensitive information related to patients is handled with great care. From compliance training and secure systems to the confidentiality agreements, Transcription Companies cover all the aspects involved in the HIPAA regulations.

(**Exhibit C:** GMR Blog, http://blog.gmrtranscription.com /securing-medical-transcription-data-with-hipaa/ (posted Feb. 23, 2010 through present)).

- HIPAA compliant medical transcription is the basic need of any medical professionals and hospitals.

(**Exhibit D:** Twitter (Sept. 19, 2010) @gmrtranscript).

11. Respondents have engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security to protect personal information in audio and transcript files. Among other things, respondents failed to:

a. require typists to adopt and implement security measures, such as installing anti-virus applications, or confirm that they had done so;

b. adequately verify that their service provider, Fedtrans, implemented reasonable and appropriate security measures to protect personal information in audio and transcript files on Fedtrans' network and computers used by Fedtrans' typists. For example, respondents did not:

i. require Fedtrans by contract to adopt and implement appropriate security measures to protect personal information in medical audio and transcript files, such as by requiring that files be securely stored and securely transmitted to typists (e.g., through encryption) and authenticating typists (e.g., through unique user credentials) before granting them access to such files; and

ii. take adequate measures to monitor and assess whether Fedtrans employed measures to appropriately protect personal information under the circumstances. Respondents did not request or review relevant information about Fedtrans' security practices, such as, for example, Fedtrans' written information security program or audits or assessments Fedtrans may have had of its computer network.

12. As a result of these security failures, respondents were unaware that Fedtrans used a File Transfer Protocol ("FTP")

application to both store medical audio and transcript files on its computer network and transmit the files between the network and its typists. The application stored and transmitted files in clear readable text and was configured so that the files could be accessed online by anyone without authentication. A major search engine therefore was able to reach the Fedtrans FTP application and index thousands of medical transcript files that respondents had assigned to Fedtrans (collectively, the "Fedtrans files"). The files were publicly available, and were accessed, using the search engine.

13. The Fedtrans files were prepared between March 2011 and October 2011. They included personal information, such as names, dates of birth, health care provider names, examination notes, medical histories, medications, and, in some cases, employment histories and marital status. Some of the files contained children's examination notes and highly sensitive medical information, such as information about psychiatric disorders, alcohol use, drug abuse, and pregnancy loss. Such information can easily be misused to cause substantial consumer injury, such as identity theft, and unauthorized access can cause harm by disclosing sensitive private medical information.

14. Respondents could have corrected their security failures using readily available, low-cost security measures.

15. Consumers have no way of independently knowing about respondents' security failures and could not reasonably avoid possible harms from such failures.

16. After being informed that the Fedtrans files were available online in clear readable text, respondents notified Fedtrans and asked the search engine that had indexed the files to remove the files from its cache.

VIOLATIONS OF THE FTC ACT

COUNT I

17. Through the means described in Paragraph 10, respondents represented, expressly or by implication, that they implemented reasonable and appropriate security measures to

prevent unauthorized access to the personal information in audio and transcript files.

18. In truth and in fact, as described in Paragraphs 11-14, respondents did not implement reasonable and appropriate security measures to prevent unauthorized access to personal information in audio and transcript files. Therefore, the representation set forth in Paragraph 17 was false or misleading and constitutes a deceptive act or practice.

COUNT II

19. Through the means described in Paragraph 10, respondents represented, expressly or by implication, that they took reasonable measures to oversee their service providers to ensure such service provider implemented reasonable and appropriate security measures.

20. In truth and in fact, as described in Paragraphs 11-14, respondents did not take reasonable measures to oversee their service providers to oversee ensure such service providers implemented reasonable and appropriate security measures. Therefore, the representation set forth in Paragraph 19 was false or misleading and constitutes a deceptive act or practice.

COUNT III

21. As set forth in Paragraphs 11-15, respondents failed to employ reasonable and appropriate measures to prevent unauthorized access to personal information in audio and transcript files. Respondents' practices caused, or are likely to cause, substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This practice was, and is, an unfair act or practice.

22. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this fourteenth day of August, 2014, has issued this complaint against respondents.

By the Commission, Commissioner McSweeny not participating.

Complaint

Exhibit A

Transcription Services for Business, Academic, Legal & More by GMR Transcription Page 1 of 2

Careers | FAQ | Blog

Toll Free: 1-800-731-7412
Call Us: 714-202-9853
2512 Chambers Road, Suite 206,
Tustin,California - 92780

Transcription Services

Academic Transcription
Business Transcription
Conf Call Transcription
Dictation Transcription
Focus group Transcription
Government/organization
Interview Transcription
Insurance Transcription
Investigative Transcription
Legal Transcription
Market Research Transcription
Medical Transcription
Meeting Transcription
Microcassette Transcription
Podcast Transcription
Sermon Transcription
Text-to-text Transcription
Verbatim Transcription
Video Transcription

Language Transcription

Spanish Transcription
Mandarin Transcription

Language Translation

English to Mandarin Translation
Mandarin to English Translation
English to Spanish Translation
Spanish to English Translation
Text to text Translation

Voice Files Accepted

Text Files Accepted

Other locations

Atlanta Address
GMR Transcription Services, Inc
1401 Peachtree Street NE, Suite 500
Atlanta, GA30309
678-554-1601

Miami Address

TRUSTED BY 5,569 SATISFIED CUSTOMERS

Why GMR Transcription Services? Because our clients say we are the best when it comes to accuracy, pricing transparency and customer service.

High Quality. Affordable Rates.
Transparent & Simple Pricing.
Multiple Plans to Suit Your Budget.
Security Measures to Protect Your Confidentiality.
Upload Voice Files & Download Transcripts 365 days a year, 7 days a week.

It's easy! See how it works

Comprehensive Transcription Services

GMR Transcription Services is a one-stop solution for all of your transcription needs. Our dedicated and experienced team handles all transcription jobs with the utmost professional care. Our primary goal is to provide a professional transcription service to you at affordable rates, and we guarantee a 98% accuracy rate for "good" audio files with up to two speakers in the recording.

We provide uncompromising quality, rates within your budget, highly accurate transcripts and timely and convenient delivery. All transcripts submitted by our skilled and experienced transcriptionists are re-verified, proofread and reviewed to ensure accuracy. In addition, our online platform is very easy to use and our transparent pricing model enables you to see the rates for each of your uploaded files before you pay for them.

Business Transcription: We cover all aspects of business transcription, including interview transcription, meeting transcription, conference call transcription, focus group transcription, dictation services and much more.

Media Transcription: Podcast Transcription, Video Transcription, we do it all.

Academic Transcription: We take all formats, whether it's Text-to-text Transcription, Digital Transcription or Audio Transcription. We also cover transcription and translation services in Mandarin and Spanish.

Special Transcription Services for All Professions: Apart from Medical Transcription and Legal Transcription, we provide services for Sermon Transcription, Investigative Transcription and Insurance Transcription, among many others.

We provide translation services for Spanish and Mandarin.

We at GMR Transcription have established our reputation through transparency, quality control, affordability and customer service. We strive to provide excellent finished transcripts in all fields and thus have a diverse team of transcriptionists that are experts in doing so.

The reason we hire only US and Canada based transcriptionists is that they have a better understanding of the nuances of the English language. This helps you because you want a transcription company that is easy to

Client Area

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Client Login
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Our Client List more

OCDSA US Navy

Get a Sample of GMR Transcripts

Free Report

11 Must-Haves To Look For When Hiring a Transcription Company

Enter Name

Enter Email

Submit Q

USE YOUR MOBILE PHONE as a recorder and UPLOAD YOUR FILES instantly!

http://www.gmrtranscription.com/index.aspx 3/27/2013

Complaint

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Call Us: 714-202-9653
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Market Research Transcription
Medical Transcription
Meeting Transcription
Microcassette Transcription
Podcast Transcription
Sermon Transcription
Text-to-text Transcription
Verbatim Transcription
Video Transcription

Language Transcription

Spanish Transcription
Mandarin Transcription

Language Translation

English to Mandarin Translation
Mandarin to English Translation
English to Spanish Translation
Spanish to English Translation
Text to text Translation

Voice Files Accepted

Text Files Accepted

Other locations

Atlanta Address
GMR Transcription Services, Inc
1931 Peachtree Street NE, Suite 320
Atlanta, GA30309
678-304-7697

Miami Address

Confidential Non-Disclosure

Each transcriptionist within the GMR community is required to sign a Confidentiality Agreement prior to working for us. This is kept on file. You can be assured that the materials going through our system are highly secure and are never divulged to anyone. Once a transcript has been completed and submitted, it is completely deleted from the transcriptionist's computer. This is a legally bound agreement between GMR Transcription and each individual transcriptionist.

We are willing to sign any specific Non-Disclosure Agreement with any customer who requests one.

Please inform us of the need to do so prior to registering, or at any time, by contacting us at: info@gmrtranscription.com

Client Area

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11 Must-Have's To Look For When Hiring a Transcription Company

Enter Name

Enter Email

Submit

USE YOUR MOBILE PHONE as a recorder and UPLOAD YOUR FILES instantly!

Complaint

Exhibit B

Complaint

Exhibit C

GMR Transcription

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Securing Medical Transcription Data With HIPAA

It is often asked what one needs to be careful while choosing an outsourcing transcription company. In the medical industry, security and privacy are extremely important.

In outsourcing arrangements with services and healthcare vendors, you can check the vendor's expertise and credibility by HIPAA compliance. Amongst all the rules that are stipulated by HIPAA, ones concerned with security, health care compliance and privacy are deemed to be important by outsourcing experts. The benefits include giving greater accuracy, data security, and absolute privacy for all of their patient's records and documents.

Look for a company that is HIPAA compliant and takes proper measures to ensure security, health care compliance and privacy. A good company will make sure that the sensitive information related to patients is handled with great care. From compliance training and secure systems to the confidentiality agreements, Transcription Companies cover all the aspects involved in the HIPAA regulations.

Transferred medical files should always be encrypted while moving between transcriptionists and medical providers. This will help to ensure absolute safety and privacy of the data.

Use of logged systems and high security firewalls restrict movement of information while locking it down to the system on which personnel works. You can also request the transcription company to work on your company's servers too. They operate remotely through your computers, nullifying data theft risks. Email access is also banned or restricted for process managers working on healthcare projects while handling customer data. Access to USB and floppy drives is banned so that there is no privacy breach.

It is important to know that those who work for the company are qualified to work in the medical transcription industry. They must have knowledge of medical terms, procedures, and need to have completed training on international coding standards. Coders have various levels of expertise and experience. These coders are regularly updated with contemporary methodologies that work in the best interest of your company.

While hiring a transcription company, one of the most important things to look at is to ensure that the company has effective safeguards to keep private information secure. Also find out if the company does

check backgrounds of their employees. They should have strict rules to find out the credibility of new employees; after all you do not want your company's sensitive work to be handled by unreliable personnel.

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transcription | admin February 23, 2010

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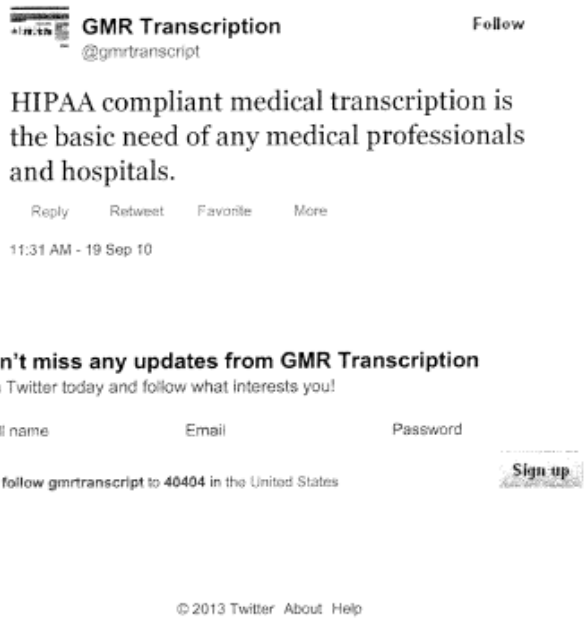
- **BLOGGERS**

Complaint

Exhibit D



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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondents named in the caption hereof, and the Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq*;

The Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), an admission by the Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 has reason to believe that the Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent GMR is a California corporation with its principal office or place of business at 2512 Chambers Road, Suite 206, Tustin, CA 92780.

2. Respondents Ajay Prasad ("Prasad") and Shreekant Srivastava ("Srivastava") are co-owners of GMR and President and Vice President of the company,

respectively. Individually or in concert with others, they formulate, direct, or control the policies, acts, or practices of respondent GMR. Their principal place of business is the same as GMR's.

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "respondents" shall mean GMR Transcription Services, Inc., and its successors and assigns, and Ajay Prasad and Shreekant Srivastava.

B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

C. "Personal information" shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver's license number or other government-issued identification number; (g) a bank account, debit card, or credit card account number; (h) a persistent identifier, such as a customer number held in a "cookie" or processor serial number; and (i) medical information about a consumer including, but not limited to, prescription information, clinical laboratory testing information, health insurance information, physician examination notes, and medical history. For the purpose of this provision, a "consumer" shall mean any person, including, but not limited to, any user of respondents' services, any person whose information is contained in the files of a

user of respondents' services, and respondents' employees and service providers.

I.

IT IS ORDERED that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondents, shall not misrepresent in any manner, expressly or by implication, the extent to which respondents use, maintain, and protect the privacy, confidentiality, security, or integrity of personal information collected from or about consumers.

II.

IT IS FURTHER ORDERED that respondent GMR Transcription Services, Inc., its successors and assigns, and any business entity that respondent Ajay Prasad or Shreekant Srivastava controls, directly or indirectly, that collects, maintains, or stores personal information from or about consumers, shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondents' or the business entity's size and complexity, the nature and scope of respondents' or the business entity's activities, and the sensitivity of the personal information collected from or about consumers, including:

A. the designation of an employee or employees to coordinate and be accountable for the information security program;

B. the identification of material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information,

and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures;

C. the design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures;

D. the development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from respondents, and requiring service providers by contract to implement and maintain appropriate safeguards; and

E. the evaluation and adjustment of the information security program in light of the results of the testing and monitoring required by subpart C, any material changes to any operations or business arrangements, or any other circumstances that respondents know or have reason to know may have a material impact on the effectiveness of the information security program.

III.

IT IS FURTHER ORDERED that, in connection with its compliance with Part II of this order, respondents shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. Professionals qualified to prepare such assessments shall be: a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information

Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SANS Institute; or a qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

A. set forth the specific administrative, technical, and physical safeguards that respondents have implemented and maintained during the reporting period;

B. explain how such safeguards are appropriate to respondents' or the business entity's size and complexity, the nature and scope of respondents' or the business entity's activities, and the sensitivity of the personal information collected from or about consumers;

C. explain how the safeguards that have been implemented meet or exceed the protections required by Part II of this order; and

D. certify that the security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondents shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been completed. All subsequent biennial Assessments shall be retained by respondents until the order is terminated and provided to the Associate Director for Enforcement within ten (10) days of

request. Unless otherwise directed by a representative of the Commission, the initial Assessment, and any subsequent Assessments requested, shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of GMR Transcription Services, Inc.*, FTC File No. 1123120. *Provided, however*, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

IV.

IT IS FURTHER ORDERED that respondents shall maintain and, upon request, make available to the Federal Trade Commission for inspection and copying:

A. for a period of three (3) years after the date of preparation of each Assessment required under Part III of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of respondents, including but not limited to, all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials relating to respondents' compliance with Parts II and III of this order, for the compliance period covered by such Assessment;

B. unless covered by IV.A, for a period of five (5) years from the date of preparation or dissemination, whichever is later, a print or electronic copy of each document relating to compliance with this order, including but not limited to:

1. all advertisements and promotional materials containing any representations covered by this order, with all materials used or relied upon in making or disseminating the representation; and

2. any documents, whether prepared by or on behalf of respondents, that contradict, qualify, or call into question compliance with this order.

V.

IT IS FURTHER ORDERED that respondents shall deliver copies of the order as directed below:

A. Respondents shall deliver a copy of this order to (1) all current and future principals, officers, directors, and managers, (2) all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order, and (3) any business entity resulting from any change in structure set forth in Part VI. Respondents shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure.

B. Respondents shall secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

VI.

IT IS FURTHER ORDERED that respondents Prasad and Srivastava, for a period of ten (10) years after the date of issuance of the order, shall notify the Commission of the following: (a) Any changes to respondent Prasad's or respondent Srivastava's residence, mailing addresses and/or telephone numbers, within ten (l0) days of the date of such change; (b) Any changes in respondent Prasad's or respondent Srivastava's employment status (including self-employment), and any changes in ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include: the name and address of each business that respondent Prasad or respondent Srivastava is

affiliated with, employed by, creates or forms, incorporates, or performs services for; a detailed description of the nature of the business; and a detailed description of respondent Prasad's or respondent Srivastava's duties and responsibilities in connection with the business or employment; and (c) Any changes in respondent Prasad's or respondent Srivastava's name or use of any aliases or fictitious names, including "doing business as" names. All notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of GMR Transcription Services, Inc.*, FTC File No.1123120. *Provided, however*, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

VII.

IT IS FURTHER ORDERED respondents shall notify the Commission at least thirty (30) days prior to any change in respondents that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in either corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of GMR Transcription Services, Inc.*, FTC File No.1123120. *Provided, however*, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such

notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

VIII.

IT IS FURTHER ORDERED that respondents, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

IX.

This order will terminate on August 14, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeny not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from GMR Transcription Services, Inc. ("GMR"), Ajay Prasad ("Prasad"), and Shreekant Srivastava ("Srivastava") (taken together, "respondents")

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Respondents are in the business of transcribing digital audio files for individuals and businesses in a variety of professions and industries. Respondents conduct their transcription business almost entirely online, where customers can upload audio files for transcription. Respondents rely almost exclusively on independent service providers to transcribe audio files that respondents assign to them. Respondents assign non-medical audio file transcriptions to at least 100 independent typists located in North America, and, between at least January 1, 2009, and May 1, 2012, automatically assigned all medical audio file transcriptions to Fedtrans Transcription Services, Inc. ("Fedtrans"). Fedtrans, which is located in India, assigned respondents' files to independent typists to transcribe. After being notified of the assignment, the typist or Fedtrans logged in to the website and downloaded the file. Fedtrans followed a similar process through which an independent typist downloaded the file from Fedtrans' computer network. Following the transcription, respondents either emailed the transcript file to the customer or notified the customer to retrieve the file from respondents' computer network. Audio files and transcript files can include sensitive information from or about consumers, including children, such as: names, dates of birth, addresses, email addresses, telephone numbers, Social Security numbers, driver's license numbers, tax information, medical histories, health care providers' examination notes, medications, and psychiatric notes (collectively, "personal information").

Analysis to Aid Public Comment

The Commission's complaint alleges that respondents misrepresented that they maintained reasonable and appropriate practices to protect consumers' personal information from unauthorized access and that respondents took reasonable steps to ensure that those engaged in transcribing medical files complied with applicable security and privacy requirements. Respondents engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for consumers' personal information. Among other things, respondents failed to:

a. require typists to adopt and implement security measures, such as installing anti-virus applications, or confirm that they had done so;

b. adequately verify that their service provider, Fedtrans, implemented reasonable and appropriate security measures to protect personal information in audio and transcript files on Fedtrans's network and computers used by Fedtrans's typists. For example, respondents did not:

   i. require Fedtrans by contract to adopt and implement appropriate security measures to protect personal information in medical audio and transcript files, such as by requiring that files be securely stored and securely transmitted to typists (e.g., through encryption) and authenticating typists (e.g., through unique user credentials) before granting them access to such files; and

   ii. take adequate measures to monitor and assess whether Fedtrans employed measures to appropriately protect personal information under the circumstances. Respondents did not request or review relevant information about Fedtrans's security practices, such as, for example, Fedtrans's written information security program or audits or assessments Fedtrans may have had of its computer network.

The complaint further alleges that as a result of these security failures, respondents were unaware that Fedtrans used an application on its computer network that stored and transmitted medical audio and transcript files in clear readable text and was

configured so that the files could be accessed online by anyone without authentication. A major search engine therefore was able to reach the application and index thousands of medical transcript files that respondents had assigned to Fedtrans. The files were publicly available, and were accessed, using the search engine. The Fedtrans files, which were prepared over at least eight months, included personal information such as names, dates of birth, health care provider names, examination notes, medical histories, medications, and, in some cases, employment histories and marital status. Some of the files contained highly sensitive medical information, such as information about psychiatric disorders, alcohol use, drug abuse, and pregnancy loss, and notes of examinations of children.

Information contained in the Fedtrans and other files can easily be misused to cause substantial consumer injury, such as identity theft, and unauthorized access can cause harm by disclosing sensitive private medical information. Respondents could have corrected their security failures using readily available, low-cost security measures. Consumers have no way of independently knowing about respondents' security failures and could not reasonably avoid possible harms from such failures. Accordingly, the complaint alleges that respondents failed to employ reasonable and appropriate measures to prevent unauthorized access to personal information in audio and transcript files, which caused, or are likely to cause, substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. The Commission alleges that this practice was, and is, an unfair act or practice.

Part I of the proposed order prohibits respondents from misrepresenting (1) the extent to which respondents use, maintain, and protect the privacy, confidentiality, security, or integrity of personal information collected from or about consumers. Part II of the proposed order requires respondents to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to respondents' size and complexity, nature and scope of their activities, and the

sensitivity of the information collected from or about consumers. Specifically, the proposed order requires respondents to:

- designate an employee or employees to coordinate and be accountable for the information security program;

- identify material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks;

- design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures;

- develop and use reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from respondents, and require service providers by contract to implement and maintain appropriate safeguards; and

- evaluate and adjust the information security program in light of the results of testing and monitoring, any material changes to operations or business arrangement, or any other circumstances that they know or have reason to know may have a material impact on its information security program.

Part III of the proposed order requires respondents to obtain within the first one hundred eighty (180) days after service of the order, and on a biennial basis thereafter for a period of twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) respondents have in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) respondents' security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and

integrity of sensitive consumer, employee, and job applicant information has been protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions.

Part IV requires respondents to retain documents relating to its compliance with the order. Part V requires dissemination of the order to all current and future principals, officers, directors, managers, employees, agents, and representatives having supervisory responsibilities relating to the subject matter of the order. Parts VI and VII ensure notification to the FTC of changes in corporate status and employment status of respondents Prasad and Srivastava. Part VIII mandates that respondents submit reports to the Commission detailing its compliance with the order. Part IX provides that the order expires after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

VALEANT PHARMACEUTICALS INTERNATIONAL, INC.;
AND
PRECISION DERMATOLOGY, INC.

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

Docket No. C-4477; File No. 141 0101
Complaint, July 3, 2014 – Decision, August 20, 2014

This consent order addresses the $500 million acquisition by Valeant Pharmaceuticals International, Inc. of certain assets of Precision Dermatology, Inc. The complaint alleges that the acquisition violates Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in U.S. markets for (1) branded and generic single-agent topical tretinoins for the treatment of acne and (2) generic Retin-A and/or the individual strengths and formulations of generic Retin-A. The consent order requires Valeant to divest all of Precision's rights and assets related to (1) Tretin-X and (2) generic Retin-A.

Participants

For the *Commission*: *Lynda Lao, Steven C. Lavender*, and *David Von Nirschl.*

For the *Respondents*: *Joe Matelis, Eric Queen*, and *Yvonne Quinn, Sullivan & Cromwell LLP*; *Lauren Battaglia, Michele Harrington*, and *Leigh Oliver, Hogan Lovells*.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Valeant Pharmaceuticals International, Inc. ("Valeant"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Precision Dermatology, Inc. ("Precision"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15

U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Valeant is a corporation organized, existing, and doing business under and by virtue of the laws of the Province of British Columbia, Canada, with its headquarters at 2150 St. Elzear Blvd. West, Laval, Quebec, H7L 4A8, Canada. Valeant's U.S. headquarters is located at 400 Somerset Corporate Boulevard, Bridgewater, New Jersey, 08807.

2. Respondent Precision is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters at 900 Highland Corporate Drive, Suite #203, Cumberland, Rhode Island, 02864.

3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to an Agreement and Plan of Merger dated January 31, 2014, Valeant proposes to acquire Precision for approximately $475 million, plus an additional $25 million payable upon a sales-based milestone (the "Acquisition"). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

5. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are

the development, license, manufacture, marketing, distribution, and sale of the following pharmaceutical products:

a. branded and generic single-agent topical tretinoins for the treatment of acne; and

b. generic Retin-A and/or the individual strengths and formulations of generic Retin-A.

6. For the purposes of this Complaint, the United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in each of the relevant lines of commerce.

IV. THE STRUCTURE OF THE MARKETS

7. Branded and generic single-agent topical tretinoins are used to treat acne vulgaris, commonly known as acne. Valeant currently manufactures and markets the branded single-agent topical tretinoins Retin-A, Retin-A Micro, and Atralin, as well as generic Retin-A and generic Retin-A Micro. Currently, Valeant markets its generic Retin-A through a profit sharing arrangement with Spear Pharmaceuticals ("Spear"). Precision markets the branded single-agent topical tretinoin Tretin-X. In addition, Precision markets generic Retin-A through a profit sharing arrangement with Rouses Point Pharmaceuticals, LLC ("Rouses Point"). The only other suppliers of single-agent topical tretinoins are Mylan with a branded product, Avita, and Actavis, with one strength of generic Retin-A. Currently, Valeant's branded and generic single-agent topical tretinoin market share is 70%, and Precision's market share is 12%. Absent a remedy, the merged entity would have a market share in excess of 80% and the transaction will result in a substantial increase in concentration in the already highly concentrated market for branded and generic single-agent topical tretinoins. Specifically, the transaction would increase the Herfindahl-Hirschman Index ("HHI") by 1680, from 5368 to a post-merger total of 7048.

8. Generic Retin-A is the generic version of Valeant's branded tretinoin product, Retin-A. The market for generic Retin-A is highly concentrated with only three current suppliers: (1) Precision, which holds an Abbreviated New Drug Application ("ANDA") for five strengths of generic Retin-A and distributes its

products through Rouses Point; (2) Valeant, which holds the New Drug Application ("NDA") for Retin-A and distributes five strengths of an "authorized" generic through Spear; and (3) Actavis, which markets only one strength of generic Retin-A cream. Absent a remedy, the transaction would result in a monopoly in all but the one strength of generic Retin-A cream for which the number of suppliers would be reduced from three to two.

V. ENTRY CONDITIONS

9. Entry into the relevant markets described in Paragraphs 5 and 6 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. *De novo* entry would not take place in a timely manner because the combination of drug development times and FDA approval requirements would be lengthy. In addition, no other entry is likely to occur such that it would be timely and sufficient to deter or counteract the competitive harm likely to result from the Acquisition.

VI. EFFECTS OF THE ACQUISITION

10. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

a. by eliminating actual, direct, and substantial competition between Valeant and Precision and reducing the number of significant competitors in the market for branded and generic single-agent topical tretinoins for the treatment of acne, including the only two meaningful providers of branded products, thereby increasing the likelihood that: (1) Valeant would be able to unilaterally exercise market power in this market; and (2) customers would be forced to pay higher prices; and

b. by eliminating actual, direct, and substantial competition between Valeant and Precision and

reducing the number of significant competitors in the market for generic Retin-A thereby increasing the likelihood that: (1) Valeant would be able to unilaterally exercise market power in this market; and (2) customers would be forced to pay higher prices.

VII. VIOLATIONS CHARGED

11. The Agreement and Plan of Merger described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this third day of July, 2014 issues its Complaint against said Respondents.

By the Commission.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Valeant Pharmaceuticals International, Inc. ("Valeant") of the voting securities of Respondent Precision Dermatology, Inc. ("Precision"), collectively "Respondents", and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Valeant is a corporation organized, existing and doing business under and by virtue of the laws the Province of British Columbia, Canada, with its headquarters address located at 2150 Saint Elzear Blvd. West, Laval, Quebec Canada H7L 4A8.

2. Respondent Precision is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 900 Highland Corporate Drive #203, Cumberland, Rhode Island 02864.

3. The 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, as used in this Order to Maintain Assets, the following definitions and the definitions used in the

Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

A. "Valeant" means: Valeant Pharmaceuticals International, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Valeant Pharmaceuticals International, Inc. (including, without limitation, Highland Merger Corp.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Valeant shall include Precision.

B. "Precision" means: Precision Dermatology, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Precision Dermatology, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Valeant and Precision, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.

F. "Divestiture Product Business(es)" means the Business of Respondents within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products to the extent that such Business is owned, controlled, or managed by the Respondents and the assets related to such Business to the extent such assets are owned by, controlled by, managed by, or licensed to, the Respondents.

G. "Interim Monitor" means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order

H. "Orders" means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

A. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Divestiture Product Businesses, to minimize any risk of loss of competitive potential for such Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Divestiture Product Assets except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Divestiture Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the related Divestiture Product Businesses.

B. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain the operations of

the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such Business) and/or as may be necessary to preserve the full economic marketability, viability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: manufacturers; suppliers; vendors and distributors; High Volume Accounts; end-use customers; Agencies; employees; and others having business relations with each of the respective Divestiture Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing each of the respective Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such Business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for such Divestiture Product Business;

2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;

3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Divestiture Product Assets to an Acquirer;

4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Divestiture Products that were marketed or sold by Respondents prior to January 31, 2014, at the related High Volume Accounts;

5. making available for use by each of the respective Divestiture Product Businesses funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such Business; and

6. providing such support services to each of the respective Divestiture Product Businesses as were being provided to such Business by Respondents as of the date the Consent Agreement was signed by Respondents.

C. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain a work force that is (i) at least as large in size (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.

D. Pending divestiture of the Divestiture Product Assets, Respondents shall:

1. not use, directly or indirectly, any Confidential Business Information related to the Divestiture Product Businesses other than as necessary to comply with the following:

   a. the requirements of this Order;

   b. Respondents' obligations to each respective Acquirer under the terms of any related Remedial Agreement; or

c. applicable Law;

2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer of the particular Divestiture Product Assets, (ii) other Persons specifically authorized by such Acquirer to receive such information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed);

3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Divestiture Products to the employees associated with the Business related to those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products; and

4. institute procedures and requirements to ensure that the above-described employees:

   a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and

   b. do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.

E. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondents' personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.

F. Respondents shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the notification to the relevant Acquirer. Respondents shall maintain complete records of all such notifications at Respondents' registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

G. Respondents shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.

H. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses within the Geographic Territory through their full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Product Businesses within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Product Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that

Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.

B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of the Orders;

provided, however, that, with respect to each Divestiture Product, the Interim Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.

F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of,

or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

H. Respondents shall report to the Interim Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by each Acquirer with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders; *provided, however*, beginning ninety (90) days after Respondents have filed their final report pursuant to Paragraph VII.B. of the Decision and Order, and ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining FDA approval to manufacture each Divestiture Product and obtaining the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents.

I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.

L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

M. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every sixty (60) days thereafter until Respondents have fully complied with this Order to Maintain Assets and the Paragraphs that are enumerated in Paragraph VII.B. of the related Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders. Respondents shall submit at the same time a copy of their report concerning compliance with the Orders to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a detailed description of their efforts to comply with the relevant paragraphs of the Orders, including:

A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by the Respondents to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and

B. a detailed description of the timing for the completion of such obligations.

provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph VII of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of a Respondent;

B. any proposed acquisition, merger or consolidation of a Respondent; or

C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

A. three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. the day after the divestiture of all of the Divestiture Product Assets, as required by and described in the Decision and Order, has been completed and the Interim Monitor, in consultation with Commission staff and the Acquirer(s), notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Valeant Pharmaceuticals International, Inc. ("Valeant") of the voting securities of Respondent Precision Dermatology, Inc. ("Precision"), collectively "Respondents", and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Valeant is a corporation organized, existing and doing business under and by virtue of the

laws of the Province of British Columbia, Canada, with its headquarters address located at 2150 Saint Elzear Blvd. West, Laval, Quebec Canada H7L 4A8.

2. Respondent Precision is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 900 Highland Corporate Drive #203, Cumberland, Rhode Island 02864.

3. The 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, as used in the Order, the following definitions shall apply:

A. "Valeant" means: Valeant Pharmaceuticals International, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Valeant Pharmaceuticals International, Inc. (including, without limitation, Highland Merger Corp.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Valeant shall include Precision.

B. "Precision" means: Precision Dermatology, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Precision Dermatology, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Valeant and Precision, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer(s)" means the following:

1. a Person specified by name in this Order to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective; or

2. a Person approved by the Commission to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

F. "Acquisition" means Respondent Valeant's acquisition of fifty percent (50%) or more of the voting securities of Precision. Respondents entered into an *Agreement and Plan of Merger* on January 31, 2014, to effect the Acquisition, by and among Valeant Pharmaceuticals International (a wholly-owned subsidiary of Valeant Pharmaceuticals International, Inc.), Precision Dermatology, Inc., and Fortis Advisors LLC, that was submitted to the Commission.

G. "Acquisition Date" means the date on which the Acquisition is consummated.

H. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term "Agency" includes, without limitation, the United States Food and Drug Administration ("FDA").

I. "Application(s)" means all of the following: "New Drug Application" ("NDA"), "Abbreviated New Drug

Application" ("ANDA"), "Supplemental New Drug Application" ("SNDA"), or "Marketing Authorization Application" ("MAA"), the applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 314 et seq., and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between the Respondent and the FDA related thereto. The term "Application" also includes an "Investigational New Drug Application" ("IND") filed or to be filed with the FDA pursuant to 21 C.F.R. Part 312, and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between the Respondent and the FDA related thereto.

J. "Business" means the research, Development, manufacture, commercialization, distribution, marketing, importation, advertisement and sale of a Product.

K. "Categorized Assets" means the following assets and rights of the specified Respondent (as that Respondent is identified in the definition of the specified Divestiture Product), as such assets and rights are in existence as of the date the Respondent signs the Agreement Containing Consent Orders in this matter and as are maintained by the Respondent in accordance with the Asset Maintenance Order until the Closing Date:

1. all rights to all of the Applications related to the specified Divestiture Product;

2. all Product Intellectual Property related to the specified Divestiture Product that is not Product Licensed Intellectual Property;

3. all Product Approvals related to the specified Divestiture Product;

4. all Product Manufacturing Technology related to the specified Divestiture Product that is not Product Licensed Intellectual Property;

5. all Product Marketing Materials related to the specified Divestiture Product;

6. all Product Scientific and Regulatory Material related to the specified Divestiture Product;

7. all Website(s) related exclusively to the specified Divestiture Product;

8. the content related exclusively to the specified Divestiture Product that is displayed on any Website that is not dedicated exclusively to the specified Divestiture Product;

9. a list of all of the NDC Numbers related to the specified Divestiture Product, and rights, to the extent permitted by Law:

    a. to require Respondent to discontinue the use of those NDC Numbers in the sale or marketing of the specified Divestiture Product *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement;

    b. to prohibit Respondent from seeking from any customer any type of cross- referencing of those NDC Numbers with any Retained Product(s) *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law;

    c. to seek to change any cross-referencing by a customer of those NDC Numbers with a

Retained Product (including the right to receive notification from the Respondent of any such cross-referencing that is discovered by Respondent);

d. to seek cross-referencing from a customer of the Respondent's NDC Numbers related to such Divestiture Product with the Acquirer's NDC Numbers related to such Divestiture Product;

e. to approve the timing of Respondent's discontinued use of those NDC Numbers in the sale or marketing of such Divestiture Product *except* for returns, rebates, allowances, and adjustments for such Divestiture Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement; and

f. to approve any notification(s) from Respondent to any customer(s) regarding the use or discontinued use of such NDC numbers by the Respondent prior to such notification(s) being disseminated to the customer(s);

10. all Product Development Reports related to the specified Divestiture Product;

11. at the option of the Acquirer of the specified Divestiture Product, all Product Assumed Contracts related to the specified Divestiture Product (copies to be provided to that Acquirer on or before the Closing Date);

12. all patient registries related to the specified Divestiture Product, and any other systematic active post-marketing surveillance program to collect patient data, laboratory data and identification information required to be

maintained by the FDA to facilitate the investigation of adverse effects related to the specified Divestiture Product (including, without limitation, any Risk Evaluation Mitigation Strategy as defined by the FDA);

13. for any specified Divestiture Product that has been marketed or sold by a Respondent prior to the Closing Date, a list of all customers and targeted customers for the specified Divestiture Product and a listing of the net sales (in either units or dollars) of the specified Divestiture Product to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the specified Divestiture Product on behalf of the High Volume Account and his or her business contact information;

14. at the option of the Acquirer of the specified Divestiture Product and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the specified Divestiture Product;

15. copies of all unfilled customer purchase orders for the specified Divestiture Product as of the Closing Date, to be provided to the Acquirer of the specified Divestiture Product not later than five (5) days after the Closing Date;

16. at the option of the Acquirer of the specified Divestiture Product, all unfilled customer purchase orders for the specified Divestiture Product; and

17. all of the Respondent's books, records, and files directly related to the foregoing;

provided, however, that "Categorized Assets" shall not include: (i) documents relating to any Respondent's general business strategies or practices relating to the conduct of its Business of marketing pharmaceutical Products, where such documents do not discuss with particularity the specified Divestiture Product; (ii) administrative, financial, and accounting records; (iii) quality control records that are determined not to be material to the manufacture of the specified Divestiture Product by the Interim Monitor or the Acquirer of the specified Divestiture Product; (v) any real estate and the buildings and other permanent structures located on such real estate; and (vi) all Product Licensed Intellectual Property;

provided further, *however*, that in cases in which documents or other materials included in the assets to be divested contain information: (i) that relates both to the specified Divestiture Product and to Retained Products or Businesses of any Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the specified Divestiture Product; or (ii) for which any Respondent has a legal obligation to retain the original copies, the specified Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer of the specified Divestiture Product, the specified Respondent shall provide that Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that the specified Respondent provides the Acquirer with the above-described information without requiring the Respondent completely to divest itself of information that, in content, also relates to Retained Product(s).

L. "cGMP" means current Good Manufacturing Practice as set forth in the United States Federal Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.

M. "Clinical Trial(s)" means a controlled study in humans of the safety or efficacy of a Product, and includes, without limitation, such clinical trials as are designed to support expanded labeling or to satisfy the requirements of an Agency in connection with any Product Approval and any other human study used in research and Development of a Product.

N. "Closing Date" means, as to each Divestiture Product, the date on which a Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets related to such Divestiture Product to an Acquirer pursuant to this Order.

O. "Confidential Business Information" means all information owned by, or in the possession or control of, any Respondent that is not in the public domain and that is directly related to the conduct of the Business related to a Divestiture Product(s). The term "Confidential Business Information" *excludes* the following:

1. information relating to any Respondent's general business strategies or practices that does not discuss with particularity the Divestiture Products;

2. information specifically excluded from the Divestiture Product Assets conveyed to the Acquirer of the related Divestiture Product(s);

3. information that is contained in documents, records or books of any Respondent that is provided to an Acquirer by a Respondent that is unrelated to the Divestiture Products acquired by that Acquirer or that is exclusively related to Retained Product(s); and

4. information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws.

P. "Development" means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including any government price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.

Q. "Direct Cost" means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. "Direct Cost" to the Acquirer for its use of any of a Respondent's employees' labor shall not exceed the average hourly wage rate for such employee;

provided, however, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, "Direct Cost" means such cost as is provided in such Remedial Agreement for that Divestiture Product.

R. "Divestiture Product(s)" means the following, individually and collectively:

1. the Tretin-X Products; and,

2. the Tretinoin Products.

S. "Divestiture Product Assets" means:

1. the Tretin-X Product Assets; and,

2. the Tretinoin Product Assets.

T. "Divestiture Product License" means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) under a Remedial Agreement with rights to sublicense to all Product Licensed Intellectual Property and all Product Manufacturing Technology related to general manufacturing know-how that was owned, licensed, or controlled by the specified Respondent (as that Respondent is identified in the definition of the specified Divestiture Product):

1. to research and Develop the specified Divestiture Products for marketing, distribution or sale within the Geographic Territory;

2. to use, make, have made, distribute, offer for sale, promote, advertise, or sell the specified Divestiture Products within the Geographic Territory;

3. to import or export the specified Divestiture Products to or from the Geographic Territory to the extent related to the marketing, distribution or sale of the specified Divestiture Products in the Geographic Territory; and

4. to have the specified Divestiture Products made anywhere in the World for distribution or sale within, or import into the Geographic Territory;

provided however, that for any Product Licensed Intellectual Property that is the subject of a license from a Third Party entered into by a Respondent prior to the Acquisition, the scope of the rights granted hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to that Respondent.

U. "Divestiture Product Releasee(s)" means the following Persons:

1. the Acquirer for the assets related to a particular Divestiture Product;

2. any Person controlled by or under common control with that Acquirer; and

3. any Manufacturing Designees, licensees, sublicensees, manufacturers, suppliers, distributors, and customers of that Acquirer, or of such Acquirer-affiliated entities.

V. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.

W. "Domain Name" means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration; *provided, however*, "Domain Name" shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.

X. "Drug Master Files" means the information submitted to the FDA as described in 21 C.F.R. Part 314.420 related to a Product.

Y. "Geographic Territory" shall mean the United States of America, including all of its territories and possessions, unless otherwise specified.

Z. "Government Entity" means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.

AA. "High Volume Account(s)" means any retailer, wholesaler or distributor whose annual or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of a Divestiture Product in the United States of America from the Respondent was, or is projected to be among the top twenty highest of such purchase amounts by the Respondent's U.S. customers on any of the following dates: (i) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; (ii) the end of the last quarter that immediately preceded the Acquisition Date; (iii) the end of the last quarter that immediately preceded the Closing Date for the relevant assets; or (iv) the end of the last quarter following the Acquisition or the Closing Date.

BB. "Interim Monitor" means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.

CC. "Law" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.

DD. "Manufacturing Designee" means any Person other than a Respondent that has been designated by an Acquirer to manufacture a Divestiture Product for that Acquirer.

EE. "Matawan" means Matawan Pharmaceuticals, LLC, a limited liability company existing, and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 11 Commerce Drive, First Floor, Cranford, NJ 07016.

FF. "NDC Number(s)" means the National Drug Code number, including both the labeler code assigned by the FDA and the additional numbers assigned by the labeler as a product code for a specific Product.

GG. "Orders" means this Decision and Order and the related Order to Maintain Assets.

HH. "Order Date" means the date on which the final Decision and Order in this matter is issued by the Commission.

II. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.

JJ. "Patent(s)" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case filed, or in existence, on or before the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

KK. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.

LL. "Product(s)" means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient and/or that is the subject of an Application.

MM. "Product Approval(s)" means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of a Product within the United States of America, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application related to that Product.

NN. "Product Assumed Contracts" means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):

1. that make specific reference to the specified Divestiture Product and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, the specified Divestiture Product from the Respondent unless such contract applies generally to the Respondent's sales of Products to that Third Party;

2. pursuant to which the Respondent had or has as of the Closing Date the ability to independently purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) or had planned to purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) from any Third Party for use in connection with the manufacture of the specified Divestiture Product;

3. relating to any Clinical Trials involving the specified Divestiture Product;

4. with universities or other research institutions for the use of the specified Divestiture Product in scientific research;

5. relating to the particularized marketing of the specified Divestiture Product or educational matters relating solely to the specified Divestiture Product(s);

6. pursuant to which a Third Party manufactures the specified Divestiture Product on behalf of the Respondent;

7. pursuant to which a Third Party provides any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of the specified Divestiture Product on behalf of Respondent;

8. pursuant to which a Third Party provides the Product Manufacturing Technology related to the specified Divestiture Product to the Respondent;

9. pursuant to which a Third Party is licensed by the Respondent to use the Product Manufacturing Technology;

10. constituting confidentiality agreements involving the specified Divestiture Product;

11. involving any royalty, licensing, covenant not to sue, or similar arrangement involving the specified Divestiture Product;

12. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the specified Divestiture Product to the Respondent including, but not limited to, consultation arrangements; and/or

13. pursuant to which any Third Party collaborates with the Respondent in the performance of research, Development, marketing, distribution or selling of the specified Divestiture Product or the Business related to such Divestiture Product;

provided, however, that where any such contract or agreement also relates to a Retained Product(s), the Respondent shall assign the Acquirer all such rights under the contract or agreement as are related to the specified Divestiture Product, but concurrently may retain similar rights for the purposes of the Retained Product(s).

OO. "Product Copyrights" means rights to all original works of authorship of any kind directly related to a Divestiture Product and any registrations and applications for registrations thereof within the Geographic Territory, including, but not limited to, the following: all such rights with respect to all promotional materials for healthcare providers, all promotional materials for patients, and educational materials for the sales force; copyrights in all preclinical, clinical and process development data and reports relating to the research and Development of that Product or of any materials used in the research, Development, manufacture, marketing or sale of that Product, including all copyrights in raw data relating to Clinical Trials of that Product, all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information, promotional and marketing materials, that Product's sales forecasting models, medical education materials, sales training materials, and advertising and display materials; all records relating to employees of a Respondent who accept employment with an Acquirer (excluding any personnel records the transfer of which is prohibited

by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to that Product or relating to its biology; all copyrights in adverse experience reports and files related thereto (including source documentation) and all copyrights in periodic adverse experience reports and all data contained in electronic databases relating to adverse experience reports and periodic adverse experience reports; all copyrights in analytical and quality control data; and all correspondence with the FDA or any other Agency.

PP. "Product Development Reports" means:

1. Pharmacokinetic study reports related to the specified Divestiture Product;

2. Bioavailability study reports (including reference listed drug information) related to the specified Divestiture Product;

3. Bioequivalence study reports (including reference listed drug information) related to the specified Divestiture Product;

4. all correspondence, submissions, notifications, communications, registrations or other filings made to, received from or otherwise conducted with the FDA relating to the Application(s) related to the specified Divestiture Product;

5. annual and periodic reports related to the above-described Application(s), including any safety update reports;

6. FDA approved Product labeling related to the specified Divestiture Product;

7. currently used or planned product package inserts (including historical change of controls summaries) related to the specified Divestiture Product;

8. FDA approved patient circulars and information related to the specified Divestiture Product;

9. adverse event reports, adverse experience information, descriptions of material events and matters concerning safety or lack of efficacy related to the specified Divestiture Product;

10. summary of Product complaints from physicians related to the specified Divestiture Product;

11. summary of Product complaints from customers related to the specified Divestiture Product;

12. Product recall reports filed with the FDA related to the specified Divestiture Product, and all reports, studies and other documents related to such recalls;

13. investigation reports and other documents related to any out of specification results for any impurities found in the specified Divestiture Product;

14. reports related to the specified Divestiture Product from any consultant or outside contractor engaged to investigate or perform testing for the purposes of resolving any product or process issues, including without limitation, identification and sources of impurities;

15. reports of vendors of the active pharmaceutical ingredients, excipients, packaging components and detergents used to produce the specified Divestiture Product that relate to the specifications, degradation, chemical interactions, testing and historical trends of the production of the specified Divestiture Product;

16. analytical methods development records related to the specified Divestiture Product;

17. manufacturing batch records related to the specified Divestiture Product;

18. stability testing records related to the specified Divestiture Product;

19. change in control history related to the specified Divestiture Product; and

20. executed validation and qualification protocols and reports related to the specified Divestiture Product.

QQ. "Product Intellectual Property" means all of the following related to a Divestiture Product (other than Product Licensed Intellectual Property):

1. Patents;

2. Product Copyrights;

3. Product Trademarks, Product Trade Dress, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and

4. rights to obtain and file for patents, trademarks, and copyrights and registrations thereof and to bring suit against a Third Party for the past, present or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;

5. for any Divestiture Product that is the subject of an NDA, the Drug Master File related to that NDA;

provided, however, "Product Intellectual Property" does not include the corporate names or corporate trade dress of "Valeant" or "Precision" or the related corporate logos thereof, or the corporate names or

corporate trade dress of any other corporations or companies owned or controlled by the Respondent or the related corporate logos thereof, or general registered images or symbols by which Valeant, or Precision can be identified or defined.

RR. "Product Licensed Intellectual Property" means the following:

1. Patents that are related to a Divestiture Product that the Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Date; and

2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the Geographic Territory to limit the use or disclosure thereof, that are related to a Divestiture Product and that the Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Date.

SS. "Product Manufacturing Technology" means all of the following related to a Divestiture Product:

1. all technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of that Product, including, but not limited to, the following: all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions,

annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Application(s) conformance and cGMP compliance, and labeling and all other information related to the manufacturing process, and supplier lists;

2. all ingredients, materials, or components used in the manufacture of that Product including the active pharmaceutical ingredient, excipients or packaging materials; and,

3. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer's option, all such equipment used to manufacture that Product.

TT. "Product Marketing Materials" means all marketing materials used specifically in the marketing or sale of the specified Divestiture Product in the Geographic Territory as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, detailing reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, television masters and other similar materials related to the specified Divestiture Product.

UU. "Product Scientific and Regulatory Material" means all technological, scientific, chemical, biological,

pharmacological, toxicological, regulatory and Clinical Trial materials and information.

VV. "Product Trade Dress" means the current trade dress of a Product, including but not limited to, Product packaging, and the lettering of the Product trade name or brand name.

WW. "Product Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for a Product.

XX. "Remedial Agreement(s)" means the following:

1. any agreement between a Respondent(s) and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;

2. any agreement between a Respondent(s) and a Third Party to effect the assignment of assets or rights of that Respondent(s) related to a Divestiture Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the

Commission's determination to make this Order final and effective;

3. any agreement between a Respondent(s) and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement by that Respondent(s) to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of this Order; and/or

4. any agreement between a Respondent(s) and a Third Party to effect the assignment of assets or rights of that Respondent(s) related to a Divestiture Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

YY. "Retained Product" means any Product(s) other than a Divestiture Product.

ZZ. "Rouses Point" means:

1. Rouses Point Pharmaceuticals, a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 24840 S. Tamiami Trail, Suite 1, Bonita Springs, Florida 34134; and

2. Matawan Pharmaceuticals, a limited liability company organized, existing and doing business under and by virtue of the laws of the State of

Delaware with its headquarters address located at 11 Commerce Drive, Cranford, New Jersey 07016.

AAA. "Technology Transfer Standards" means requirements and standards sufficient to ensure that the information and assets required to be delivered to an Acquirer pursuant to this Order are delivered in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner. Such standards and requirements shall include, *inter alia*,

1. designating employees of the Respondent(s) knowledgeable about the Product Manufacturing Technology (and all related intellectual property) related to each of the Divestiture Products who will be responsible for communicating directly with the Acquirer or its Manufacturing Designee, and the Interim Monitor (if one has been appointed), for the purpose of effecting such delivery;

2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the specified Divestiture Product that are acceptable to the Acquirer;

3. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all such Product Manufacturing Technology (including all related intellectual property) to the Acquirer or its Manufacturing Designee; and

4. providing, in a timely manner, assistance and advice to enable the Acquirer or its Manufacturing Designee to:

    a. manufacture the specified Divestiture Product in the quality and quantities achieved by the

specified Respondent (as that Respondent is identified in the definition of the specified Divestiture Product), or the manufacturer and/or developer of such Divestiture Product;

b. obtain any Product Approvals necessary for the Acquirer or its Manufacturing Designee, to manufacture, distribute, market, and sell the specified Divestiture Product in commercial quantities and to meet all Agency-approved specifications for such Divestiture Product; and

c. receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to the specified Divestiture Product.

BBB. "Third Party(ies)" means any non-governmental Person other than the following: the Respondents; or, the Acquirer of particular assets or rights pursuant to this Order.

CCC. "Tretin-X Product(s)" means the following: the Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Precision pursuant to the following ANDAs:

1. ANDA No. 090098;

2. ANDA No. 202209; and,

any supplements, amendments, or revisions to the above-described ANDAs.

DDD. "Tretin-X Product Assets" means all rights, title and interest in and to all assets related to the Business within the Geographic Territory of Respondent Precision related to each of the respective Tretin-X Products, to the extent legally transferable, including, without limitation, the Categorized Assets related to the Tretin-X Products.

EEE. "Tretin-X Product Divestiture Agreements" means:

1. The Asset Purchase Agreement between Valeant Pharmaceuticals International, (as Seller) and Watson Laboratories, Inc., (as Purchaser) dated as of June 20, 2014; and

2. the *Assignment and Assumption Agreement* by and between Precision Dermatology, Inc., Onset Dermatologics, LLC and Watson Laboratories, Inc., to be executed on the Closing Date (attached as Exhibit A to the *Asset Purchase Agreement*)

all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Tretin-X Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Tretin-X Product Divestiture Agreements are contained in Non-Public Appendix I.

FFF. "Tretinoin Product(s)" means the following: the Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Precision pursuant to the following ANDAs:

1. ANDA No. 075213;

2. ANDA No. 075265;

3. ANDA No. 075264;

4. ANDA No. 075529;

5. ANDA No. 075589; and,

any supplements, amendments, or revisions to the above-described ANDAs.

GGG. "Tretinoin Product Assets" means all rights, title and interest in and to all assets related to the Business within the Geographic Territory of Respondent

Precision related to each of the respective Tretinoin Products, to the extent legally transferable, including, without limitation, the Categorized Assets related to the Tretinion Products.

HHH. "Tretinoin Product Divestiture Agreements" means:

1. the *Asset Purchase Agreement* between Valeant Pharmaceuticals International (as Seller), Matawan Pharmaceuticals, LLC (as Purchaser) and Rouses Point Pharmaceuticals, LLC (as Guarantor), dated as of June 20, 2014;

2. the *Assignment and Assumption Agreement* by and between Precision Dermatology, Inc., Onset Dermatologics, LLC and Matawan Pharmaceuticals, LLC, to be executed on the Closing Date (attached as Exhibit A to the *Asset Purchase Agreement*); and

all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Tretinoin Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Tretinoin Product Divestiture Agreements are contained in Non-Public Appendix I.

III. "Watson" means Watson Laboratories, Inc. a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, New Jersey 07054. Watson Laboratories, Inc. is a wholly owned subsidiary of Actavis, Inc.

JJJ. "Website" means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by a Respondent; *provided, however,* "Website" shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not

owned by a Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that a Respondent can convey its rights, if any, therein; or (2) content unrelated to any of the Divestiture Products.

II.

IT IS FURTHER ORDERED that:

KKK. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondents shall divest the Tretin-X Product Assets and grant the related Divestiture Product License, absolutely and in good faith, to Watson pursuant to, and in accordance with, the Tretin-X Product Divestiture Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Watson or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Tretin-X Product Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Tretin-X Product Assets to Watson prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that Watson is not an acceptable purchaser of the Divestiture Product Assets, then Respondents shall immediately rescind the transaction with Watson, in whole or in part, as directed by the Commission, and shall divest the Tretin-X Product Assets within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondents have divested the Tretin-X Product Assets to Watson prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Tretin-X Product Assets to Watson (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

LLL. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondents shall divest the Tretinoin Product Assets and grant the related Divestiture Product License, absolutely and in good faith, to Matawan pursuant to, and in accordance with, the Tretinoin Product Divestiture Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Matawan or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Tretinoin Product Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Tretinoin Product Assets to Matawan prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that Matawan is not an acceptable purchaser of the Tretinoin Product Assets, then Respondents shall immediately rescind the transaction with Matawan, in whole or in part, as directed by the Commission, and shall divest the Tretinoin Product Assets within one hundred eighty

(180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondents have divested the Tretinoin Product Assets to Matawan prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Tretinoin Product Assets to Matawan (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

MMM. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the assets required to be divested pursuant to this Order to an Acquirer, and to permit the relevant Acquirer to continue the Business of the Divestiture Product(s) being acquired by that Acquirer;

provided, however, Respondents may satisfy this requirement by certifying that the relevant Acquirer for the Divestiture Product has executed all such agreements directly with each of the relevant Third Parties.

NNN. Respondents shall:

1. submit to each Acquirer, at Respondents' expense, all Confidential Business Information related to the Divestiture Products being acquired by that Acquirer;

2. deliver all Confidential Business Information related to the Divestiture Products being acquired by that Acquirer to that Acquirer:

    a. in good faith;

    b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

    c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

3. pending complete delivery of all such Confidential Business Information to the relevant Acquirer, provide that Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Divestiture Products acquired by that Acquirer that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

4. not use, directly or indirectly, any such Confidential Business Information related to the Business of the Divestiture Products other than as necessary to comply with the following:

    a. the requirements of this Order;

    b. Respondents' obligations to each respective Acquirer under the terms of any related Remedial Agreement; or

    c. applicable Law;

5. not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer of the particular Divestiture Products, (ii) other Persons specifically authorized

by that Acquirer to receive such information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed); and

6. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the marketing or sales of the Divestiture Products to the marketing or sales employees associated with the Business related to those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products.

OOO. For each Acquirer of a Divestiture Product, Respondents shall provide, or cause to be provided to that Acquirer in a manner consistent with the Technology Transfer Standards the following:

1. all Product Manufacturing Technology (including all related intellectual property) related to the Divestiture Product(s) being acquired by that Acquirer; and

2. all rights to all Product Manufacturing Technology (including all related intellectual property) that is owned by a Third Party and licensed to any Respondent related to the Divestiture Products being acquired by that Acquirer.

Respondents shall obtain any consents from Third Parties required to comply with this provision. No Respondent shall enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of that Acquirer to use or to acquire from the Third Party the Product Manufacturing Technology (including all related intellectual property) related to the Divestiture Products acquired by that Acquirer. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing

Technology. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to such agreements that allows the Third Party to provide the relevant Product Manufacturing Technology to that Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to that Acquirer.

PPP. Respondents shall require, as a condition of continued employment post-divestiture of the assets required to be divested pursuant to this Order, that each employee that has had responsibilities related to the marketing or sales of the Divestiture Products within the one (1) year period prior to the Closing Date and each employee that has responsibilities related to the marketing or sales of those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products, in each case who have or may have had access to Confidential Business Information, and the direct supervisor(s) of any such employee sign a confidentiality agreement pursuant to which that employee shall be required to maintain all Confidential Business Information related to the Divestiture Products as strictly confidential, including the nondisclosure of that information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

QQQ. Not later than thirty (30) days after the Closing Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondents' personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondents shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondents

shall provide a copy of the notification to the relevant Acquirer. Respondents shall maintain complete records of all such notifications at Respondents' principal business office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

RRR. Until Respondents complete the divestitures required by this Order and fully provide, or cause to be provided, the Product Manufacturing Technology related to a particular Divestiture Product to the relevant Acquirer,

1. Respondents shall take actions as are necessary to:

   a. maintain the full economic viability and marketability of the Businesses associated with that Divestiture Product;

   b. minimize any risk of loss of competitive potential for that Business;

   c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to that Divestiture Product;

   d. ensure the assets related to each Divestiture Product are provided to the relevant Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the Business associated with each Divestiture Product; and

   e. ensure the completeness of the transfer and delivery of such Product Manufacturing Technology; and

2. Respondents shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Businesses associated with that Divestiture Product.

SSS. From the Closing Date, Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against an Acquirer or the Divestiture Product Releasee(s) of that Acquirer under the following:

1. any Patent owned by or licensed to a Respondent as of the day after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;

2. any Patent that was filed or in existence on or before the Acquisition Date that is acquired by or licensed to a Respondent at any time after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;

if such suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer. Each Respondent shall also covenant to that Acquirer that as a condition of any assignment or license from that Respondent to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants

not to sue that Acquirer or the related Divestiture Product Releasee(s) under such Patents, if the suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer. The provisions of this Paragraph do not apply to any Patent owned by, acquired by or licensed to or from a Respondent that claims inventions conceived by and reduced to practice after the Acquisition Date.

TTT. Upon reasonable written notice and request from an Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondents to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation brought by a Third Party related to the Product Intellectual Property related to any of the Divestiture Product(s) acquired by that Acquirer, if such litigation would have the potential to interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer.

UUU. For any patent infringement suit filed prior to the Closing Date in which any Respondent is alleged to have infringed a Patent of a Third Party or any potential patent infringement suit from a Third Party

that any Respondent has prepared or is preparing to defend against as of the Closing Date, and where such a suit would have the potential directly to limit or interfere with the relevant Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Products; or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of such Divestiture Product(s), that Respondent shall:

1. cooperate with that Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from that Respondent in connection with obtaining resolution of any pending patent litigation related to that Divestiture Product;

2. waive conflicts of interest, if any, to allow that Respondent's outside legal counsel to represent that Acquirer in any ongoing patent litigation related to that Divestiture Product; and

3. permit the transfer to that Acquirer of all of the litigation files and any related attorney work-product in the possession of that Respondent's outside counsel related to that Divestiture Product.

VVV. The purpose of the divestiture of the Divestiture Product Assets and the provision of the related Product Manufacturing Technology and the related obligations imposed on the Respondents by this Order is:

1. to ensure the continued use of such assets for the purposes of the Business associated with each Divestiture Product within the Geographic Territory; and

2. to create a viable and effective competitor, that is independent of Respondents in the Business of each Divestiture Product within the Geographic Territory; and,

3. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

WWW. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements.

XXX. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

YYY. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

ZZZ. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of the Orders;

   provided, however, that, the Interim Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

AAAA. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with

any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.

BBBB. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

CCCC. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

DDDD. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by each Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order; *provided, however*, beginning ninety (90) days after Respondents

have filed their final report pursuant to Paragraph VII.B., and ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining FDA approval to manufacture each Divestiture Product and obtaining the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents.

EEEE. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

FFFF. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

GGGG. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.

HHHH. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

IIII. The Interim Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

JJJJ. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Divestiture Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

KKKK. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

LLLL. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

MMMM. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall

develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The

Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order or the Order to Maintain Assets in this matter.

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

NNNN. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

OOOO. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

PPPP. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, each Respondent shall assure that its own counsel (including its own in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

A. To assure such Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or

B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Divestiture Products or the assets and Businesses associated with those Divestiture Products;

provided, *however*, that a Respondent may disclose such information as necessary for the purposes set forth in this Paragraph V pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, *however,* that pursuant to this Paragraph V, the Respondent needing such access to original documents shall: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if that Acquirer withholds such agreement unreasonably); and (ii) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VI.

IT IS FURTHER ORDERED that:

C. Any Remedial Agreement shall be deemed incorporated into this Order.

D. Any failure by a Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

E. Respondents shall include in each Remedial Agreement related to each of the Divestiture Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligation to the Acquirer pursuant to this Order.

F. No Respondent shall seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Divestiture Products a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.

G. No Respondent shall modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VII.

IT IS FURTHER ORDERED that:

H. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

I. Within thirty (30) days after the Order Date, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II.A., II.B., II.C., II.D., II.E., and II.H., Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this

Order. Respondents shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Order, including:

1. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, and (ii) transitional services being provided by the Respondents to the relevant Acquirer; and

2. a detailed description of the timing for the completion of such obligations.

J. One (1) year after the Order Date, annually for the next nine (9) years on the anniversary of the Order Date, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

K. any proposed dissolution of a Respondent;

L. any proposed acquisition, merger or consolidation of a Respondent; or

M. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

N. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

O. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on August 20, 2024.

By the Commission.

NON-PUBLIC APPENDIX I

AGREEMENTS RELATED TO THE DIVESTITURES

[Redacted From the Public Record Version, But Incorporated By Reference]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Valeant Pharmaceuticals International, Inc. ("Valeant"), which is designed to remedy the anticompetitive effects of Valeant's acquisition of Precision Dermatology, Inc. ("Precision").

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the proposed Consent Agreement, along with the comments received, in order to make a final decision as to whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order ("Order").

Pursuant to an Agreement and Plan of Merger dated January 31, 2014, Valeant plans to acquire Precision for approximately $475 million in cash, plus an additional $25 million milestone payment upon the achievement of certain sales targets (the "Proposed Acquisition"). Both parties sell topical pharmaceutical products in the United States. The Commission alleges in its Complaint that the Proposed Acquisition, if consummated, would violate 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, by lessening competition in U.S. markets for (1) branded and generic single-agent topical tretinoins for the treatment of acne and (2) generic Retin-A and/or the individual strengths and formulations of generic Retin-A. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Proposed Acquisition. Specifically, under the terms of the Consent Agreement, Valeant would be required to divest all of Precision's rights and assets related to (1) Tretin-X and (2) generic Retin-A. Valeant has proposed Actavis, Inc. ("Actavis") as the buyer of the Tretin-X assets and Matawan Pharmaceuticals, LLC ("Matawan Pharmaceuticals") as the buyer of the generic Retin-A assets.

II. The Products and Structure of the Markets

A. Branded and Generic Single-Agent Topical Tretinoins

Valeant's proposed acquisition of Precision would significantly increase concentration in the single-agent topical tretinoin market. Single-agent topical tretinoins are one of three kinds of retinoids, a class of chemical compounds used to treat acne vulgaris, commonly known as acne. Single-agent topical tretinoins are not reasonably interchangeable with the other two kinds of retinoids, adapalene and tazarotene, because they are used to treat patients with a different severity of acne. Tretinoins are viewed as more efficacious but more abrasive than adapalenes and less abrasive but less efficacious than tazarotenes.

The branded and generic single-agent topical tretinoin market includes both branded and generic tretinoins. Unlike pharmaceutical markets in which the branded product no longer competes with generics once multiple generics enter, branded versions of single-agent topical tretinoins continue to compete with each other and their generic versions. Although generics contain the same molecule as the brands, many dermatologists believe that prescribing a branded product allows them to know precisely which delivery vehicles their patients are using, and hence what might be the cause of any skin irritation that may arise. As a result, even years after generic entry into this market,

many dermatologists still prescribe branded tretinoins, and Valeant and Precision continue to invest in promotion and marketing of their branded products.

Valeant currently manufactures and markets branded Retin-A, Retin-A Micro, and Atralin, as well as generic Retin-A and Retin-A Micro. Currently, Valeant markets its generic Retin-A through a profit sharing arrangement with Spear Pharmaceuticals ("Spear"). Precision markets Tretin-X, as well as generic Retin-A through a profit sharing arrangement with Rouses Point Pharmaceuticals, LLC ("Rouses Point"). The only other suppliers of single-agent topical tretinoins are Mylan, with its branded product, Avita, and Actavis, with one strength of generic Retin-A. Currently, Valeant accounts for approximately 70% of single-agent topical tretinoin sales, and Precision has a share of approximately 12%. Spear, Rouses Point, Mylan and Actavis account for the remaining 18% of the market. Unremedied, the Proposed Acquisition will consolidate the two most significant suppliers of single-agent topical tretinoins, and would increase the Herfindahl-Hirschman Index concentration ("HHI") by 1680, from 5368 to a post-merger total of 7048. Valeant's post-acquisition market share in the single-agent topical tretinoin market would grow to over 80%.

B. Generic Retin-A

In addition, Valeant's proposed acquisition of Precision would consolidate two leading suppliers of generic Retin-A. Although generic Retin-A products are part of the single-agent topical tretinoin market, generic Retin-A products compete particularly closely with each other and, therefore, also comprise a separate relevant market. Generic Retin-A is offered in a variety of strengths and formulations. Three suppliers currently offer generic Retin-A products: (1) Precision, which holds an Abbreviated New Drug Application ("ANDA") for generic Retin-A and distributes five strengths and formulations of its generic Retin-A products through Rouses Point; (2) Valeant, which holds the New Drug Application ("NDA") for Retin-A and distributes through an "authorized" generic arrangement with Spear the same strengths and formulations as Precision's generic Retin-A; and (3) Actavis, which markets one of the five formulations of generic Retin-A currently on the market. Since

retail pharmacies typically carry each of these strengths and formulations in order to be able to fill the full range of requested prescriptions, each strength and formulation may constitute a distinct product market. Absent a remedy, the Proposed Acquisition will result in a monopoly for four of the five strengths of generic Retin-A, and a duopoly for the only other formulation (the 0.025% cream), for which the post-acquisition market share would increase to nearly 80% and the HHI would rise from 3534 to 6568.

III. Entry

Entry into the manufacture and sale of both branded and generic single-agent topical tretinoins and generic Retin-A generally or for any given strength/formulation would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. The combination of drug development times and regulatory requirements, including U.S. Food and Drug Administration ("FDA") approval, is costly and lengthy. Industry participants also note that expertise and facilities associated with manufacturing topical products are sufficiently specialized that a relatively small number of firms participate in such markets.

IV. Effects

The Proposed Acquisition would likely cause significant anticompetitive harm to consumers for the manufacture and sale of both branded and generic single-agent topical tretinoins and generic Retin-A and/or the individual strengths and formulations of generic Retin-A by eliminating actual, direct, and substantial competition between Valeant and Precision in these markets. With respect to branded and generic single-agent topical tretinoins, the Proposed Acquisition would likely result in unilateral anticompetitive effects. Evidence gathered during the course of the investigation demonstrates that there is close competition between Valeant's and Precision's branded tretinoin products in terms of pricing and promotional activities. Although generic tretinoins provide some competitive constraint on branded tretinoin pricing, there is a sufficient degree of direct competition between Valeant's and Precision's branded products that Valeant will likely have an incentive to increase the price of

branded single-agent topical tretinoins if the Proposed Acquisition takes place. Since many managed care organizations incentivize the use of generic tretinoin over branded tretinoin, the competition between Precision's and Valeant's branded products has benefitted consumers primarily in the form of promotional couponing. The Proposed Acquisition would likely allow Valeant to raise prices by reducing its couponing and other promotional activity for Tretin-X.

For the generic Retin-A products, the Proposed Acquisition would give Valeant a monopoly in four of five strengths and formulations of generic Retin-A, a duopoly for the only other strength, and would combine the two largest suppliers of generic Retin-A overall. In generic pharmaceuticals markets, price is heavily influenced by the number of participants with sufficient supply. Market participants consistently characterize generic drug markets as commodity markets in which the number of generic suppliers has a direct impact on pricing. Customers and competitors alike have confirmed that the prices of the generic pharmaceutical products at issue continue to decrease with new entry even after a number of suppliers have entered these generic markets. Further, customers generally believe that having at least four suppliers in a generic pharmaceutical market produces more competitive prices than if fewer suppliers are available to them. The evidence shows that anticompetitive effects are likely to result from the Proposed Acquisition, due to a decrease in the number of independent competitors in the markets at issue. The combination of these products at Valeant results in even greater concentration in already highly concentrated markets and would likely result in significantly higher prices for all strengths of generic Retin-A.

V. The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in each of the relevant product markets. Pursuant to the Consent Agreement, the parties are required to divest Precision's rights and assets related to Tretin-X to Actavis, and its rights and assets related to generic Retin-A to Matawan Pharmaceuticals. Further, the proposed Consent Agreement requires Precision to assign to Actavis and Matawan Pharmaceuticals its contract

manufacturing agreement with DPT Laboratories Ltd. ("DPT") for the divested assets. The parties must accomplish these divestitures and relinquish their rights no later than ten days after the Proposed Acquisition is consummated.

Actavis is well-suited to acquire Tretin-X because of its current presence in the dermatology field, and the fact that it already markets a branded antibiotic, Doryx, that is also used to treat acne vulgaris. Actavis is a multinational pharmaceutical company headquartered in Ireland that employs approximately 19,200 individuals. In 2013, the company generated $8.7 billion in worldwide revenue. Actavis develops, manufactures, markets, sells, and distributes branded, generic, branded generic, biosimilar, and over-the-counter pharmaceutical products. Currently, Actavis offers forty-five branded pharmaceutical products and approximately 250 generic pharmaceutical product lines in the United States. Actavis employs a significant dermatology sales force.

Since Actavis will step into Precision's existing contract manufacturing relationship with DPT for the production of Tretin-X, no transfer of manufacturing will be necessary for the proposed divestiture and Actavis will be able to compete immediately following the acquisition in the single-agent topical tretinoin market.

Matawan Pharmaceuticals is an acceptable purchaser of the generic Retin-A assets and will be able to replicate Precision's role in that market. Under the proposed divestiture, Matawan Pharmaceuticals will purchase the generic Retin-A assets, but little else will change as the products will continue to be manufactured by DPT and marketed by Rouses Point. Since Matawan Pharmaceuticals will use Precision's already-existing contract manufacturing relationship with DPT for the production of generic Retin-A, no transfer of manufacturing will be necessary.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. If the Commission determines that Actavis and Matawan Pharmaceuticals are not acceptable acquirers of the divested assets, or that the manner of

the divestitures is not acceptable, the parties must unwind the sale of rights to Actavis and Matawan Pharmaceuticals, and divest the Tretin-X and generic Retin-A assets to Commission-approved acquirers within six months of the date the Order becomes final. In that circumstance, the Commission may appoint a trustee to divest the Products if the parties fail to divest them as required.

The proposed Consent Agreement contains several provisions to help ensure that the divestitures are successful. The Order requires Valeant and Precision to take all action to maintain the economic viability, marketability, and competitiveness of the products to be divested until such time that they are transferred to Commission-approved acquirers. The Order also requires that Valeant and Precision transfer all confidential business information, including customer information related to the divestiture products, to Actavis and Matawan Pharmaceuticals.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

ENGINEERED PLASTIC SYSTEMS, LLC

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

Docket No. C-4485; File No. 132 3204
Complaint, August 20, 2014 – Decision, August 20, 2014

This consent order addresses Engineered Plastic Systems, LLC's green claims made while promoting its plastic lumber products. The complaint alleges that Respondent represented that some of its benches and tables are all, or virtually all, recycled plastic, but that these products contained substantially less recycled plastic than claimed. The consent order prohibits Respondent from making representations regarding the recycled content or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence.

Participants

For the *Commission*: *Robert M. Frisby.*

For the *Respondent*: *Jack Joyce, President, pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Engineered Plastic Systems, LLC, a corporation ("Respondent"), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Engineered Plastic Systems, LLC is a limited liability company with its principal office or place of business at 885 Church Road, Elgin, IL 60123.

2. Respondent has advertised, offered for sale, sold, and distributed plastic lumber products, including picnic tables and benches.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Since at least June 2011, Respondent has disseminated one or more advertisements and promotional materials for plastic lumber products, including but not necessarily limited to the attached Exhibits A and B. These materials contain the following statements:

a. "Sports Bench . . . Made entirely of recycled plastic lumber" (Exhibit A, brochure, p. 11)

"Eco Table . . . Made entirely of recycled plastic synthetic lumber" (*Id.*, p. 13)

"Perennial Table . . . Made entirely of recycled plastic lumber" (*Id.*, p. 15)

"Hexagonal Table . . . Made entirely of recycled plastic lumber" (*Id.*, p. 16)

"Geneva Bench . . . All recycled plastic design" (*Id.*, p. 24)

"Garden Bench . . . Constructed using 2x4 recycled plastic lumber profiles . . . Choice of recycled plastic-molded legs or ¼" steel legs" (*Id.*, p. 8)

"Trailside Bench . . . Constructed using 2x6 recycled plastic lumber profiles . . . Choice of recycled plastic molded legs or ¼" steel legs" (*Id.*, p. 9)

b. "Eco Table . . . All recycled plastic construction" (Exhibit B, excerpt from www.epsplasticlumber.com)

"Hexagonal Table . . . All recycled plastic construction" (*Id.*)

5. A consumer acting reasonably under the circumstances is likely to interpret the representations described in Paragraph 4 to mean that Respondent's tables and benches are made from all, or virtually all, recycled plastic.

6. In fact, Respondent's tables and benches contained substantially less recycled plastic than Respondent represented.

From June 2011 to early 2014, Respondent's tables and benches, on average, contained only about 72% recycled plastic. The products also contained some non-recycled plastic and a mineral component.

False or Misleading Claims

7. In connection with the advertising, promotion, offering for sale, or sale of plastic lumber products, Respondent has represented, directly or indirectly, expressly or by implication, that its Eco, Hexagonal, and Perennial Tables and its Garden, Geneva, Sports, and Trailside Benches are all or virtually all recycled plastic.

8. In fact, Respondent's tables and benches are not all or virtually all recycled plastic.

9. The representations set forth in Paragraph 7 are false or misleading, or were not substantiated at the time the representations were made.

Violations of Section 5

10. The acts and practices of Respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twentieth day of August, 2014, has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A

BENCHES

Garden Bench

Constructed using 2x4 recycled plastic lumber profiles

Choice of recycled plastic-molded legs or 1/4" steel legs

Custom engraving available

One-Piece Plastic Molded Legs, Black

All plastic bench model. Molded legs easily anchor to or land. Legs do not come pre-drilled.

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	M
4' Bench	48"L x 25"W x 33"H	48"L x 14"H	2	78 lbs	G
6' Bench	72"L x 25"W x 33"H	72"L x 14"H	3	113 lbs	G
8' Bench	96"L x 25"W x 33"H	96"L x 14"H	4	151 lbs	G

Steel Leg with Surface Mount (2)

1/4" powder-coated steel legs. Surface mount co complimentary cement anchors and pre-drilled anch

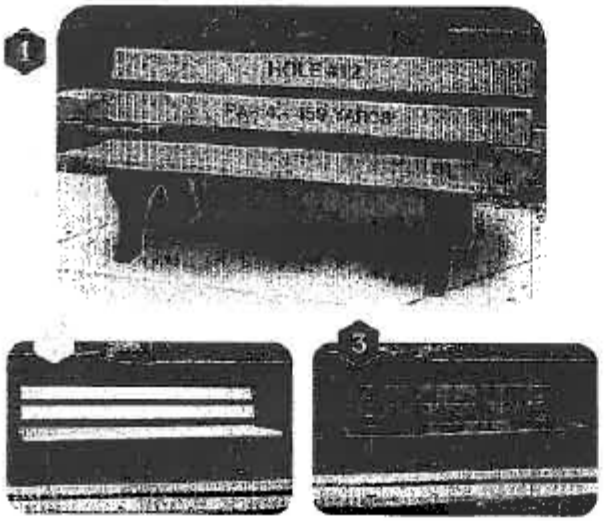
SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT
4' Bench	48"L x 25"W x 33"H	48"L x 16"H	2	74 lbs
6' Bench	72"L x 25"W x 33"H	72"L x 16"H	3	110 lbs
8' Bench	96"L x 25"W x 33"H	96"L x 16"H	4	147 lbs

Steel Leg with In-Ground Mount (3)

1/4" powder-coated steel legs. In-ground mount c 18" of additional pipe for mounting.

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT
4' Bench	48"L x 25"W x 33"H	48"L x 16"H	2	74 lbs
6' Bench	72"L x 25"W x 33"H	72"L x 16"H	3	110 lbs
8' Bench	96"L x 25"W x 33"H	96"L x 16"H	4	147 lbs

Trailside Bench



Constructed using 2x6 recycled plastic lumber profiles
Choice of recycled plastic molded legs or 1/4" steel legs
Widest seat for added comfort

One-Piece Plastic Molded Legs (1)

All plastic bench model. Molded legs easily anchor to ceme
or land. Legs do not come pre-drilled. Black in color.

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
4' Bench	48"L x 25"W x 33"H	48"L x 17"H	2	85 lbs	TSB4
6' Bench	72"L x 25"W x 33"H	72"L x 17"H	3	128 lbs	TSB6
8' Bench	96"L x 25"W x 33"H	96"L x 17"H	4	170 lbs	TSB8

Steel Leg with Surface Mount (2)

1/4" powder-coated steel legs. Surface mount comes wi
complimentary cement anchors and pre-drilled anchor hole

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
4' Bench	48"L x 25"W x 33"H	48"L x 17"H	2	83 lbs	TSLB4
6' Bench	72"L x 25"W x 33"H	72"L x 17"H	3	125 lbs	TSLB6
8' Bench	96"L x 25"W x 33"H	96"L x 17"H	4	166 lbs	TSLB8

Steel Leg with In-Ground Mount (3)

1/4" powder-coated steel legs. In-ground mount comes wi
18" of additional pipe for mounting.

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
4' Bench	48"L x 25"W x 33"H	48"L x 17"H	2	83 lbs	TSLB4-IG
6' Bench	72"L x 25"W x 33"H	72"L x 17"H	3	125 lbs	TSLB6-IG
8' Bench	96"L x 25"W x 33"H	96"L x 17"H	4	166 lbs	TSLB8-IG

△ www.epaplasticlumber.com | 800.460.232

Complaint

Sports Bench

Made entirely of recycled plastic lumber

Black one-piece plastic molded legs

Plastic fastener covers included

4' Sports Bench - Model # SB4

DIMENSIONS	SEAT	LEGS	WEIGHT
45"L x 19.5"W x 20"H	19.5"H	2	85 lbs

6' Sports Bench - Model # SB6

DIMENSIONS	SEAT	LEGS	WEIGHT
72"L x 19.5"W x 20"H	19.5"H	2	89 lbs

8' Sports Bench - Model # SB8

DIMENSIONS	SEAT	LEGS	WEIGHT
96"L x 19.5"W x 20"H	19.5"H	3	121 lbs

12' Sports Bench - Model # SB12

DIMENSIONS	SEAT	LEGS	WEIGHT
144"L x 19.5"W x 20"H	19.5"H	4	177 lbs

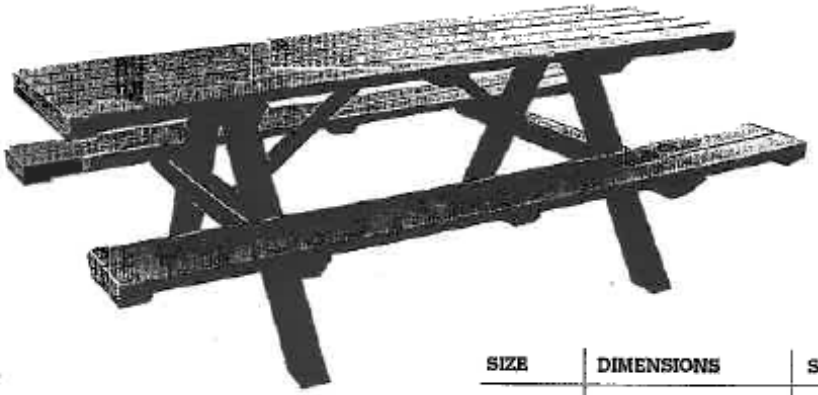
For All Benches:

- Stainless steel fasteners and all parts necessary for assembly are included.
- Custom colors for plastic molded legs available with orders of 100 or more.
- Custom engraving availble for all benches. See p.29 for more details.

One-Piece Plastic Molded Leg For Benches with Back (Black)
Model # GBLBG
41"L x 25"W x 32"H | 17 lbs

One-Piece Plastic Molded Leg For Benches with No Back
Model # SBLBG
41"L x 16"W x 16"H | 12 lbs

Picnic Tables from Perennial Park Products are durbable and easy to maintain. All parts made of our signature recycled plastic lumber are waterproof, resistant to graffiti and stains, and will not rot, crack, splinter or peel. All tabletops are non-toxic and food-safe.



Eco Table

Made entirely of recycled plastic synthetic lumber

Your choice of color for tabletop and benches, black legs

Rounded edges for added safety

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
6' Table	72"L x 58"W x 32.5"H	72"L x 18"H	2	250 lbs	ECO6
8' Table	96"L x 58"W x 32.5"H	96"L x 18"H	2	306 lbs	ECO8

www.epplasticlumber.com | 800.480.2327

Complaint

Perennial Table with Single Overhang

MODEL # PT8-H1

Wheelchair accessible & ADA compliant

8' tabletop, 6' benches

DIMENSIONS	SEAT	LEGS	WEIGHT
96"L x 58"W x 32"H	72"L x 18"H	2	386 lbs

Perennial Table with Dual Overhang

MODEL # PT8-H2

Wheelchair accessible & ADA compliant

8' tabletop, 6' benches

DIMENSIONS	SEAT	LEGS	WEIGHT
96"L x 58"W x 32"H	72"L x 18"H	2	386 lbs

Perennial Table

Made entirely of recycled plastic lumber

Step-over design with A-shaped frame

Round, smooth edges for added safety

SIZE	DIMENSIONS	SEAT	LEGS	WEIGHT	MODEL #
4' Table	48"L x 58"W x 32"H	48"L x 18"H	2	300 lbs	PT4
6' Table	72"L x 58"W x 32"H	72"L x 18"H	2	375 lbs	PT6
8' Table	96"L x 58"W x 32"H	96"L x 18"H	2	428 lbs	PT8

www.eyeplasticlumber.com | 800.480.2527

PICNIC TABLES

15

PICNIC TABLES

16

Square Table

MODEL # IC4

4' square table with four easy to walk-through benches

Seats up to 8 adults

Black powder-coated steel legs

Frame will support an umbrella

DIMENSIONS	SEAT	LEGS	WEIGHT
72"L x 72"W x 28"H	19"H	8	320 lbs

Hexagonal Table

MODEL # PT-HEX45

6-sided hexagonal table with three angled benches

Seats up to 6 adults

Made entirely of recycled plastic lumber

Pre-assembled legs and tabletop

DIMENSIONS	SEAT	LEGS	WEIGHT
72"L x 72"W x 32"H	19"H	9	250 lbs

Mix and match seat and tabletop colors!

Courtyard Table

MODEL # CT-OCT

Pedestal feet and rounded ed help create unique design

Four angled benches seat up eight adults

Choose a combination of two colors or a one-color design

DIMENSIONS	SEAT	LEGS
82"L x 82"W x 32"H	19"H	8

Complaint

OUTDOOR LIVING

24

Outdoor Living is what we're all about. Whether for homes, recreation areas, businesses public use, these accessories let you incorporate eco-friendly furnishings into your dec and landscaping. All pieces are built for comfort and feature stylish, classic designs.

The Geneva Collection - All New!

Geneva Bench NEW!

MODEL # GENBENCH

Curved seat for added comfort

All recycled plastic design

Weatherproof, resistant to fading, easy to cle

Will not blow in wind

Choose two-tone colors or one color design

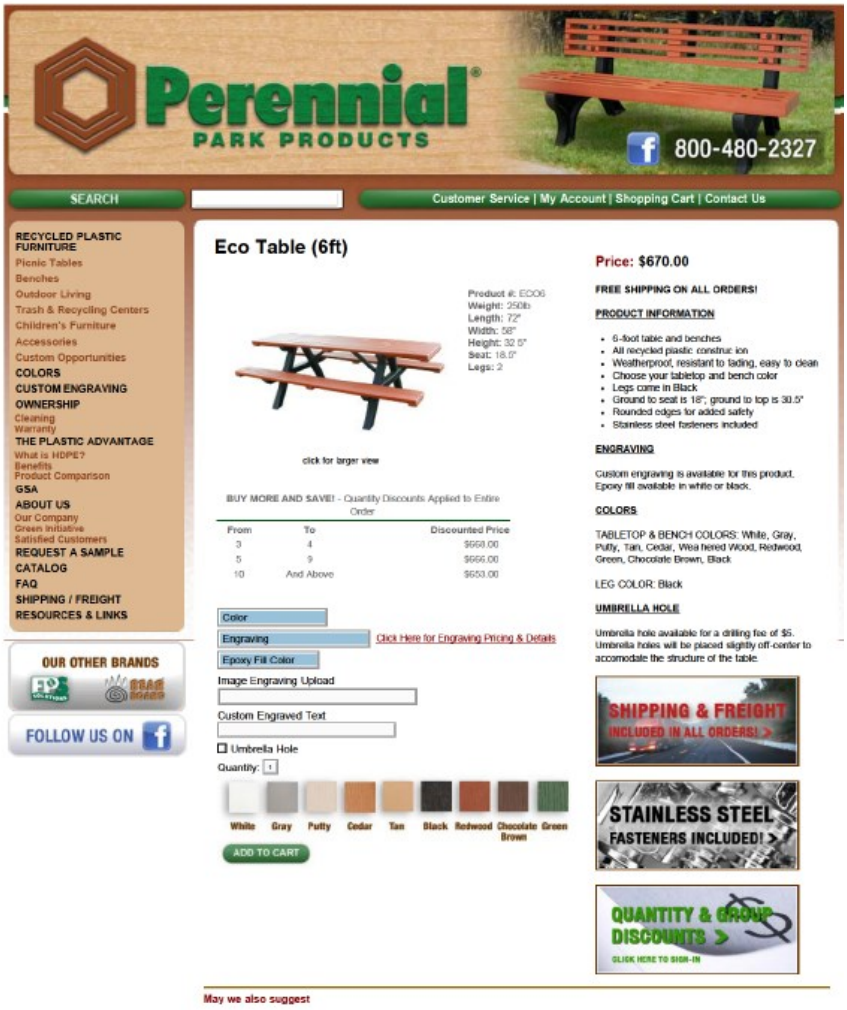
DIMENSIONS	SEAT	LEGS	WEIG
51¼"L x 25"W x 38"H	45"L x 18"H	4	81.5 l

www.epiplasticlumber.com | 800.490.9327

Complaint

Exhibit B

Eco Table (6ft)



Complaint

Hexagonal Table

http://www.epsplasticsinc.com/index.cfm/product/37_2/hexagonal-table.cfm[5/17/2013 11:15:41 AM]

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 a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 Federal Trade Commission Act, and that a 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 thirty (30) days for the receipt and consideration of public comments, pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Engineered Plastic Systems, LLC, a limited liability company, has its principal office or place of business at 885 Church Road, Elgin, IL 60123.

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

ORDER

DEFINITIONS

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

A. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

B. "Competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true.

C. Unless otherwise specified, "respondent" means Engineered Plastic Systems, LLC, a limited liability company, and its successors and assigns.

I.

IT IS ORDERED that respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or package, shall not make any representation, in any manner, expressly or by implication, about:

A. The recycled content of any product or package; or

B. The environmental benefit of any product or package;

unless such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates that the representation is true.

If, in general, experts in the relevant scientific fields would conclude it is necessary, such evidence must be competent and reliable scientific evidence. For any representation that a product or package contains recycled content, such evidence must show that any recycled content in such product or package is composed of materials that have been recovered or otherwise diverted from the waste stream.

II.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent must maintain and upon request make available to the Federal Trade

Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "Engineered Plastic Systems, LLC, Docket No. C-4485."

V.

IT IS FURTHER ORDERED that respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, all reports required by this Part shall also be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject

line must begin: "Engineered Plastic Systems, LLC, Docket No. C-4485."

VI.

This order will terminate on August 20, 2034, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a

Analysis to Aid Public Comment

consent order from Engineered Plastic Systems, LLC, a limited liability company ("Respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter addresses allegedly deceptive green claims that Respondent made while promoting its plastic lumber products. According to the FTC complaint, Respondent represented that some of its benches and tables are all, or virtually all, recycled plastic. The complaint also alleges that these products contained substantially less recycled plastic than Respondent represented. According to the complaint, from June 2011 to early 2014, Respondent's tables and benches, on average, contained only about 72% recycled plastic. Thus, the complaint alleges that the above claims were false, misleading, or unsubstantiated in violation of Section 5(a) of the FTC Act.

The proposed consent order contains several provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Part I prohibits Respondent from making representations regarding the recycled content or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence. Part I further provides that if, in general, experts in the relevant scientific field would conclude it necessary, such evidence must be competent and reliable scientific evidence. Consistent with the Guides for the Use of Environmental Marketing Claims ("Green Guides"), 16 C.F.R. § 260.13(b), Part I specifically requires Respondent to substantiate recycled content claims by demonstrating that such content is composed of materials that were recovered or otherwise diverted from the waste stream.

Parts II through VI are reporting and compliance provisions. Part II requires Respondent to keep (and make available to the Commission on request): copies of advertisements and

promotional materials containing the representations covered by the order; materials relied upon in disseminating those representations; and evidence that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations. Part III requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. It also requires Respondent to maintain and make available to the FTC all acknowledgments of receipt of the order. Part IV requires notification to the FTC of changes in corporate status. Part V mandates that Respondent submit an initial compliance report to the FTC and subsequent reports requested by the FTC. Part VI is a provision terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed consent order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

JACOB J. ALIFRAGHIS
D/B/A
INSTANTUPCCODES.COM

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

Docket No. C-4483; File No. 141 0036
Complaint, August 20, 2014 – Decision, August 20, 2014

This consent order addresses Jacob J. Alifraghis's invitation to certain competitors in the sale of barcodes to join together in a collusive scheme to raise prices. The complaint alleges that Mr. Alifraghis sent messages proposing that all three competitors raise their prices to meet the higher prices charged by another competitor. The consent order prohibits Respondent from entering into, participating in, maintaining, organizing, implementing, enforcing, inviting, offering, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

Participants

For the *Commission*: *Dana Abrahamsen* and *Matthew Accornero.*

For the *Respondent*: *David Balto, Solo Practitioner.*

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 ("Commission"), having reason to believe that Jacob J. Alifraghis, also doing business as InstantUPCCodes.com (hereinafter sometimes referred to as "Respondent"), has violated the provisions of Section 5 of the Federal Trade Commission Act, 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 this Complaint stating its charges as follows:

NATURE OF THE CASE

1. Jacob J. Alifraghis, also d/b/a InstantUPCCodes.com ("Instant"), is one of the largest sellers of barcodes in the United States. On multiple occasions, Mr. Alifraghis invited two of his closest competitors, Nationwide Barcode ("Nationwide") and Competitor A, to join with Instant in a collusive scheme to raise and fix prices for barcodes. The collusive plan included invitations to match the higher prices of another barcode seller, Competitor B. By inviting collusion, Mr. Alifraghis endangered competition and violated Section 5 of the FTC Act.

PRELIMINARY ALLEGATIONS

2. Respondent Jacob J. Alifraghis is an individual living in Florida and doing business in Florida as InstantUPCCodes.com, with a mailing address of 2803 Gulf To Bay Blvd, #165, Clearwater, FL, 33759. Mr. Alifraghis' written communications to his competitors, as set forth below, were by email or through websites that permit individuals to transmit written messages.

3. The primary business of Instant is selling barcodes over the internet.

4. Nationwide is managed by an individual by the name of Philip Bernard Peretz. Nationwide operates a website that permits individuals to transmit written messages to Mr. Peretz.

JURISDICTION

5. The business practices of Respondent Jacob J. Alifraghis, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

LINE OF COMMERCE

6. A barcode is a unique 12-digit number that allows a retailer to track sales of products within its inventory system. Universal product codes ("UPCs") are the predominant form of barcodes used in the United States. UPC barcodes are issued by GS1 (formerly the Uniform Commercial Council), a nonprofit group that sets standards for international commerce. In order to avoid GS1 membership fees or minimum purchase requirements, many small businesses purchase UPC barcodes on the online secondary market.

7. Instant, Nationwide, and Competitor A are three of the largest sellers of barcodes in the United States. Instant's closest competitors, and the principal competitive constraints upon Instant's pricing power, are Nationwide and Competitor A. Competition between and among Instant, Nationwide, and Competitor A has driven down the prices for barcodes charged by each of these sellers.

INVITATIONS TO COLLUDE

8. Prior to August 4, 2013, the principal of Instant, Mr. Alifraghis, had never communicated with the principals of Nationwide and Competitor A.

9. On August 4, 2013, Mr. Alifraghis transmitted a long message to Nationwide and Mr. Peretz through Nationwide's website. Mr. Alifraghis sent the same message to Competitor A. This message contained an explicit invitation to raise and fix prices of barcodes. Mr. Alifraghis proposed that both Nationwide and Competitor A match the higher prices of Competitor B. The email stressed that all three firms had to act in concert or the plan would not succeed. Mr. Alifraghis proposed that the parties raise their prices within 48 hours:

> Hello Phil, Our company name is InstantUPCCodes.com, as you may be aware, we are one of your competitors within the same direct industry that you are in. The reason for this email is because of the constant price changing from

multiple vendors within this industry. The 3 main problems are US, YOU and [Competitor A].

However, there is a specific problem with YOU and [Competitor A] in general and it only hurts YOUR business. I want to explain this situation in its entirety so that you understand exactly where I'm coming from and why all 3 of us are only digging our own graves in our own industry.

When I got in this business (exactly one year ago), the prices per package were 2-3x the amount per amount of UPC codes ordered. I made a promise to myself to never go lower than any of the competition even though I didn't have a large customer base like my competitors. I would always match the prices of YOU and [Competitor A] specifically. Recently [Competitor A] was out of business until he came back and slammed his prices down again. So you know what I did? I went and matched his prices. The problem is that his prices were lower than yours which I knew you would lower yours once again, it was only a matter of time.

Here's the deal Phil, I'm your friend, not your enemy. My sales are doing excellent from the huge client base that we've built and our profits rise steadily every month. The problem is that there are only so many customers that need UPC codes in the first place and when we sell them for pennies, they won't be coming back in the future for as much repeat business, because they stocked up on a huge bulk package and they are set for the next few years. While our business might be booming now, it will only get worse in the future if we keep going at this pace.

I can even assure you right now, that I will never lower my prices under yours, I will only match your prices. This problem has to stop between the

3 of us constantly lowering our prices. Here's what I'd like to do:

All 3 of us- US, YOU and [Competitor A] need to match the price that [Competitor B] has. The reason why they won't lower their price is because they would kill their sales from their existing customer database. I am also going to send this email to [Competitor A] regarding this as well. I'd say that 48 hours would be an acceptable amount of time to get these price changes completed for all 3 of us. The thing is though, we all need to agree to do this or it won't work. If [Competitor A] or you decide not to go through with the price change to match [Competitor B] pricing, then it won't work, we need all 3 of us to do this.

Reply and let me know if you are willing to do this or not. In the mean time I will contact [Competitor A] with the same message and ask him if he's okay with doing this. If this is acceptable by everyone, I will coordinate a date when the change must be completed so that everyone's on board.

If you do not decide you want to match the prices of [Competitor B], I will match your prices upon receiving your reply or within 48 hours, whichever comes first, this will make [Competitor A] obviously change his prices as well and we will all be at a lower price.

If you, or [Competitor A] cannot make it in this industry at the same matched price as my company, then you need to fix your sites, work on advertising, seo etc... I make profit, when you and [Competitor A] have lower prices that my company. We need to all work together on this to bring the prices back up to where they should be. Have you seen the prices on eBay? I mean this is ridiculous.

> We all need to work together on keeping the prices where they should be. We also need to have identical UPC packages or this will not work either. I will forward this message to [Competitor A] now. Let me know if you are interested in doing this or not. Even though I am your competitor, you need to realize sometimes we have to work together shape up an industry.

10. The next day, on August 5, Mr. Peretz forwarded Mr. Alifraghis' message (*see* paragraph 9 above) to Competitor A, asking for Competitor A's thoughts on the proposal to raise and fix prices:

> Good morning folks,
>
> I received this last night[. . . .]
> would love to get your thoughts on this.
>
> Best Regards,
> Phil

11. On August 6, Mr. Peretz emailed Mr. Alifraghis and Competitor A. He stated that rather than raise price within the next 48 hours as proposed by Mr. Alifraghis, he would prefer to wait until Sunday, August 11, to raise his rates. Mr. Peretz added a second condition: he wanted Instant to raise its prices first:

> We are open to what you suggest [. . .] and are willing to pull the trigger on this at midnight Sunday, August 11th.
>
> Since I am in the Pacific Time zone, this will give me the chance to see what you have done BEFORE I go live with my updated prices.
>
> I am not going to change my quantity breakdowns, but will meet those prices (I might stay higher in a few areas where it makes sense to me) but for all intent and purpose, the prices will be the same or higher. I will base these on [Competitor B's] prices as you suggest.

* * *

> I will be ready to make this switch on Sunday Midnight and will look to you to lead the charge.
>
> I also look forward to increasing our revenues.

12. Competitor A did not respond to the email from Mr. Alifraghis (*see* paragraph 9 above), and did not respond to the emails from Mr. Peretz (*see* paragraphs 10 and 11 above). Mr. Peretz had a telephone conversation with a representative of Competitor A.

13. On August 7, Mr. Peretz sent an email to Mr. Alifraghis and Competitor A trying to overcome what he perceived as an impasse in the planning to coordinate an increase in prices. Mr. Peretz explained that a lack of trust was leading all three of the firms to make less money:

> It seems that we have hit an impasse.
>
> After some conversation with [Competitor A], the issue of trust came up.
>
> It seems that none of us really trust one another and the issue of "price fixing" with someone who is nameless becomes a sticking point. We will not be doing this.
>
> We do agree that prices need to rise, but [Competitor A] is fairly satisfied with destroying the market with his 10,000 barcodes for 1,000.
>
> He blames you [. . .] I blame him.
>
> Like I said [. . .] none of us trust one another [. . .] we first need to resolve this 3-way issue of ethics.
>
> In the meantime [. . .] we will all be making less money.

14. Mr. Alifraghis feared that Competitor A was not ready and willing to cooperate with the proposal to raise prices. On August 9, Mr. Alifraghis transmitted another message to Mr. Peretz via Nationwide's website, urging his competitors to see the benefits to all the companies of collusive pricing:

> I personally think that [Competitor B's] prices are TOO low, but he is the highest priced out of all of us and it[']s for a good reason, not only does he want higher revenues from his established customers, but he wants to keep the pricing higher for a reason.
>
> All of our pricing should be something like this:
>
> 1 UPC - $39
> 5 UPC's - $ 159
> 10 UPC's - $219
> and so on[. . . .]
>
> The best part is that the above pricing is not even the top tier of how high it could be. Not only would this improve the quantity of overall but also the amount of revenue per sale.
>
> * * *
>
> If you want to make money now and in the future, we all need to raise our pricing.
>
> * * *
>
> I sincerely believe that [N]ationwide is an asset to this industry based on his dedication. I also commend [N]ationwide since I can sincerely see that he understands this logic. Since I know that [N]ationwide is willing to move forward with these price changes, I can see that he clearly understands the reasoning behind what [I]'m saying. Therefore this message is directly aimed at [Competitor A].

Complaint

> [Competitor A], if you cannot truly grasp my reasoning behind why everything [I]'ve said so far is logical and you are not willing to change your prices [. . .] then I understand that is a decision you can choose to make. However, since I believe you are incorrect about this decision, I do not have to continue business at the pace you decide to move.
>
> I believe competition is good for every industry as things only improve within time. The problem is, your decisions have an effect on not only you, but also for me and others in the business. I am a man of my word and I reached out to you which means I take this business very seriously. You may not and that may be your problem but it doesn't have to be mine. I'm not in business to make pennies and [I]'m not a charity. I'm in business because [I]'m here for profit, not bad decisions.
>
> This is what I will leave you with [. . .] You need to make a responsible and logical decision by changing your prices. . . . This is the final and last straw for me to play these games like this. If you decide you don't want to keep the longevity of the business, I can easily put up 3-6 more sites and push everyone lower.
>
> * * *
>
> I respect everyone in this business and industry even though you are my competitors.
>
> Mr. Peretz forwarded this August 9 message from Instant to Competitor A.

15. On August 11, Mr. Peretz emailed Mr. Alifraghis and Competitor A asking each of them to confirm their "intentions" with regard to the price-fixing scheme under discussion.

16. Mr. Alifraghis responded with another message transmitted through Nationwide's website. Mr. Alifraghis'

message stated that Instant would increase prices only after receiving assurances from Competitor A:

> When I thought we were ALL on board, I was willing to change my prices first so that you could see my intentions were obviously real which is why I contacted you both about this.
>
> We'll see what he says about changing ALL of his prices to match [Competitor B]. If he agrees to change ALL of his prices, I will still change mine first so that everyone can see my intentions are as good as my word.
>
> You or [Competitor A] may not know me or trust me or even want to know me or trust me, but I can assure you that I'm a man of my word. If I make a promise, I will stick to it. From what I see, [Competitor A] doesn't seem to take this business as seriously as everyone else, who knows maybe he will come around.
>
> Until [Competitor A] agrees to change all of his prices, I will not change mine first. I know that YOU are on board with the price changes, but like I said it won't work if just me and you change our prices. We'll just be handing free sales to [Competitor A]. I am not interested in handing my sales to anyone, I am interested in bringing the prices back up where they need to be.
>
> I don't mind being the first to change my prices, but everyone needs to be in agreement.

17. On August 11, the price increase discussed by the barcode competitors in multiple email messages failed to materialize. Two days later, on August 13, Mr. Peretz wrote again to Instant and Competitor A. Mr. Peretz implored his competitors to continue their dialogue and to take the opportunity presented to raise prices. Mr. Peretz advised his competitors -- incorrectly -- that their joint actions would not constitute illegal collusion on price:

> This is a dialog [. . .] a dialog is a very good thing and it seems, regardless of how I feel about each of you and how you feel about each other or me, this is an opportunity to increase profitability. All it takes is conversation and a leap of faith.
>
> This is the opportunity that we have all wanted [. . .] to be able to increase our prices and to make some money.
>
> I am higher than you fellows…the sign of good intent would be to meet my prices, then [. . .] over the next several months, increase our prices to where they should be. As we each observe where the other is at, we adjust our prices accordingly.
>
> This is, however, a slippery slope, and could be misconstrued as collusion, which is illegal.
>
> It is not illegal, however, for one of us to raise our prices and then have others follow.
>
> Our discussion has NOT been price fixing, merely a courtesy that we will meet each other's prices [. . .] even if we have to raise them to do this.

18. When Mr. Peretz did not hear back from his competitors, he threatened to lower his prices to punish his rivals for not entering into a price-fixing conspiracy. Mr. Peretz's August 19 email to Instant and Competitor A stated:

> Gentlemen,
>
> Have we given up on this conversation?
>
> This is the busiest time of year... and I am considering meeting and/or beating your prices. Would like to see what your thoughts are before I screw up our industry even more.

19. Mr. Alifraghis replied to Nationwide later that evening renewing his plea for Nationwide to obtain Competitor A's

cooperation in the plan to raise prices. Mr. Alifraghis also threatened to lower prices to punish its rivals if they did not agree to set higher prices:

> Nationwide, This is the problem [. . .] you are not accepting responsibility for YOUR own actions. You brought us here to this moment. YOU brought us here, if you would have stopped lowering your prices, YOU wouldn't be here in this situation. I can care less if you match my prices, that would be a smart move for you at this point. But if you go lower, I will continue to bring the entire industry to ground zero.
>
> You going lower than me will do nothing for you, because I'll be right there or if [Competitor A] goes lower I'll still be right there matching both of you. You're still going to have the same problems.
>
> * * *
>
> I'll change my prices and put everyone out of business tomorrow. I'll put the prices so low, there will be no profits PERIOD.
>
> * * *
>
> I messaged you both to bring the prices up, not go down. [Competitor A] is your problem[. . . .] [G]et him to agree to matching [Competitor B's] prices and I'll change mine before everyone [. . .] like I said.
>
> * * *
>
> If you both don't wanna raise your prices [. . .] just keep going lower and lower and lower. I don't mind, go either direction you decide I'll be right there matching the prices. . . . I'll surprise the both of you with the lowest prices you've ever seen. You are pushing me to put everyone out of business.

20. Mr. Peretz and Mr. Alifraghis continued to exchange communications about price levels into January 2014. On October 21, 2013, Mr. Alifraghis contacted Nationwide and complained that its prices were too low. Mr. Peretz responded by claiming that Instant was priced lower than Nationwide. On January 6, Mr. Alifraghis contacted Nationwide and complained that Competitor A and Competitor B had lowered their prices. Nationwide responded by stating that, "If you want to be colleagues, certainly we can," but that Mr. Alifraghis had shown a lack of respect for Nationwide's business.

21. The FTC served a subpoena on Nationwide in January 2014. In January 2014, Mr. Alifraghis became aware that the FTC was trying to serve him a subpoena as well.

VIOLATION CHARGED

22. As set forth in Paragraphs 8 through 21 above, Respondent invited his competitors to collude with Instant to raise prices for barcodes in violation of Section 5 of the Federal Trade Commission Act, as amended.

23. The acts, policies and practices of Respondent, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. Such acts, policies and practices of Respondent will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twentieth day of August, 2014, issues its complaint against Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of Jacob J. Alifraghis, an individual, (hereinafter referred to as "Respondent"), and Respondent having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, Respondent's attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent Jacob J. Alifraghis is an individual living in Florida and doing business in Florida as InstantUPCCodes.com, with a mailing address of 2803 Gulf To Bay Blvd., #165, Clearwater, FL, 33759.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of

Respondent, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" means Jacob J. Alifraghis; all businesses, partnerships, joint ventures, subsidiaries, divisions, groups, affiliates and websites controlled by Jacob J. Alifraghis, including, without limitation, the website InstantUPCCodes.com; and the respective partners, directors, officers, agents, employees, attorneys, representatives, consultants, representatives, successors, and assigns of each.

B. "Barcode" means a machine-readable code in the form of numbers and a pattern of parallel lines of varying widths, used to identify a product; Barcode includes machine-readable codes commonly referred to as "Universal Product Codes" or "UPCs."

C. "Commission" means the Federal Trade Commission.

D. "Communicating" means any transfer or dissemination of information, regardless of the means by which it is accomplished, including orally, by letter, e-mail, notice, or memorandum.

E. "Competitor" means any Person engaged in the business of selling, leasing, renting, or licensing Barcodes, including, but not limited to, firms such as Nationwide Barcode and NationwideBarcode.com.

F. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, partnerships, and unincorporated entities.

II.

IT IS FURTHER ORDERED that in connection with the sale, leasing, renting or licensing of any Barcode in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, Respondent shall cease and desist from, either directly or indirectly, or through any corporate or other device:

A. Communicating with any Competitor regarding prices or rates, or prospective prices or rates, of Respondent or any Competitor; *provided, however*, that for purposes of this Paragraph II.A, Communicating does not include the transfer or dissemination of information to the public through websites or other widely accessible methods of advertising such as newspapers, television, signage, direct mail or online and social media; *provided, further, however*, that it shall not, of itself, constitute a violation of Paragraph II .A. of this Order for Respondent to Communicate, or enter into an agreement, with a Competitor regarding prices or rates at which Respondent will buy Barcodes from, or sell Barcodes to, such Competitor.

B. Entering into, attempting to enter into, adhering to, participating in, maintaining, organizing, implementing, enforcing, inviting, encouraging, offering or soliciting any agreement or understanding, express or implied, between or among Respondent and any Competitor:

1. To raise, fix, maintain, or stabilize prices or price levels, rates or rate levels, or payment terms, or to engage in any other pricing action;

2. To allocate or divide markets, customers, contracts, transactions, business opportunities, lines of commerce, or territories; or

3. To set, change, limit or reduce service terms or service levels.

C. Exhorting, requesting, suggesting, urging, advocating, encouraging, advising, or recommending to any Competitor, either publicly or privately, that it:

1. Set, change, raise, fix, stabilize or maintain its prices or price levels, rates or rate levels, or payment terms, or engage in any other pricing action; or

2. Set, change, reduce, limit, maintain, or reduce its service terms or service levels.

III.

IT IS FURTHER ORDERED that Respondent shall:

A. Within thirty (30) days after the date on which this Order becomes final, provide to each of Respondent's officers, directors and employees a copy of this Order and the Complaint.

B. For a period of four (4) years from the date this Order becomes final, provide a copy of this Order and the Complaint to any person who becomes a director, officer, or employee of Respondent, and shall provide such copies within thirty (30) days of the commencement of such Person's employment or term as an officer or director.

C. Require each person to whom a copy of this Order is furnished pursuant to Paragraph III.A. and III.B. above to sign and submit to Respondent within thirty (30) days of the receipt thereof a statement that (1) represents that the undersigned has read and understands the Order, and (2) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject Respondent to penalties for violation of the Order.

D. Retain documents and records sufficient to record Respondent's compliance with his obligations under Paragraph III of this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall file a verified written report within sixty (60) days from the date this Order becomes final, annually thereafter for four (4) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

A. A copy of the acknowledgement(s) required by III.D. of the Order; and

B. A detailed description of the manner and form in which Respondent has complied and is complying with this Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission:

A. Of any change in its principal address within twenty (20) days of such change in address; and

B. At least thirty (30) days prior to:

1. Any proposed dissolution of Respondent;

2. Any proposed acquisition, merger, or consolidation of Respondent; or

3. Any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written

request and upon five (5) days notice, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and obtain copies of relevant books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and

B. The opportunity to interview Respondent, or officers, directors, or employees of Respondent, who may have counsel present, related to compliance with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on August 20, 2034.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing consent order ("Consent Agreement") from Mr. Jacob J. Alifraghis, who operates InstantUPCCodes.com ("Instant"), and a separate Agreement from Philip B. Peretz and 680 Digital, Inc., also d/b/a Nationwide Barcode ("Nationwide"). These individuals and entities are collectively referred to as "Respondents." The Commission's complaints ("Complaints") allege that each

Respondent violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by inviting certain competitors in the sale of barcodes to join together in a collusive scheme to raise prices.

Under the terms of the proposed Consent Agreements, Respondents are required to cease and desist from communicating with their competitors about rates or prices. They are also barred from entering into, participating in, inviting, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

The Commission anticipates that the competitive issues described in the Complaints will be resolved by accepting the Proposed Orders, subject to final approval, contained in the Consent Agreements. The Consent Agreements have been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreements again and the comments received, and will decide whether it should withdraw from the Consent Agreements or make final the accompanying Decisions and Orders ("Proposed Orders").

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreements and the accompanying Proposed Orders or in any way to modify their terms.

The Consent Agreements are for settlement purposes only and do not constitute an admission by Respondents that the law has been violated as alleged in the Complaints or that the facts alleged in the Complaints, other than jurisdictional facts, are true.

I. The Complaints

The allegations of the Complaints are summarized below:

Instant, Nationwide, and a firm we refer to as Competitor A sell barcodes over the Internet. A firm we refer to as Competitor B also sells barcodes over the Internet, but at higher prices than

Instant, Nationwide, and Competitor A. Price competition among these firms caused the price of barcodes to decrease over time.

Prior to August 2013, Instant had never communicated with Nationwide or Competitor A. On the evening of August 4, 2013, Mr. Alifraghis of Instant sent a message to Mr. Peretz of Nationwide proposing that all three competitors raise their prices to meet the higher prices charged by Competitor B:

> Hello Phil, Our company name is InstantUPCCodes.com, as you may be aware, we are one of your competitors within the same direct industry that you are in. . . . Here's the deal Phil, I'm your friend, not your enemy. . . .
>
> Here's what I'd like to do: All 3 of us- US, YOU and [Competitor A] need to match the price that [Competitor B] has. . . . I'd say that 48 hours would be an acceptable amount of time to get these price changes completed for all 3 of us. The thing is though, we all need to agree to do this or it won't work. . . . Reply and let me know if you are willing to do this or not.

Mr. Alifraghis then sent a similar email message to Competitor A. The next day, on August 5, Mr. Peretz forwarded Mr. Alifraghis' message to Competitor A, asking for Competitor A's thoughts on the proposal to raise and fix prices.

On August 6, Mr. Peretz emailed Mr. Alifraghis and Competitor A. He stated that, rather than raise price within the next 48 hours as proposed by Mr. Alifraghis, he would prefer to wait until Sunday, August 11, to raise his prices. Mr. Peretz added a second condition: he wanted Instant to raise its prices first:

> We are open to what you suggest . . . and are willing to pull the trigger on this at midnight Sunday, August 11th.

Competitor A did not respond to this email or to any emails in the series. Not having heard from Competitor A, Mr. Alifraghis

emailed Mr. Peretz stating that he would have to hear from Competitor A directly before any price increase could take place.

On August 7, Mr. Peretz sent an email to Mr. Alifraghis and Competitor A, trying to overcome the lack of lack of trust that he perceived as impeding efforts to coordinate a price increase.

On August 11, the price increase discussed by the barcode competitors in multiple email messages failed to materialize. Two days later, on August 13, Mr. Peretz wrote again to Mr. Alifraghis and Competitor A. Mr. Peretz urged his competitors to continue their dialogue and to take the opportunity presented to raise prices:

> This is a dialog [. .] a dialog is a very good thing and it seems, regardless of how I feel about each of you and how you feel about each other or me, this is an opportunity to increase profitability. All it takes is conversation and a leap of faith.
>
> This is the opportunity that we have all wanted [. .] to be able to increase our prices and to make some money.

In their correspondence, Mr. Alifraghis and Mr. Peretz also threatened to lower their own prices if the other parties did not cede to their demands to collectively increase pricing. For example, on August 19, Mr. Peretz stated in an email to Instant and Competitor A:

> Gentlemen,
> Have we given up on this conversation?
>
> This is the busiest time of year . . . and I am considering meeting and/or beating your prices. Would like to see what your thoughts are before I screw up our industry even more.

Mr. Peretz and Mr. Alifraghis continued to exchange communications about price levels into January 2014, until they learned of the FTC's investigation.

II. Analysis

The term "invitation to collude" describes an improper communication from a firm to an actual or potential competitor that the firm is ready and willing to coordinate on price or output or other important terms of competition. Mr. Alifraghis' August 4 email to his competitors outlining a mechanism by which the three companies can and should fix the price of barcodes is a clear example of an invitation to collude. The ensuing private communications among barcode sellers outlined in the Complaints establish a series of subsequent invitations, with each Respondent repeatedly communicating its willingness to raise and fix prices for barcodes, contingent on other competitors doing so, and soliciting rivals to participate in a common scheme.

For 20 years, the Commission has held that an invitation to collude may violate Section 5 of the FTC Act.[1] Several legal and economic justifications support the imposition of liability upon a firm that communicates an invitation to collude, even where there is no proof of acceptance. First, difficulties exist in determining whether a competitor has or has not accepted a particular solicitation. Second, even an unaccepted solicitation may facilitate coordinated interaction by disclosing the solicitor's intentions or preferences. Third, the anti-solicitation doctrine

1 *See*, *e.g.*, *In re Quality Trailer Prods.*, 115 F.T.C. 944 (1992); *In re AE Clevite*, 116 F.T.C. 389 (1993); *In re Precision Moulding*, 122 F.T.C. 104 (1996); *In re Stone Container*, 125 F.T.C. 853 (1998); *In re MacDermid*, 129 F.T.C (C-3911) (2000); *see also In re McWane, Inc.*, Docket No. 9351, *Opinion of the Commission on Motions for Summary Decision* at 20-21 (F.T.C. Aug. 9, 2012) ("an invitation to collude is 'the quintessential example of the kind of conduct that should be . . . challenged as a violation of Section 5'") (citing the Statement of Chairman Leibowitz and Commissioners Kovacic and Rosch, *In re U-Haul Int'l, Inc.*, 150 F.T.C. 1, 53 (2010). This conclusion has been affirmed by leading antitrust scholars. *See*, P. Areeda & H. Hovenkamp, VI ANTITRUST LAW ¶ 1419 (2003); Stephen Calkins, *Counterpoint: The Legal Foundation of the Commission's Use of Section 5 to Challenge Invitations to Collude is Secure*, ANTITRUST Spring 2000, at 69. In a case brought under a state's version of Section 5, the First Circuit expressed support for the Commission's application of Section 5 to invitations to collude. *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012).

serves as a useful deterrent against potentially harmful conduct that serves no legitimate business purpose.[2]

If the invitation is accepted and the competitors reach an agreement, the Commission will refer the matter to the Department of Justice for a criminal investigation. In this case, the complaint does not allege that Nationwide, Instant, and Competitor A reached an agreement.

An invitation to collude, which, if accepted, would constitute a *per se* violation of the Sherman Act, is a violation of Section 5. Although this case involves particularly egregious conduct, less egregious conduct may also result in Section 5 liability. It is not essential that the Commission find such explicit invitations to increase prices. Nor must the Commission find repeated misconduct attributable to the principals of firms.

III. The Proposed Consent Orders

The Proposed Orders have the following substantive provisions:

Section II, Paragraph A of the Proposed Orders enjoin Respondents from communicating with their competitors about rates or prices, with a proviso permitting public posting of rates and a second proviso that permits Respondents to buy or sell barcodes.

Section II, Paragraph B prohibits Respondents from entering into, participating in, maintaining, organizing, implementing, enforcing, inviting, offering, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices**.**

Section II, Paragraph C bars Respondents from urging any competitor to raise, fix or maintain its price or rate levels or to limit or reduce service terms or levels.

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2 *Valassis Communications, Inc.,* Analysis of Agreement Containing Consent Order to Aid Public Comment, 71 Fed. Reg. 13976, 13978-79 (Mar. 20, 2006).

Analysis to Aid Public Comment

Sections III-VI of the Proposed Orders impose certain standard reporting and compliance requirements on Respondents.

The Proposed Orders will expire in 20 years.

Complaint

IN THE MATTER OF

680 DIGITAL, INC.
D/B/A
NATIONWIDE BARCODE;
AND
PHILIP B. PERETZ

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

Docket No. C-4484; File No. 141 0036
Complaint, August 20, 2014 – Decision, August 20, 2014

This consent order addresses 680 Digital, Inc.'s invitation to certain competitors in the sale of barcodes to join together in a collusive scheme to raise prices. The complaint alleges that Respondent violated Section 5 of the Federal Trade Commission Act by inviting certain competitors in the sale of barcodes to join together in a collusive scheme to raise prices. The consent order requires Respondents to cease and desist from communicating with their competitors about rates or prices. They are also barred from entering into, participating in, inviting, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

Participants

For the *Commission*: *Dana Abrahamsen* and *Matthew Accornero.*

For the *Respondents*: *Douglas Ross, Davis Wright Tremaine.*

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 ("Commission"), having reason to believe that 680 Digital, Inc., also d/b/a Nationwide Barcode and Phil Peretz, (hereinafter sometimes collectively referred to as "Respondents"), have violated the provisions of Section 5 of the Federal Trade Commission Act, 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 this Complaint stating its charges as follows:

NATURE OF THE CASE

1. 680 Digital, Inc., also d/b/a Nationwide Barcode ("Nationwide"), is one of the largest sellers of barcodes in the United States. On multiple occasions, Nationwide invited two of its closest competitors, InstantUPCCodes.com ("Instant") and Competitor A, to join with Nationwide in a collusive scheme to raise and fix prices for barcodes. The collusive plan included invitations to match the higher prices of another barcode seller, Competitor B. By inviting collusion, Nationwide endangered competition and violated Section 5 of the FTC Act.

PRELIMINARY ALLEGATIONS

2. Respondent 680 Digital, Inc. also d/b/a Nationwide Barcode is a corporation organized, existing, and doing business under and by virtue of the laws of Washington, with its business mailing address at PO Box 2750, Issaquah, WA 98027.

3. Respondent Philip B. Peretz is an individual living in Nevada and doing business in Nevada, with a mailing address of 3495 Lakeside Drive, # 144, Reno, NV 89509. Mr. Peretz's written communications to his competitors, as set forth below, were by email.

4. The primary business of Nationwide is selling barcodes over the internet. Nationwide operates a website that permits individuals to transmit written messages to Mr. Peretz. Instant's written communications to Mr. Peretz, as set forth below, were transferred through this portal.

5. Instant is owned and operated by an individual by the name of Jacob J. Alifraghis.

JURISDICTION

6. At all times relevant herein, Respondent 680 Digital has been, and is now, a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

7. The business practices of Respondents, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

LINE OF COMMERCE

8. A barcode is a unique 12-digit number that allows a retailer to track sales of products within its inventory system. Universal product codes ("UPCs") are the predominant form of barcodes used in the United States. UPC barcodes are issued by GS1 (formerly the Uniform Commercial Council), a nonprofit group that sets standards for international commerce. In order to avoid GS1 membership fees or minimum purchase requirements, many small businesses purchase UPC barcodes on the online secondary market.

9. Nationwide, Instant and Competitor A are three of the largest sellers of barcodes in the United States. Nationwide's closest competitors, and the principal competitive constraints upon Nationwide's pricing power, are Instant and Competitor A. Competition between and among Instant, Nationwide, and Competitor A has driven down the prices for barcodes charged by each of these sellers.

INVITATIONS TO COLLUDE

10. Prior to August 4, 2013, the principal of Instant, Mr. Alifraghis, had never communicated with the principals of Nationwide and Competitor A.

11. On August 4, 2013, Mr. Alifraghis transmitted a long message to Nationwide and Mr. Peretz through Nationwide's website. Mr. Alifraghis sent the same message to Competitor A. This message contained an explicit invitation to raise and fix prices of barcodes. Mr. Alifraghis proposed that both Nationwide and Competitor A match the higher prices of Competitor B. The email stressed that all three firms had to act in concert or the plan would not succeed. Mr. Alifraghis proposed that the parties raise their prices within 48 hours:

Complaint

Hello Phil, Our company name is InstantUPCCodes.com, as you may be aware, we are one of your competitors within the same direct industry that you are in. The reason for this email is because of the constant price changing from multiple vendors within this industry. The 3 main problems are US, YOU and [Competitor A].

However, there is a specific problem with YOU and [Competitor A] in general and it only hurts YOUR business. I want to explain this situation in its entirety so that you understand exactly where I'm coming from and why all 3 of us are only digging our own graves in our own industry.

When I got in this business (exactly one year ago), the prices per package were 2-3x the amount per amount of UPC codes ordered. I made a promise to myself to never go lower than any of the competition even though I didn't have a large customer base like my competitors. I would always match the prices of YOU and [Competitor A] specifically. Recently [Competitor A] was out of business until he came back and slammed his prices down again. So you know what I did? I went and matched his prices. The problem is that his prices were lower than yours which I knew you would lower yours once again, it was only a matter of time.

Here's the deal Phil, I'm your friend, not your enemy. My sales are doing excellent from the huge client base that we've built and our profits rise steadily every month. The problem is that there are only so many customers that need UPC codes in the first place and when we sell them for pennies, they won't be coming back in the future for as much repeat business, because they stocked up on a huge bulk package and they are set for the next few years. While our business might be booming now, it will only get worse in the future if we keep going at this pace.

I can even assure you right now, that I will never lower my prices under yours, I will only match your prices. This problem has to stop between the 3 of us constantly lowering our prices. Here's what I'd like to do:

All 3 of us- US, YOU and [Competitor A] need to match the price that [Competitor B] has. The reason why they won't lower their price is because they would kill their sales from their existing customer database. I am also going to send this email to [Competitor A] regarding this as well. I'd say that 48 hours would be an acceptable amount of time to get these price changes completed for all 3 of us. The thing is though, we all need to agree to do this or it won't work. If [Competitor A] or you decide not to go through with the price change to match [Competitor B] pricing, then it won't work, we need all 3 of us to do this.

Reply and let me know if you are willing to do this or not. In the mean time I will contact [Competitor A] with the same message and ask him if he's okay with doing this. If this is acceptable by everyone, I will coordinate a date when the change must be completed so that everyone's on board.

If you do not decide you want to match the prices of [Competitor B], I will match your prices upon receiving your reply or within 48 hours, whichever comes first, this will make [Competitor A] obviously change his prices as well and we will all be at a lower price.

If you, or [Competitor A] cannot make it in this industry at the same matched price as my company, then you need to fix your sites, work on advertising, seo etc... I make profit, when you and [Competitor A] have lower prices that my company. We need to all work together on this to

> bring the prices back up to where they should be. Have you seen the prices on eBay? I mean this is ridiculous.
>
> We all need to work together on keeping the prices where they should be. We also need to have identical UPC packages or this will not work either. I will forward this message to [Competitor A] now. Let me know if you are interested in doing this or not. Even though I am your competitor, you need to realize sometimes we have to work together shape up an industry.

12. The next day, on August 5, Mr. Peretz forwarded Mr. Alifraghis' message (*see* paragraph 11 above) to Competitor A asking for Competitor A's thoughts on the proposal to raise and fix prices:

> Good morning folks,
>
> I received this last night[. . . .]
> would love to get your thoughts on this.
>
> Best Regards,
> Phil

13. On August 6, Mr. Peretz emailed Mr. Alifraghis and Competitor A. He stated that rather than raise price within the next 48 hours as proposed by Mr. Alifraghis, he would prefer to wait until Sunday, August 11, to raise his rates. Mr. Peretz added a second condition: he wanted Instant to raise its prices first:

> We are open to what you suggest [. . .] and are willing to pull the trigger on this at midnight Sunday, August 11th.
>
> Since I am in the Pacific Time zone, this will give me the chance to see what you have done BEFORE I go live with my updated prices.
>
> I am not going to change my quantity breakdowns, but will meet those prices (I might stay higher in a

> few areas where it makes sense to me) but for all intent and purpose, the prices will be the same or higher. I will base these on [Competitor B's] prices as you suggest.
>
> * * *
>
> I will be ready to make this switch on Sunday Midnight and will look to you to lead the charge.
>
> I also look forward to increasing our revenues.

14. Competitor A did not respond to the email from Mr. Alifraghis (*see* paragraph 11 above), and did not respond to the emails from Mr. Peretz (*see* paragraphs 12 and 13 above). Mr. Peretz had a telephone conversation with a representative of Competitor A.

15. On August 7, Mr. Peretz sent an email to Mr. Alifraghis and Competitor A trying to overcome what he perceived as an impasse in the planning to coordinate an increase in prices. Mr. Peretz explained that a lack of trust was leading all three of the firms to make less money:

> It seems that we have hit an impasse.
>
> After some conversation with [Competitor A], the issue of trust came up.
>
> It seems that none of us really trust one another and the issue of "price fixing" with someone who is nameless becomes a sticking point. We will not be doing this.
>
> We do agree that prices need to rise, but [Competitor A] is fairly satisfied with destroying the market with his 10,000 barcodes for 1,000.
> He blames you [. . .] I blame him.
>
> Like I said [. . .] none of us trust one another [. . .] we first need to resolve this 3-way issue of ethics.

> In the meantime [. . .] we will all be making less money.

16. Mr. Alifraghis feared that Competitor A was not ready and willing to cooperate with the proposal to raise prices. On August 9, Mr. Alifraghis transmitted another message to Mr. Peretz via Nationwide's website, urging his competitors to see the benefits to all the companies of collusive pricing:

> I personally think that [Competitor B's] prices are TOO low, but he is the highest priced out of all of us and it[']s for a good reason, not only does he want higher revenues from his established customers, but he wants to keep the pricing higher for a reason.
>
> All of our pricing should be something like this:
>
> 1 UPC - $39
> 5 UPC's - $ 159
> 10 UPC's - $219
> and so on[. . . .]
>
> The best part is that the above pricing is not even the top tier of how high it could be. Not only would this improve the quantity of overall but also the amount of revenue per sale.
>
> * * *
>
> If you want to make money now and in the future, we all need to raise our pricing.
>
> * * *
>
> I sincerely believe that [N]ationwide is an asset to this industry based on his dedication. I also commend [N]ationwide since I can sincerely see that he understands this logic. Since I know that [N]ationwide is willing to move forward with these price changes, I can see that he clearly understands

> the reasoning behind what [I]'m saying. Therefore this message is directly aimed at [Competitor A].
>
> [Competitor A], if you cannot truly grasp my reasoning behind why everything [I]'ve said so far is logical and you are not willing to change your prices [. . .] then I understand that is a decision you can choose to make. However, since I believe you are incorrect about this decision, I do not have to continue business at the pace you decide to move.
>
> I believe competition is good for every industry as things only improve within time. The problem is, your decisions have an effect on not only you, but also for me and others in the business. I am a man of my word and I reached out to you which means I take this business very seriously. You may not and that may be your problem but it doesn't have to be mine. I'm not in business to make pennies and [I]'m not a charity. I'm in business because [I]'m here for profit, not bad decisions.
>
> This is what I will leave you with [. . .] You need to make a responsible and logical decision by changing your prices. . . . This is the final and last straw for me to play these games like this. If you decide you don't want to keep the longevity of the business, I can easily put up 3-6 more sites and push everyone lower.
>
> * * *
>
> I respect everyone in this business and industry even though you are my competitors.
>
> Mr. Peretz forwarded this August 9 message from Instant to Competitor A.

17. On August 11, Mr. Peretz emailed Mr. Alifraghis and Competitor A asking each of them to confirm their "intentions" with regard to the price-fixing scheme under discussion.

18. Mr. Alifraghis responded with another message transmitted through Nationwide's website. Mr. Alifraghis' message stated that Instant would increase prices only after receiving assurances from Competitor A:

> When I thought we were ALL on board, I was willing to change my prices first so that you could see my intentions were obviously real which is why I contacted you both about this.
>
> We'll see what he says about changing ALL of his prices to match [Competitor B]. If he agrees to change ALL of his prices, I will still change mine first so that everyone can see my intentions are as good as my word.
>
> You or [Competitor A] may not know me or trust me or even want to know me or trust me, but I can assure you that I'm a man of my word. If I make a promise, I will stick to it. From what I see, [Competitor A] doesn't seem to take this business as seriously as everyone else, who knows maybe he will come around.
>
> Until [Competitor A] agrees to change all of his prices, I will not change mine first. I know that YOU are on board with the price changes, but like I said it won't work if just me and you change our prices. We'll just be handing free sales to [Competitor A]. I am not interested in handing my sales to anyone, I am interested in bringing the prices back up where they need to be.
>
> I don't mind being the first to change my prices, but everyone needs to be in agreement.

19. On August 11, the price increase discussed by the barcode competitors in multiple email messages failed to materialize. Two days later, on August 13, Mr. Peretz wrote again to Instant and Competitor A. Mr. Peretz implored his competitors to continue their dialogue and to take the opportunity presented to raise prices. Mr. Peretz advised his competitors -- incorrectly --

that their joint actions would not constitute illegal collusion on price:

> This is a dialog [. . .] a dialog is a very good thing and it seems, regardless of how I feel about each of you and how you feel about each other or me, this is an opportunity to increase profitability. All it takes is conversation and a leap of faith.
>
> This is the opportunity that we have all wanted [. . .] to be able to increase our prices and to make some money.
>
> I am higher than you fellows…the sign of good intent would be to meet my prices, then [. . .] over the next several months, increase our prices to where they should be. As we each observe where the other is at, we adjust our prices accordingly.
>
> This is, however, a slippery slope, and could be misconstrued as collusion, which is illegal.
>
> It is not illegal, however, for one of us to raise our prices and then have others follow.
>
> Our discussion has NOT been price fixing, merely a courtesy that we will meet each other's prices [. . .] even if we have to raise them to do this.

20. When Mr. Peretz did not hear back from his competitors, he threatened to lower his prices to punish his rivals for not entering into a price-fixing conspiracy. Mr. Peretz's August 19 email to Instant and Competitor A stated:

> Gentlemen,
>
> Have we given up on this conversation?
>
> This is the busiest time of year... and I am considering meeting and/or beating your prices. Would like to see what your thoughts are before I screw up our industry even more.

21. Mr. Alifraghis replied to Nationwide later that evening renewing his plea for Nationwide to obtain Competitor A's cooperation in the plan to raise prices. Mr. Alifraghis also threatened to lower prices to punish its rivals if they did not agree to set higher prices:

> Nationwide, This is the problem [. . .] you are not accepting responsibility for YOUR own actions. You brought us here to this moment. YOU brought us here, if you would have stopped lowering your prices, YOU wouldn't be here in this situation. I can care less if you match my prices, that would be a smart move for you at this point. But if you go lower, I will continue to bring the entire industry to ground zero.
>
> You going lower than me will do nothing for you, because I'll be right there or if [Competitor A] goes lower I'll still be right there matching both of you. You're still going to have the same problems.
>
> * * *
>
> I'll change my prices and put everyone out of business tomorrow. I'll put the prices so low, there will be no profits PERIOD.
>
> * * *
>
> I messaged you both to bring the prices up, not go down. [Competitor A] is your problem[. . . .] [G]et him to agree to matching [Competitor B's] prices and I'll change mine before everyone [. . .] like I said.
>
> * * *
>
> If you both don't wanna raise your prices [. . .] just keep going lower and lower and lower. I don't mind, go either direction you decide I'll be right there matching the prices. . . . I'll surprise the both

> of you with the lowest prices you've ever seen. You are pushing me to put everyone out of business.

22. Mr. Peretz and Mr. Alifraghis continued to exchange communications about price levels into January 2014. On October 21, 2013, Mr. Alifraghis contacted Nationwide and complained that its prices were too low. Mr. Peretz responded by claiming that Instant was priced lower than Nationwide. On January 6, Mr. Alifraghis contacted Nationwide and complained that Competitor A and Competitor B had lowered their prices. Nationwide responded by stating that, "If you want to be colleagues, certainly we can," but that Mr. Alifraghis had shown a lack of respect for Nationwide's business.

23. The FTC served a subpoena on Nationwide in January 2014.

VIOLATION CHARGED

24. As set forth in Paragraphs 10 through 23 above, Respondents invited their competitors to collude with 680 Digital to raise prices for barcodes in violation of Section 5 of the Federal Trade Commission Act, as amended.

25. The acts, policies and practices of Respondents, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. Such acts, policies and practices of Respondents will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twentieth day of August, 2014, issues its complaint against Respondents.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of 680 Digital, Inc., a corporation, and Phillip B. Peretz an individual, (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent 680 Digital, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of Washington with its business mailing address at PO Box 2750, Issaquah, WA 98027.

2. Respondent Philip B. Peretz, who operates 680 Digital, Inc. d/b/a NationwideBarcode.com, is an individual

living in Nevada and doing business in Nevada, with a mailing address of 3495 Lakeside Drive, # 144, Reno, NV 89509.

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

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent 680 Digital, Inc." means 680 Digital Inc., its members, directors, officers, trustees, employees, attorneys, agents, consultants, and representatives; its divisions, subsidiaries, affiliates, partnerships, and joint ventures, including, without limitation, Nationwide Barcode and NationwideBarcode.com; and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, successors, and assigns of each.

B. "Respondent Philip B. Peretz" means Philip Bernard Peretz; all businesses, partnerships, joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Philip B. Peretz; and the respective partners, directors, officers, agents, employees, attorneys, representatives, consultants, representatives, successors, and assigns of each.

C. Respondents means Respondent 680 Digital, Inc. and Respondent Philip B. Peretz, individually and collectively.

D. "Barcode" means a machine-readable code in the form of numbers and a pattern of parallel lines of varying widths, used to identify a product; Barcode includes

machine-readable codes commonly referred to as "Universal Product Codes" or "UPCs."

E. "Commission" means the Federal Trade Commission.

F. "Communicating" means any transfer or dissemination of information, regardless of the means by which it is accomplished, including orally, by letter, e-mail, notice, or memorandum.

G. "Competitor" means any Person engaged in the business of selling, leasing, renting, or licensing Barcodes, including, but not limited to, firms such as InstantUPCCodes.com.

H. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, partnerships, and unincorporated entities.

II.

IT IS FURTHER ORDERED that in connection with the sale, leasing, renting or licensing of any Barcode in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, Respondents shall cease and desist from, either directly or indirectly, or through any corporate or other device:

A. Communicating with any Competitor regarding prices or rates, or prospective prices or rates, of Respondents or any Competitor; *provided, however*, that for purposes of this Paragraph II.A, Communicating does not include the transfer or dissemination of information to the public through websites or other widely accessible methods of advertising such as newspapers, television, signage, direct mail or online and social media; *provided, further, however*, that it shall not, of itself, constitute a violation of Paragraph II .A. of this Order for Respondent to Communicate, or enter into an agreement, with a Competitor regarding prices or rates at which Respondent will buy Barcodes from, or sell Barcodes to, such Competitor.

B. Entering into, attempting to enter into, adhering to, participating in, maintaining, organizing, implementing, enforcing, inviting, encouraging, offering or soliciting any agreement or understanding, express or implied, between or among Respondents and any Competitor:

1. To raise, fix, maintain, or stabilize prices or price levels, rates or rate levels, or payment terms, or to engage in any other pricing action;

2. To allocate or divide markets, customers, contracts, transactions, business opportunities, lines of commerce, or territories; or

3. To set, change, limit or reduce service terms or service levels.

C. Exhorting, requesting, suggesting, urging, advocating, encouraging, advising, or recommending to any Competitor, either publicly or privately, that it:

1. Set, change, raise, fix, stabilize or maintain its prices or price levels, rates or rate levels, or payment terms, or engage in any other pricing action; or

2. Set, change, reduce, limit, maintain, or reduce its service terms or service levels.

III.

IT IS FURTHER ORDERED that Respondents shall:

A. Within thirty (30) days after the date on which this Order becomes final, provide to each of Respondents' officers, directors and employees a copy of this Order and the Complaint.

B. For a period of four (4) years from the date this Order becomes final, provide a copy of this Order and the Complaint to any person who becomes a director,

officer, or employee of Respondents, and shall provide such copies within thirty (30) days of the commencement of such Person's employment or term as an officer or director.

C. Require each person to whom a copy of this Order is furnished pursuant to Paragraph III.A. and III.B. above to sign and submit to Respondents within thirty (30) days of the receipt thereof a statement that (1) represents that the undersigned has read and understands the Order, and (2) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject Respondents to penalties for violation of the Order.

D. Retain documents and records sufficient to record Respondents' compliance with its obligations under Paragraph III of this Order.

IV.

IT IS FURTHER ORDERED that Respondents shall file verified written reports within sixty (60) days from the date this Order becomes final, annually thereafter for four (4) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

A. A copy of the acknowledgement(s) required by III.D. of the Order; and

B. A detailed description of the manner and form in which Respondents have complied and are complying with this Order.

V.

IT IS FURTHER ORDERED that each Respondents shall notify the Commission:

A. Of any change in its principal address within twenty (20) days of such change in address; and

B. At least thirty (30) days prior to:

1. Any proposed dissolution of Respondents;

2. Any proposed acquisition, merger, or consolidation of Respondents; or

3. Any other change in Respondents including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written request and upon five (5) days notice to the applicable Respondent, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and obtain copies of relevant books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and

B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on August 20, 2034.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing consent order ("Consent Agreement") from Mr. Jacob J. Alifraghis, who operates InstantUPCCodes.com ("Instant"), and a separate Agreement from Philip B. Peretz and 680 Digital, Inc., also d/b/a Nationwide Barcode ("Nationwide"). These individuals and entities are collectively referred to as "Respondents." The Commission's complaints ("Complaints") allege that each Respondent violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by inviting certain competitors in the sale of barcodes to join together in a collusive scheme to raise prices.

Under the terms of the proposed Consent Agreements, Respondents are required to cease and desist from communicating with their competitors about rates or prices. They are also barred from entering into, participating in, inviting, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

The Commission anticipates that the competitive issues described in the Complaints will be resolved by accepting the Proposed Orders, subject to final approval, contained in the Consent Agreements. The Consent Agreements have been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the

Commission will review the Consent Agreements again and the comments received, and will decide whether it should withdraw from the Consent Agreements or make final the accompanying Decisions and Orders ("Proposed Orders").

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreements and the accompanying Proposed Orders or in any way to modify their terms.

The Consent Agreements are for settlement purposes only and do not constitute an admission by Respondents that the law has been violated as alleged in the Complaints or that the facts alleged in the Complaints, other than jurisdictional facts, are true.

I. The Complaints

The allegations of the Complaints are summarized below:

Instant, Nationwide, and a firm we refer to as Competitor A sell barcodes over the Internet. A firm we refer to as Competitor B also sells barcodes over the Internet, but at higher prices than Instant, Nationwide, and Competitor A. Price competition among these firms caused the price of barcodes to decrease over time.

Prior to August 2013, Instant had never communicated with Nationwide or Competitor A. On the evening of August 4, 2013, Mr. Alifraghis of Instant sent a message to Mr. Peretz of Nationwide proposing that all three competitors raise their prices to meet the higher prices charged by Competitor B:

> Hello Phil, Our company name is InstantUPCCodes.com, as you may be aware, we are one of your competitors within the same direct industry that you are in. . . . Here's the deal Phil, I'm your friend, not your enemy. . . .
>
> Here's what I'd like to do: All 3 of us- US, YOU and [Competitor A] need to match the price that [Competitor B] has. . . . I'd say that 48 hours would be an acceptable amount of

> time to get these price changes completed for all 3 of us. The thing is though, we all need to agree to do this or it won't work. . . . Reply and let me know if you are willing to do this or not.

Mr. Alifraghis then sent a similar email message to Competitor A. The next day, on August 5, Mr. Peretz forwarded Mr. Alifraghis' message to Competitor A, asking for Competitor A's thoughts on the proposal to raise and fix prices.

On August 6, Mr. Peretz emailed Mr. Alifraghis and Competitor A. He stated that, rather than raise price within the next 48 hours as proposed by Mr. Alifraghis, he would prefer to wait until Sunday, August 11, to raise his prices. Mr. Peretz added a second condition: he wanted Instant to raise its prices first:

> We are open to what you suggest . . . and are willing to pull the trigger on this at midnight Sunday, August 11th.

Competitor A did not respond to this email or to any emails in the series. Not having heard from Competitor A, Mr. Alifraghis emailed Mr. Peretz stating that he would have to hear from Competitor A directly before any price increase could take place.

On August 7, Mr. Peretz sent an email to Mr. Alifraghis and Competitor A, trying to overcome the lack of lack of trust that he perceived as impeding efforts to coordinate a price increase.

On August 11, the price increase discussed by the barcode competitors in multiple email messages failed to materialize. Two days later, on August 13, Mr. Peretz wrote again to Mr. Alifraghis and Competitor A. Mr. Peretz urged his competitors to continue their dialogue and to take the opportunity presented to raise prices:

> This is a dialog [. .] a dialog is a very good thing and it seems, regardless of how I feel about each of you and how you feel about each other or me, this is an opportunity to increase profitability. All it takes is conversation and a leap of faith.

> This is the opportunity that we have all wanted [. .] to be able to increase our prices and to make some money.

In their correspondence, Mr. Alifraghis and Mr. Peretz also threatened to lower their own prices if the other parties did not cede to their demands to collectively increase pricing. For example, on August 19, Mr. Peretz stated in an email to Instant and Competitor A:

> Gentlemen,
> Have we given up on this conversation?
>
> This is the busiest time of year . . . and I am considering meeting and/or beating your prices. Would like to see what your thoughts are before I screw up our industry even more.

Mr. Peretz and Mr. Alifraghis continued to exchange communications about price levels into January 2014, until they learned of the FTC's investigation.

II. Analysis

The term "invitation to collude" describes an improper communication from a firm to an actual or potential competitor that the firm is ready and willing to coordinate on price or output or other important terms of competition. Mr. Alifraghis' August 4 email to his competitors outlining a mechanism by which the three companies can and should fix the price of barcodes is a clear example of an invitation to collude. The ensuing private communications among barcode sellers outlined in the Complaints establish a series of subsequent invitations, with each Respondent repeatedly communicating its willingness to raise and fix prices for barcodes, contingent on other competitors doing so, and soliciting rivals to participate in a common scheme.

For 20 years, the Commission has held that an invitation to collude may violate Section 5 of the FTC Act.[1] Several legal and

1 *See*, *e.g.*, *In re Quality Trailer Prods.*, 115 F.T.C. 944 (1992); *In re AE Clevite*, 116 F.T.C. 389 (1993); *In re Precision Moulding*, 122 F.T.C. 104

economic justifications support the imposition of liability upon a firm that communicates an invitation to collude, even where there is no proof of acceptance. First, difficulties exist in determining whether a competitor has or has not accepted a particular solicitation. Second, even an unaccepted solicitation may facilitate coordinated interaction by disclosing the solicitor's intentions or preferences. Third, the anti-solicitation doctrine serves as a useful deterrent against potentially harmful conduct that serves no legitimate business purpose.[2]

If the invitation is accepted and the competitors reach an agreement, the Commission will refer the matter to the Department of Justice for a criminal investigation. In this case, the complaint does not allege that Nationwide, Instant, and Competitor A reached an agreement.

An invitation to collude, which, if accepted, would constitute a *per se* violation of the Sherman Act, is a violation of Section 5. Although this case involves particularly egregious conduct, less egregious conduct may also result in Section 5 liability. It is not essential that the Commission find such explicit invitations to increase prices. Nor must the Commission find repeated misconduct attributable to the principals of firms.

(1996); *In re Stone Container*, 125 F.T.C. 853 (1998); *In re MacDermid*, 129 F.T.C (C-3911) (2000); *see also In re McWane, Inc.*, Docket No. 9351, *Opinion of the Commission on Motions for Summary Decision* at 20-21 (F.T.C. Aug. 9, 2012) ("an invitation to collude is 'the quintessential example of the kind of conduct that should be . . . challenged as a violation of Section 5'") (citing the Statement of Chairman Leibowitz and Commissioners Kovacic and Rosch, *In re U-Haul Int'l, Inc.*, 150 F.T.C. 1, 53 (2010). This conclusion has been affirmed by leading antitrust scholars. *See*, P. Areeda & H. Hovenkamp, VI ANTITRUST LAW ¶ 1419 (2003); Stephen Calkins, *Counterpoint: The Legal Foundation of the Commission's Use of Section 5 to Challenge Invitations to Collude is Secure*, ANTITRUST Spring 2000, at 69. In a case brought under a state's version of Section 5, the First Circuit expressed support for the Commission's application of Section 5 to invitations to collude. *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012).

2 *Valassis Communications, Inc.,* Analysis of Agreement Containing Consent Order to Aid Public Comment, 71 Fed. Reg. 13976, 13978-79 (Mar. 20, 2006).

III. The Proposed Consent Orders

The Proposed Orders have the following substantive provisions:

Section II, Paragraph A of the Proposed Orders enjoin Respondents from communicating with their competitors about rates or prices, with a proviso permitting public posting of rates and a second proviso that permits Respondents to buy or sell barcodes.

Section II, Paragraph B prohibits Respondents from entering into, participating in, maintaining, organizing, implementing, enforcing, inviting, offering, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices**.**

Section II, Paragraph C bars Respondents from urging any competitor to raise, fix or maintain its price or rate levels or to limit or reduce service terms or levels.

Sections III-VI of the Proposed Orders impose certain standard reporting and compliance requirements on Respondents.

The Proposed Orders will expire in 20 years.

Complaint

IN THE MATTER OF

I-HEALTH, INC.
AND
MARTEK BIOSCIENCES CORP.

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

Docket No. C-4486; File No. 122 3067
Complaint, August 21, 2014 – Decision, August 21, 2014

This consent order addresses i-Health, Inc.'s and Martek Biosciences Corporation's advertising for the BrainStrong Adult dietary supplement containing algal docosahexaenoic acid ("DHA"), an omega-3 fatty acid. The complaint alleges that the companies violated Sections 5(a) and 12 of the Federal Trade Commission Act by making the unsubstantiated representation that BrainStrong Adult improves memory and prevents cognitive decline in adults. The consent order prohibits any representation about the health benefits, performance, safety, or efficacy of any dietary supplement, food, or drug promoted to prevent cognitive decline or improve memory, or containing DHA, unless it is non-misleading and supported by competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

Participants

For the *Commission*: *Victor DeFrancis, Keith Fentonmiller,* and *Edwin Rodriguez.*

For the *Respondents*: *Charles Dickinson, Martin Hahn,* and *Corey Roush, Hogan Lovells US LLP; Jason Stephans, In-House Counsel.*

COMPLAINT

The Federal Trade Commission ("FTC" or "Commission"), having reason to believe that i-Health, Inc. and Martek Biosciences Corporation ("Respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent i-Health, Inc. is a Delaware corporation with its principal office or place of business at 55 Sebethe Drive, Cromwell, Connecticut 06416. i-Health, Inc. was formerly known as Amerifit Brands, Inc. (also known as Amerifit, Inc.).

2. Respondent Martek Biosciences Corporation is a Delaware corporation with its principal office or place of business at 6480 Dobbin Road, Columbia, Maryland 21045. On June 30, 2012, Martek Biosciences Corporation merged into its successor, DSM Nutritional Products, LLC. DSM Nutritional Products, LLC is a Delaware corporation with its principal office or place of business at 45 Waterview Boulevard, Parsippany, New Jersey 07054.

3. Since at least March 2011, Respondents have together labeled, advertised, promoted, offered for sale, sold, and distributed to consumers throughout the United States a dietary supplement branded as BrainStrong Adult, which contains, among other ingredients, docosahexaenoic acid ("DHA"), an Omega-3 fatty acid, from algal triglyceride oil. BrainStrong Adult is either a "food" or a "drug" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

4. The acts and practices of Respondents, as alleged herein, have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

BrainStrong Adult

5. BrainStrong Adult is formulated for adults with a recommended dose of 900 mg of DHA per day and is marketed at a wide range of major retail stores, including, but not limited to, CVS Pharmacy, Walmart, Walgreens, and Rite Aid. BrainStrong Adult is also marketed through online vendors, such as www.drugstore.com and www.amazon.com. The retail price is approximately $30 for a thirty-day supply.

6. Respondents have disseminated or caused to be disseminated advertisements for BrainStrong Adult, including, but not limited to, the attached Exhibits A through D. These advertisements contain the following statements and depictions, among others:

a. **Product Packaging**: BrainStrong Adult 90-Count Bottle

b. **Product Packaging**: BrainStrong Adult 120-Count Bottle

c. **Internet Website**: www.brainstrongdha.com (Exhibit A)

JUST SAY "NO" TO THE LOSS OF MEMORY.

* * *

THE MIDAS STUDY

Losing your memory as you age may be natural. But improving your memory can also be natural. New BrainStrong™ with *life'sDHA*™, is safe, natural and clinically shown to help protect against normal, cognitive decline as we age.†

THE STUDY THAT PROVED IT.

Adults 55+: The Memory Improvement with Docosahexaenoic Acid (DHA) Study, or MIDAS, was the first large, randomized and placebo-controlled study demonstrating the benefits of DHA in maintaining and improving brain health in older adults. The study indicated that the use of DHA improves learning and memory recall in healthy aging adults with mild memory complaints.

IN OTHER WORDS:

MIDAS found that healthy people with memory complaints who took 900 mg/day algal DHA capsules for six months had almost double the reduction in errors on a test that measures learning and memory performance versus those who took a placebo, a benefit roughly equivalent to having the learning and memory skills of someone three years younger.

* * *

Conclusions:

- 900 mg/day algal DHA supplementation for 6 months resulted in a significant decrease of memory

errors on a memory test as well as significant increases to verbal recognition memory scores.

* * *

A BATTLE PLAN:

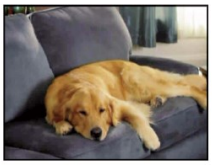
We now have clinical evidence to indicate that 900 mg/day of algal DHA improves memory in aging adults.

[†]A recent clinical study showed that adults over 55 with a mild memory complaint, who took 900mg/day of life'sDHA™ for 6 months, improved their short-term memory.

* * *

BrainStrong Adult is a daily brain health supplement for adults of all ages containing 900mg/serving of a DHA omega-3 fatty acid, which helps protect the brain against normal cognitive decline as we age.

d. **Television Advertisement**: "Forget Me Not"
(Exhibit B: CD and storyboard excerpt)

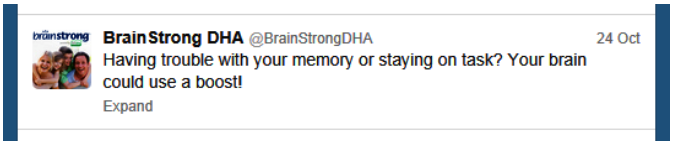


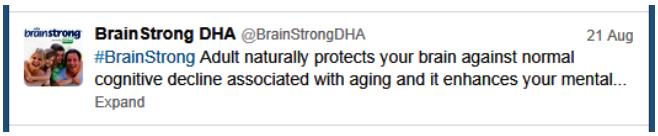
e. **Internet Website**: Facebook (Exhibit C) (DSM-FTC-1100)

"BrainStrong Adult is a new daily brain health supplement for adults containing 900mg/serving of a DHA omega-3 fatty acid, which helps protect the brain against normal cognitive decline as we age."

f. **Internet Advertisements**: Twitter

i. Tweets from December 18, October 24, and August 21, 2012





ii. Exhibit D (DSM-FTC-1030)

31 Mar [BrainStrong Twitter image] **BrainStrong DHA @BrainStrongDHA**

Did you know you can continue learning into your 80s? And BrainStrong has been shown to increase memory in adults 55+! **#BrainStrongChamp**

7. There are several types of human memory. Episodic memory is the recollection of specific personal events linked to a time and place. It can be verbal, as in remembering a conversation or a list of grocery items, or nonverbal, as in recalling a major life event (*e.g.*, the birth of a child) or where one left an object. Episodic memory can be of short (minutes) or long (years) duration. The scenario depicted in Exhibit B (a woman not recalling the reason she entered a room – to find her sunglasses) is an example of an episodic memory failure over a short duration. Humans also possess sensory memory (*e.g.*, residual sensory impressions of visual stimuli or sounds), working memory (the short-term mental manipulation of information, such as numbers), semantic memory (general knowledge about the world, such as facts, concepts, and vocabulary), and procedural memory (learned skills, like riding a bike).

8. Human cognitive function includes not only the different types of memory, but also non-memory abilities such as executive function, attention, processing speed, and reasoning.

9. The MIDAS study referred to in Exhibit A objectively tested only two types of memory – episodic and working – and the cognitive ability of executive function. In addition, according to the authors of the MIDAS study, the study "was not designed to assess long term effects of DHA on cognitive decline rates," and although "DHA is potentially beneficial for prevention of cognitive decline[, it] will need confirmation with long-term prevention trials."

Count I
Unsubstantiated Memory Improvement Claim

10. In connection with the advertising, promotion, offering for sale, or sale of BrainStrong Adult, Respondents have represented, directly or indirectly, expressly or by implication, that BrainStrong Adult improves memory in adults.

11. The representation set forth in Paragraph 10 was not substantiated at the time the representation was made. The MIDAS study did not show that BrainStrong Adult improved performance on non-episodic memory tasks. In addition, the MIDAS study employed three types of laboratory tasks to test

different, but interrelated, aspects of episodic memory – visuospatial memory, visual pattern recognition memory, and visual-verbal memory. Results from these tasks did not yield a pattern of statistically and clinically significant improvement in the DHA group relative to the placebo group. Whether analyzed separately or as a composite, the effect size of any statistically significant, between-group difference was trivial, and no evidence showed that any such difference correlated with improvement in everyday episodic memory tasks outside the laboratory, such as the ability to remember the location of one's sunglasses or why one entered a room.

Count II
Unsubstantiated Prevention of Cognitive Decline Claim

12. In connection with the advertising, promotion, offering for sale, or sale of BrainStrong Adult, Respondents have represented, directly or indirectly, expressly or by implication, that BrainStrong Adult prevents cognitive decline in adults.

13. The representation set forth in Paragraph 12 was not substantiated at the time the representation was made. A subject's performance on laboratory tasks that measure only one type of memory (*i.e.*, episodic) does not fully capture the overall state of his or her cognitive function, which includes other types of memory and non-memory cognitive abilities. In the MIDAS study, subjects treated with DHA for twenty-four weeks performed worse than placebo on a task of executive function, a non-memory cognitive ability. Moreover, a twenty-four-week study is an insufficient duration to test the impact of DHA on cognitive decline. Because the placebo group in MIDAS showed no evidence of cognitive decline, the study could reach no conclusion about DHA's ability to prevent or slow that condition.

Count III
False Establishment Claim about Memory Improvement

14. In connection with the advertising, promotion, offering for sale, or sale of BrainStrong Adult, Respondents have represented, directly or indirectly, expressly or by implication, that BrainStrong Adult is clinically proven to improve memory in adults.

15. In fact, BrainStrong Adult is not clinically proven to improve memory in adults. Therefore, the representation set forth in Paragraph 14 was, and is, false or misleading.

Violations of Sections 5 and 12

16. The acts and practices of Respondents as alleged in this Complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, this twenty-first day of August, 2014, has issued this complaint against the Respondents.

By the Commission, Commissioner Ohlhausen dissenting and Commissioner McSweeny not participating.

Complaint

Exhibit A

DHA for Adults 55+ | DHA Omega-3 for Brain & Memory Health | BrainStrong

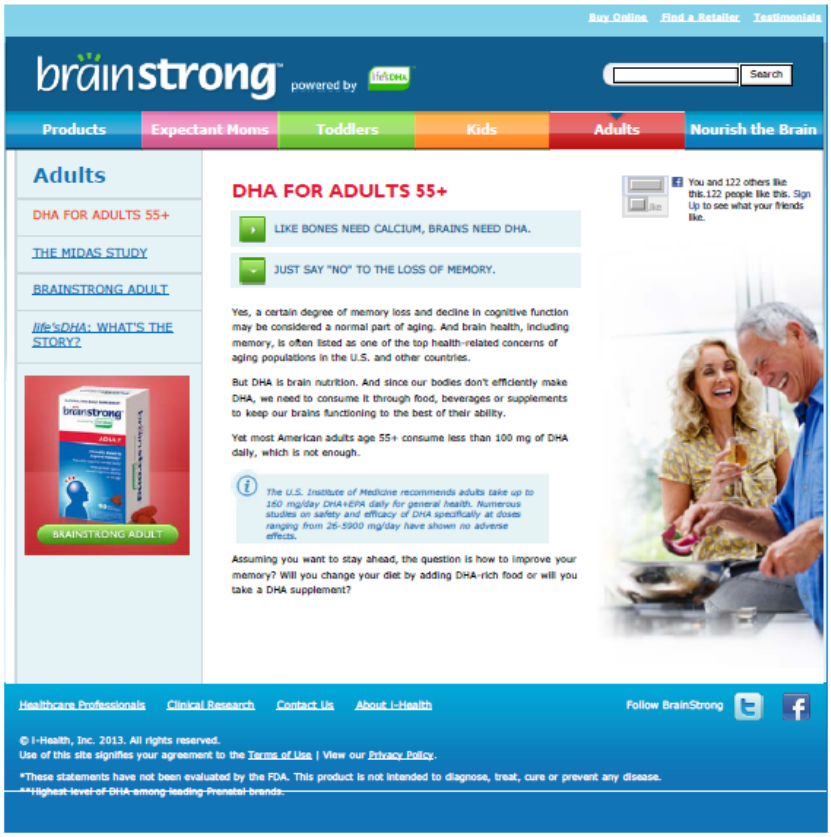


Exhibit A

http://brainstrongdha.com/adults/dha_for_adults[1/8/2013 9:21:03 AM]

Complaint

Exhibit A

ttp://www.brainstrongdha.com/adults/the_midas_study[1/4/2013 4:52:28 PM]

Buy BrainStrong Adult DHA Omega-3 Products | Memory Improvement Supplements

Exhibit A

http://www.brainstrongdha.com/products/brainstrong_adult[1/4/2013 4:50:15 PM]

Exhibit B

Competitrack

Advertiser: BrainStrong
Product: BrainStrong DHA
Title: Forget Me Not
Ad Code: BRSTPM-0005

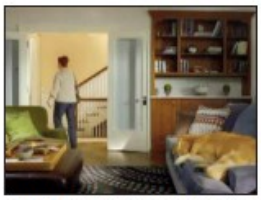
First Date: 06/27/11
Source: New York City
Length: 30
New/Recut: New

(Music)
WOMAN (VOICE OVER): What did I walk into this room for?

DOG (V.O.): Your sunglasses.

WOMAN (V.O.): I'm not leaving until I remember why I came in here.

DOG (V.O.): They're on your head.



WOMAN (V.O.): Maybe if I go out and come back in I'll remember.

DOG (V.O.): Yeah, that never works.

VOICE OVER: Need a memory boost? Introducing BrainStrong...

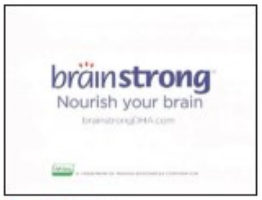
with life's DHA, the natural, essential nutrient for a healthy brain.

Clinically shown to improve adult memory.

Text: This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

WOMAN (V.O.): Can you tell me why I came in here?
DOG (V.O.): You never listen to me.

V.O.: New BrainStrong natural DHA supplement.



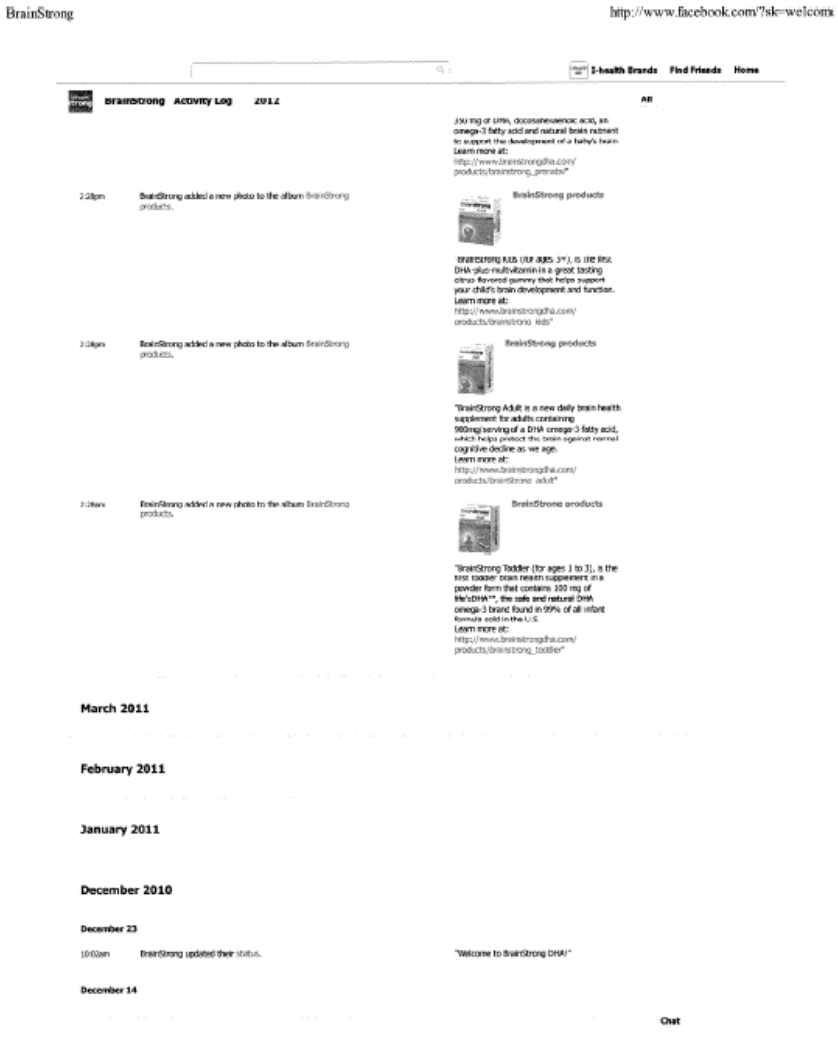
Nourish your brain.
(Fade out)

Text: brainstrongDHA.com
life's DHA A Trademark Of Martek Biosciences Corporation.

Exhibit B

Complaint

Exhibit C



Complaint

Exhibit D

31 Mar  BrainStrong DHA @BrainStrongDHA

Did you know you can continue learning into your 80s? And BrainStrong has been shown to increase memory in adults 55+! #BrainStrongChamp

Expand Collapse

- Reply
- Delete
- FavoritedFavorite

31 Mar  BrainStrong DHA @BrainStrongDHA

The old adage that you are only using 10% of your brain isn't true; every part of the brain has a known function. #BrainStrongChamp

Expand Collapse

- Reply
- Delete
- FavoritedFavorite

30 Mar  BrainStrong DHA @BrainStrongDHA

Find out if your child is getting enough DHA: ow.ly/9HVBz #BrainHealth

Expand Collapse

- Reply
- Delete
- FavoritedFavorite

30 Mar  Lifehacker @lifehacker

How to train your brain and boost your memory like a USA memory champion: lifehac.kr/HxZSNw

Retweeted by BrainStrong DHA
Expand Collapse

- Reply
- RetweetedRetweet
- Delete
- FavoritedFavorite

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order ("consent agreement") that includes: a statement that the agreement is for settlement purposes only and does not constitute an admission that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true; 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 has reason to believe that the respondents have violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comment, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

3. Respondent i-Health, Inc. is a Delaware corporation with its principal office or place of business at 55 Sebethe Drive, Cromwell, Connecticut 06416.

4. Respondent Martek Biosciences Corporation was a Delaware corporation with its principal office or place of business at 6480 Dobbin Road, Columbia, Maryland 21045. On June 30, 2012, Martek Biosciences

Corporation merged into its successor, DSM Nutritional Products, LLC. DSM Nutritional Products, LLC is a Delaware corporation with its principal office or place of business at 45 Waterview Boulevard, Parsippany, New Jersey 07054.

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

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "Respondents" means i-Health, Inc. and Martek Biosciences Corporation, and their successors and assigns.

B. DSM Nutritional Products, LLC is a successor of Martek Biosciences Corporation.

C. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

D. "Covered Product" means any dietary supplement, food, or drug promoted to prevent cognitive decline or improve memory, or containing docosahexaenoic acid ("DHA"), including, but not limited to, BrainStrong Adult. Covered Product does not include infant formula or ingredients when sold specifically for use in infant formula.

E. "Dietary supplement" means:

1. any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or

2. any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or

more ingredients that are a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above, that is intended to be ingested, and is not represented to be used as a conventional food or as a sole item of a meal or the diet.

F. "Endorsement" means as defined in 16 C.F.R. § 255.0.

G. "Food" and "drug" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

H. The term "including" in this order means "without limitation."

I. The terms "and" and "or" in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

J. "Reliably Reported," for a human clinical test or study ("test"), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

I.
Prohibited Memory and Cognitive Decline Claims

IT IS ORDERED that Respondents and their officers, agents, representatives, and employees, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement,

depiction, illustration, trademark, or trade name, that such product:

A. improves memory in adults; or

B. prevents cognitive decline in adults,

unless the representation is non-misleading and, at the time of making such representation, Respondents possess and rely upon competent and reliable scientific evidence to substantiate that the representation is true. For purposes of this Section, competent and reliable scientific evidence shall consist of human clinical testing that is sufficient in quality and quantity, based on standards generally accepted by experts in cognitive science, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Such testing shall be randomized, double-blind, and placebo-controlled; and be conducted by researchers qualified by training and experience to conduct such testing. In addition, all underlying or supporting data and documents generally accepted by experts in cognitive science as relevant to an assessment of such testing, as set forth and described in the Part of this Order entitled Preservation of Records Relating to Competent and Reliable Human Clinical Tests or Studies, must be available for inspection and production to the Commission.

II.
Prohibited Health Benefit Claims

IT IS FURTHER ORDERED that Respondents and their officers, agents, representatives, and employees, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, other than representations covered under Part I of this order, about the health benefits, performance, safety, or efficacy of any Covered Product, unless the representation is non-misleading, and, at the time of making such representation, the Respondents

possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies that (1) have been conducted and evaluated in an objective manner by qualified persons; (2) are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing, as set forth in the Part of this Order entitled Preservation of Records Relating to Competent and Reliable Human Clinical Tests or Studies, are available for inspection and production to the Commission.

III.
Prohibited Representations Regarding Tests or Studies

IT IS FURTHER ORDERED that Respondents and their officers, agents, representatives, and employees, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name, word, phrase such as "clinically shown" or "clinically proven," endorsement, depiction, illustration, trademark, or trade name:

A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or

B. That any benefits of such Covered Product are scientifically or clinically proven, including, but not limited to, that the Covered Product is clinically proven to improve memory in adults.

IV.
FDA Approved Claims

IT IS FURTHER ORDERED that nothing in this order shall prohibit Respondents from making any representation for:

A. Any drug that is permitted in labeling for such drug under any tentative or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; or

B. Any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997.

V.
Record Keeping Requirements

IT IS FURTHER ORDERED that Respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

A. All advertisements, labeling, packaging, and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.
Preservation of Records Relating to Competent and Reliable Human Clinical Tests or Studies

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which Respondents rely to substantiate any claim covered by this Order, Respondents shall secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;

B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;

C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test, all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;

D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or between-group analysis performed on any test data; and

E. All documents referring or relating to the sponsorship of the test, including all communications, including contracts, between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part (1) by any Respondent, or by any person or entity affiliated with or acting on behalf of any Respondent, including officers, agents, representatives, and employees, or by any other person or entity in active concert or participation with any Respondent ("Respondent's affiliates"), (2) by the supplier or manufacturer of the product at issue, or (3) by a supplier to any Respondent, to Respondent's affiliates, or to the product's manufacturer of any ingredient contained in such product.

For any test conducted, controlled, or sponsored, in whole or in part, by Respondents, Respondents must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to Respondents' size and complexity, the nature and scope of Respondents' activities, and the sensitivity of the personal information collected from or about the participants.

VII.
Order Acknowledgements

IT IS FURTHER ORDERED that Respondents shall deliver a copy of this order to all current and future principals, officers, and directors, and to all current and future employees, agents, and representatives having managerial responsibilities with respect to the subject matter of this order. Respondents shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.
Compliance Notification

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under

this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the business or corporate name or address. Provided, however, that, with respect to any proposed change in the corporation(s) about which Respondents learn less than thirty (30) days prior to the date such action is to take place, Respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line i-Health, Inc., FTC File No. 122-3067. *Provided, however,* that, in lieu of overnight courier, notices may be sent by first class mail, but only if electronic versions of such notices are contemporaneously sent to the Commission at DEbrief@ftc.gov.

IX.
Compliance Reporting

IT IS FURTHER ORDERED that Respondents, within one hundred twenty (120) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

X.
Order Termination

This order will terminate on August 21, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any part in this order that terminates in less than twenty (20) years;

B. This order's application to any Respondent that is not named as a Respondent in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Ohlhausen dissenting and Commissioner McSweeny not participating.

Statement of Chairwoman Edith Ramirez and Commissioner Julie Brill

We write to explain our support for the complaint and order imposed against respondents i-Health, Inc. and Martek Biosciences Corporation (collectively, "i-Health") with respect to advertising claims that their BrainStrong Adult dietary supplement improves adult memory and is clinically proven to do so. Section 5 of the FTC Act requires that advertisers have a reasonable basis for the claims they make to ensure that their claims are truthful and non-deceptive.[1] We have reason to believe that i-Health fell short of this standard.

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1 *FTC Policy Statement Regarding Advertising Substantiation*, 104 F.T.C. 839 (1984) (appended to *Thompson Med. Co.*, 104 F.T.C. 648 (1984)) ("*Substantiation Statement*") ("[W]e reaffirm our commitment to the

Concurring Statement

i-Health advertises a dietary supplement, BrainStrong Adult, containing docosahexaenoic acid ("DHA"), with broad and prominent claims that the product is "[c]linically shown to improve memory." Its advertising also makes the general efficacy claim that BrainStrong improves memory. Consumers would likely have reasonably interpreted these claims broadly to include a wide variety of promises of real-life improvements in memory, such as the ability to remember the location of one's sunglasses or why one entered a room – which is the precise scenario depicted in i-Health's television ad. [2] We do not believe that i-Health possessed the evidence necessary to back up such reasonable interpretations by consumers. Accordingly, we allege that i-Health's efficacy claim was unsubstantiated and that its establishment claim was false and misleading.[3]

i-Health's establishment claim that BrainStrong Adult is clinically proven to improve adult memory requires, by its own terms, a well-controlled human clinical study.[4] Its efficacy claim about its dietary supplement must be supported by competent and reliable scientific evidence.[5] In support of these claims, i-Health

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underlying legal requirement of advertising substantiation – that advertisers and ad agencies have a reasonable basis for advertising claims before they are disseminated."), *aff'd*, 791 F.2d 189, 193 & 196 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

2 *See* FTC, *Dietary Supplements: An Advertising Guide for Industry* 3-4 (Apr. 2001) ("*Dietary Supplements Guide*"), *available at* http://business.ftc.gov/documents/bus09-dietary-supplements-advertising-guide-industry ("When an ad lends itself to more than one reasonable interpretation, the advertiser is responsible for substantiating each interpretation."); *see also id.* at 12.

3 The Commission also alleges that i-Health made the unsubstantiated claim that BrainStrong prevents cognitive decline in adults. Because the Commission has unanimously voted in favor of this allegation, we do not address it here.

4 *Substantiation Statement* at 839 ("When the substantiation claim is express (e.g., 'tests prove,' 'doctors recommend,' and 'studies show'), the Commission expects the firm to have at least the advertised level of substantiation."); *Removatron Int'l Corp.*, 111 F.T.C. 206, 297-99 (1988) ("If an advertisement represents that a particular claim has been scientifically established, the advertiser must possess a level of proof sufficient to satisfy the relevant scientific community of the claim's truth."), *aff'd*, 884 F.2d 1489 (1st Cir. 1989).

5 *Dietary Supplements Guide* at 9.

relies primarily on a double-blind, placebo-controlled clinical study published in a peer-reviewed journal – the Memory Improvement with Docosahexaenoic Acid Study ("MIDAS study"). The study purports to show that DHA "improves episodic memory" and "memory function." The MIDAS study's principal investigator and author was an employee of respondent Martek.[6]

As an initial matter, regardless of the methodology and purported findings of the MIDAS study, the first question we ask is what the study was designed to measure and demonstrate. Stated differently, and more directly for our purposes, does the study, assuming it was well-conducted, substantiate i-Health's broad claims that BrainStrong improves memory and that it was "clinically shown" to do so? Contrary to the view of Commissioner Ohlhausen, we do not think it does.

As detailed in the complaint, there are several types of human memory, including episodic memory, sensory memory, working memory, semantic memory, and procedural memory. Importantly, the MIDAS study tested tasks associated with only two types of memory: episodic memory, the recollection of specific personal events linked to a time and place, such as where someone left her car keys; and working memory, the short-term mental manipulation of information, such as the ability to follow a story or discussion. Notably, the study reports only a very small improvement from BrainStrong in relation to episodic memory – the positive result was essentially limited to performance on a single test of one of three types of episodic memory that were measured (visuospatial). The study did not reveal any improvement in working memory. In light of the narrow scope of the study and its limited results, we have reason to believe that i-Health's marketing claims that BrainStrong improves "memory" broadly speaking would likely mislead consumers, as there is no basis to conclude that it has any impact whatsoever on other important facets of memory, such as the ability to remember the meaning of words (semantic memory) or to follow an exchange of

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6 Karin Yurko-Mauro et al., *Beneficial Effects of Docosahexaenoic Acid on Cognition in Age-Related Cognitive Decline*, 6 Alzheimer's & Dementia 456 (2010).

dialogue (working memory). This alone would be reason enough for us to conclude that the MIDAS study does not adequately substantiate i-Health's general memory improvement claims.

But our concerns extend even further. As we have also alleged in the complaint, the MIDAS study did not show a pattern of statistically and clinically significant improvements on the episodic memory tasks among subjects who took BrainStrong's DHA, relative to the placebo group. Specifically, it failed to show meaningful, statistically significant improvements on two of the three episodic memory tasks measured. Further, it failed to demonstrate that the very small, statistically significant improvement on one of those tasks that it did report correlates with improvements in memory tasks outside of the laboratory.[7] We believe that reasonable consumers would likely be misled that BrainStrong will result in the kinds of real-life improvements depicted in i-Health's advertising.

It is correct, as Commissioner Ohlhausen notes in her dissent, that some of the statements made by the study's authors in the "Results" and "Discussion" sections of the MIDAS study use language similar to that in i-Health's memory improvement claims. However, we disagree that the Commission must accept at face value these statements as supportive of the claims in i-Health's advertising. Doing so would be inconsistent with the Commission's obligation to assess the quality and reliability of the scientific evidence underlying challenged advertising claims.[8] Our conclusions are based on extensive consultations with experts in the cognitive science and biostatistics fields. Consistent with the requirements of Section 5 and our past practice,[9] we undertook

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7 *See Dietary Supplements Guide* at 12 ("Some results that are statistically significant may still be so small that they would mean only a trivial effect on consumer health.").

8 Commissioner Ohlhausen also observes that the complaint does not take issue with how i-Health conducted the clinical testing component of the trial, *i.e.*, that it was a large, multi-center trial that was randomized, placebo-controlled, and double-blinded. However, sometimes such studies ultimately yield inconclusive or weak findings, as was the case with the MIDAS study.

9 *See, e.g., Schering Corp.*, 118 F.T.C. 1030, 1084, 1095 (1994). *See also Unither Pharma, Inc.*, 136 F.T.C. 145, 161 (2003).

an evaluation of the results of the MIDAS study to assess whether they substantiated i-Health's advertising claims and did not simply defer to the authors' interpretations of their results.[10]

For all of the foregoing reasons, we have reason to believe that i-Health lacked adequate substantiation for the broad marketing claims that BrainStrong Adult improves adult memory, that i-Health's clinical-proof claims are false and misleading, and that the relief set forth in the proposed order is appropriate.

10 In addition to the MIDAS study, our experts in the cognitive science and biostatistics fields also reviewed the totality of other evidence that i-Health proffered on DHA and memory, finding those results to be inadequate to back i-Health's claims as well.

Dissenting Statement

Separate Statement of Commissioner Maureen K. Ohlhausen
Dissenting in Part

The Commission has long interpreted Section 5 of the FTC Act[1] to require an advertiser to have a reasonable basis for making an objective claim about its product.[2] As we execute this mandate, we must be mindful of what we are trying to accomplish, however. As former FTC Chairman Robert Pitofsky stated, the overall goal of evaluating advertising claims is not "a broad, theoretical effort to achieve Truth, but rather a practical enterprise to ensure the existence of reliable data which in turn will facilitate an efficient and reliable competitive market process."[3]

I dissent in part from today's action because it imposes an unduly high standard of substantiation on a safe product. This unduly high standard not only risks denying consumers useful information in the present but may also, in the long term, diminish incentives to conduct research on the health effects of foods and dietary supplements and reduce the incentives of manufacturers to introduce such products.[4] The majority's approach may ultimately undermine an efficient and reliable competitive market process and make consumers worse off. [5]

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1 15 U.S.C. § 45(a).

2 FTC Policy Statement Regarding Advertising Substantiation (appended to *Thompson Med. Co., Inc.*, 104 F.T.C. 648, 840 (1984)).

3 Robert Pitofsky, *Beyond Nader: Consumer Protection and the Regulation of Advertising*, 90 HARV. L. REV. 661, 671 (1977).

4 *See* Statement of Commissioner Maureen K. Ohlhausen, Dissenting in Part and Concurring in Part, *In the Matter of GeneLink, Inc., et al.*, FTC Docket No. C4456, at 2 (Jan. 7, 2014) ("Although raising the requirement for both the number and the rigor of studies required for substantiation for all health- or disease-related claims may increase confidence in those claims, the correspondingly increased burdens in time and money in conducting such studies may suppress information that would, on balance, benefit consumers.").

5 *See id.* ("If we demand too high a level of substantiation in pursuit of certainty, we risk losing the benefits to consumers of having access to information about emerging areas of science and the corresponding pressure on firms to compete on the health features of their products."); FTC Staff Comment Before the Food and Drug Administration In the Matter of Assessing

The complaint in this matter challenges the efficacy claim that BrainStrong Adult (a DHA supplement) improves memory in adults and the establishment claim that BrainStrong Adult is clinically proven to improve memory in adults.[6] Advertisers must support claims of efficacy of dietary supplements with "competent and reliable scientific evidence."[7] For establishment claims, where advertisements refer to a certain level of support, advertisers "must be able to demonstrate that the assertion is accurate [and] have the level of support that they claim, expressly or by implication, to have."[8]

In this matter, the defendant offers as the primary substantiation for its claims the MIDAS study, a placebo-controlled, randomized, double-blind, parallel, multi-center, six-month, peer-reviewed, journal-published study of 485 subjects with statistically significant results.[9] Specifically, the MIDAS study concluded:

Consumer Perceptions of Health Claims, Docket No. 2005N-0413, at 5-6 (2006) (noting the FTC's advertising enforcement seeks to avoid "unduly burdensome restrictions that might chill information useful to consumers in making purchasing decisions.") *available at* http://www.ftc.gov/be/V060005.pdf.

6 The complaint also challenges the efficacy claim that BrainStrong Adult prevents cognitive decline. I agree with the majority that the proffered study does not support this claim.

7 The FTC's *Dietary Supplements: An Advertising Guide for Industry* defines competent and reliable scientific evidence as "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." It further states that well-controlled human clinical trials are the "most reliable form of evidence." *See Dietary Supplements: An Advertising Guide for Industry* at 9 ("*Dietary Supplements Guide*"), *available at* http://business.ftc.gov/sites/default/files/pdf/bus09-dietary-supplements-advertising-guide-industry.pdf.

8 *Id*.

9 *See* Karin Yurko-Mauro *et al.*, *Beneficial Effects of Docosahexaenoic Acid on Cognition in Age-Related Cognitive Decline*, 6 ALZHEIMER'S & DEMENTIA 456 (2010) ("MIDAS study").

- "This clinical study demonstrated that 900 mg/d of DHA supplementation improved episodic memory and learning in healthy, older adults with mild memory complaints…. The DHA effects are significant in that they represent an objective demonstration of improved memory in [age-related cognitive decline]."[10]

- "Our results are the first to clinically confirm that DHA significantly improves episodic memory and learning functions in healthy adults with [age-related cognitive decline]."[11]

- "Our study results demonstrate that DHA is well tolerated and may have significant positive effect on gradual memory loss…."[12]

These conclusions match up well with the "improves memory" efficacy claim and the "clinically proven to improve memory" establishment claim.[13] Thus, I believe this study, in the context of other supporting studies involving DHA and memory,[14] provides a reasonable basis for the "improves memory" claims.[15]

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10 *Id.* at 461.

11 *Id.* at 463.

12 *Id.*

13 BrainHealth Adult product packaging also included language stating, "A recent clinical study showed that adults over 55 with a mild memory complaint who took 900mg/day of life'sDHA for 6 months improved their short-term memory."

14 Martek cited many studies, including: a wide body of animal and cell culture studies that are consistent with the importance of DHA in cognitive function and suggest a potential mechanism for DHA's ability to support memory; numerous epidemiological studies identifying a correlation between DHA consumption and cognitive function; multiple clinical trials with generally supportive (although not wholly consistent) results; and seven reviews by independent expert bodies confirming the importance of DHA in supporting cognitive function. Not all of these studies are squarely on point, and some of them contain methodological weaknesses or inconclusive results. As such, their probity varies, but taken together they are supportive of DHA's positive role in brain function. The FTC must evaluate the well-conducted,

The complaint offers two reasons why the MIDAS study, despite being well-conducted and having statistically significant results, does not substantiate Martek's claims for BrainStrong Adult. First, the complaint argues that the "improves memory" claim is unsubstantiated because the MIDAS study did not show that BrainStrong Adult improved performance for all types of memory. However, the MIDAS study did demonstrate a statistically significant improvement in performance on episodic memory tasks. An improvement in episodic memory is indeed an improvement in memory, and the claim accurately conveys the study's findings in consumer vernacular.

Second, instead of criticizing the study's methodology, the complaint criticizes its conclusions. The complaint asserts that the MIDAS study "did not yield a pattern of statistically and clinically significant improvement" in memory.[16] This conclusion is based on the opinion of experts retained by FTC

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statistically significant MIDAS study within the totality of this supportive evidence. *See Dietary Supplements Guide* at 14 ("Studies cannot be evaluated in isolation. The surrounding context of scientific evidence is just as important as the internal validity of individual studies.").

15 Because the claims at issue here closely parallel the conclusions of the MIDAS study, this case differs from others where companies possessed well-conducted clinical trials yielding statistically significant results but made claims beyond the trials' ability to support. *Cf. Nestle HealthCare Nutrition, Inc.*, 151 F.T.C. 1 (2011) (defendant claimed its product reduced the duration of acute diarrhea in children up to the age of thirteen; studies only applied to infants and could not be extrapolated to older children); *Kellogg Co*., FTC Docket No. C-4262 (2009) (defendant claimed that children who ate Frosted MiniWheats for breakfast were "nearly 20%" or "up to 18%" more attentive three hours later than children who ate nothing; study calculated average increased attention as ~10% and over half of children showed no benefit from eating the cereal).

16 It is undisputed that the MIDAS study's primary endpoint (the CANTAB Paired Associate Learning, or "PAL," test) yielded statistically significant results, with a p-value of 0.032. As the Commission has stated, "significance with a p-value that is less than or equal to 0.05 is the recognized standard to show that a study's hypothesis has been proven." *POM Wonderful LLC*, Opinion of the Commission, 2013 FTC Lexis 6 at *77 (2013). Furthermore, the MIDAS study demonstrated that the difference in PAL scores between the test group and the placebo group was equivalent to a net 3.4-year improvement in performance, offering evidence of a clinically significant result.

staff. The eight MIDAS study co-authors clearly disagree with this conclusion, as demonstrated by their own conclusions in the study.

The fact that some experts may disagree with the conclusions of a well-conducted study does not render that study unreliable or incompetent, nor make claims based on the study unsubstantiated. Specifically, Martek's reliance upon the MIDAS study, which was both well-conducted and consistent with other research, is not rendered unreasonable by the existence of some disagreement among experts. Indeed, "some disagreement" is the usual state of science.[17]

17 "The game of science is, in principle, without end. He who decides one day that scientific statements do not call for any further test, and that they can be regarded as finally verified, retires from the game." Karl Popper, THE LOGIC OF SCIENTIFIC DISCOVERY 32 (Taylor & Francis Group, 2005).

Concurring Statement of Commissioner Joshua D. Wright

As set forth in the Commission's complaint, i-Health, Inc. and Martek Biosciences Corporation (i-Health) marketed a dietary supplement branded as BrainStrong Adult, which contains docosahexaenoic acid (DHA). In its advertising and marketing, i-Health represented, among other things, that BrainStrong Adult improves memory in adults.[1]

As articulated in the complaint, these representations included a general memory improvement claim as well as a specific "episodic" memory improvement claim. I write separately to explain why, in my view, the Memory Improvement with Docosahexaenoic Acid Study (the MIDAS study) does not provide evidence sufficient to substantiate either of those claims.

First, the MIDAS study was not designed to evaluate all the types of memory that would be encompassed within a general memory claim.[2] As set forth in the complaint, there are several types of human memory, including episodic, sensory, working, semantic, and procedural. Although the MIDAS study included one test of working memory, which found no benefit from supplementation, the study's focus was episodic memory. Therefore, to the extent that consumers took away an understanding that BrainStrong Adult would improve general memory, rather than a single dimension of human memory, that claim was unsubstantiated.

Second, the MIDAS study does not adequately substantiate even a narrower claim of improving episodic memory – for example, that BrainStrong Adult would help consumers recall where they had just left their keys or the reason they left one room to walk into another room. It is correct the MIDAS study was a well-designed attempt to evaluate improvement in episodic memory.[3] The shortcoming of the MIDAS study as it relates to

1 Complaint at ¶ 10.

2 Complaint at ¶¶ 7 and 11.

3 The study was well designed in the sense that it was a randomized, double-blinded, placebo-controlled evaluation of multiple measures of episodic memory.

substantiation is not study design or methodology but rather that, put simply, its results were inconsistent and insufficiently robust to support claims about noticeable improvement in everyday memory along the lines of the television ad.

Episodic memory is a cognitive construct that encompasses the ability to recall specific autobiographical or personal events or "episodes," as well as the time and place those events occurred. Episodic memories have one or more components (e.g., visual, visuospatial, verbal, auditory, and temporal) and are formed in the brain's hippocampus after it interacts with one or more other brain regions. Identifying and isolating episodic memory can be especially difficult because of the potential influence of interactions with other brain regions, which may make it difficult to know whether and to what extent an improvement in test performance was due to changes to hippocampal function.

Consequently, in order to assess changes in episodic memory, cognitive experts generally conduct studies employing multiple measures of episodic memory. Laboratory tests of episodic memory probe hippocampal function via different modalities (e.g., visual, auditory, verbal, and tactile) and cognitive tasks (pattern recognition, visuospatial memory, verbal recall). Cognitive experts then consider the results of the different tests together, which reduces the impact of the various confounding influences that are associated with each individual test. This standard approach reduces the likelihood that idiosyncrasies in the design or administration of any one test will lead to an erroneous conclusion.[4]

Importantly, cognitive experts would generally accept that the observed effects from the intervention under study reflect changes to episodic memory rather than the influence of other neural pathways or a spurious correlation, when the multiple measures

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4 Michael S. Humphreys et al., *Measuring Episodic Memory: A Novel Approach with an Indefinite Number of Alternative Forms*, 24 APPL. COGNIT. PSYCHOL. 1080, 1081 (2010) ("[t]he use of multiple tasks provides some insurance against the possibility that different neurological substrates are involved in at least some tasks commonly considered episodic.") (citing Norman & O'Reilly, 2003).

show a consistent trend in favor of treatment. By contrast, cognitive experts evaluating an intervention that generates a small but statistically significant effect for one task but not the other two would generally conclude the collective results are insufficient to demonstrate improved episodic memory.

The MIDAS study properly employed three types of laboratory tasks to test different, but interrelated, aspects of episodic memory – visuospatial memory, visual pattern recognition memory, and visual-verbal memory.[5] However, because the results of the three laboratory tasks, when evaluated together, did not consistently trend in support of improved episodic memory, the MIDAS study is not sufficient to substantiate i-Health's improved episodic memory claim.

5 Complaint at ¶ 11.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from against i-Health, Inc. and Martek Biosciences Corporation (hereafter "the companies").

The proposed consent order ("proposed order") has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the companies' advertising for the BrainStrong Adult dietary supplement containing algal docosahexaenoic acid ("DHA"), an omega-3 fatty acid. The Commission's complaint alleges that, based primarily on a randomized, controlled trial called the "Memory Improvement with Docosahexaenoic Acid (DHA) Study" (the "MIDAS study"), the companies advertised that BrainStrong Adult improves memory and prevents cognitive decline in adults, and is clinically proven to improve memory in adults. Human cognitive function consists of at least five different types of memory, as well as non-memory abilities such as executive function, attention, processing speed, and reasoning. The MIDAS study objectively tested only two types of memory (episodic and working memory) and the cognitive ability of executive function, and was not designed to test DHA's effect on cognitive decline in aging adults.

The complaint alleges that the companies violated Sections 5(a) and 12 of the Federal Trade Commission Act by making the unsubstantiated representation that BrainStrong Adult improves memory in adults. According to the complaint, the MIDAS study did not show that BrainStrong Adult improves working memory or the cognitive ability of executive function. In addition, results from the tests of episodic memory did not yield a pattern of statistically and clinically significant improvement in the DHA group relative to the placebo group. For the same reasons, the complaint also alleges that the companies violated Sections 5(a)

and 12 by making the false or misleading representation that BrainStrong Adult is clinically proven to improve memory in adults.

Finally, the complaint alleges that the companies violated Sections 5(a) and 12 by making the unsubstantiated representation that BrainStrong Adult prevents cognitive decline in adults. According to the complaint, a subject's performance on laboratory tasks that measure only one type of memory (*i.e.*, episodic) does not fully capture the overall state of his or her cognitive function, which includes other types of memory and non-memory cognitive abilities. In the MIDAS study, subjects treated with DHA for twenty-four weeks performed worse than placebo on a task of executive function, a non-memory cognitive ability. Moreover, a twenty-four-week study is an insufficient duration to test the impact of DHA on cognitive decline. Because the placebo group in the MIDAS study showed no evidence of cognitive decline, the study could reach no conclusion about DHA's ability to prevent or slow that condition.

The proposed order includes injunctive relief that prohibits these alleged violations and fences in similar and related violations. For purposes of the order, "Covered Product" means any dietary supplement, food, or drug promoted to prevent cognitive decline or improve memory, or containing DHA, including, but not limited to, BrainStrong Adult, except for infant formula or ingredients when sold specifically for use in infant formula. As additional fencing-in relief, the order requires the companies to follow appropriate recordkeeping and compliance reporting requirements, as well as document preservation requirements for human clinical studies that they conduct or sponsor on the Covered Product.

Part I of the proposed order prohibits any representation that the Covered Product improves memory or prevents cognitive decline in adults, unless it is non-misleading and supported by competent and reliable scientific evidence. Such evidence must consist of human clinical testing that is sufficient in quality and quantity, based on standards generally accepted by experts in cognitive science, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. The testing must have been conducted by

qualified researchers, and have been randomized, double-blind, and placebo-controlled. In addition, the companies must maintain all underlying or supporting data that cognitive science experts generally would accept as relevant to an assessment of such testing.

Part II of the proposed order prohibits any representation about the health benefits, performance, safety, or efficacy of the Covered Product, unless it is non-misleading and supported by competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted by a qualified person in an objective manner and are generally accepted in the profession to yield accurate and reliable results. When that evidence consists of a human clinical trial, the companies must maintain all underlying or supporting data and documents that experts in the field generally would accept as relevant to an assessment of such testing.

Part III of the proposed order prohibits the companies from misrepresenting, including through the use of a product name, word or phrase such as "clinically shown" or "clinically proven," endorsement, depiction, illustration, trademark, or trade name, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, including misrepresenting that the benefits of the product are clinically proven or that the product is clinically proven to improve memory in adults.

Part IV of the proposed order provides a safe harbor for representations permitted under any tentative or final standard promulgated by the Food and Drug Administration ("FDA"), any new drug application approved by the FDA, or FDA regulations pursuant to the Nutrition Labeling and Education Act of 1990 or the FDA Modernization Act of 1997.

Part V contains recordkeeping requirements for advertisements and substantiation relevant to representations covered by Parts I through III of the order.

Triggered when the human clinical testing requirement in either Part I or II applies, **Part VI** of the proposed order requires the companies to secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, such as protocols, instructions, participant-specific data, statistical analyses, and contracts with the test's researchers. There is an exception for a "Reliably Reported" test defined as a test published in a peer-reviewed journal that was not conducted, controlled, or sponsored by any proposed respondent or supplier. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Parts VII through IX of the proposed order require the companies to: deliver a copy of the order to officers, employees, and representatives having managerial responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part X provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

ACTAVIS PLC
AND
FOREST LABORATORIES, INC.

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

Docket No. C-4474; File No. 141 0098
Complaint, June 30, 2014 – Decision, August 29, 2014

This consent order addresses the $25 billion acquisition by Actavis plc of certain assets of Forest Laboratories, Inc. The complaint alleges that the acquisition violates Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in the markets for (1) generic diltiazem hydrochloride extended release capsules (AB4) (generic Tiazac), (2) generic ursodiol tablets, and (3) generic propranolol hydrochloride extended release capsules, as well as the future relevant market of lamotrigine orally disintegrating tablets and its generic equivalent. The consent order requires the parties to: (1) return all of Forest's rights and assets related to generic diltiazem hydrochloride (AB4) to Valeant Pharmaceuticals International, Inc., (2) divest all of Actavis' rights and assets to generic ursodiol and generic lamotrigine ODT to Impax Laboratories, Inc., and (3) divest all of Forest's rights and assets to generic propranolol hydrochloride to Catalent Pharma Solutions, Inc.

Participants

For the *Commission*: *Christine E. Tasso* and *David Von Nirschl.*

For the *Respondents*: *Maria Raptis* and *Steven C. Sunshine, Skadden, Arps, Slate, Meagher & Flom LLP; Steven K. Bernstein* and *Ann Malester, Weil Gotshal & Manges LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Actavis plc ("Actavis"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Forest Laboratories, Inc. ("Forest"), a

corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Actavis is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of Ireland, with its headquarters address located at 1 Grand Canal Square, Docklands, Dublin 2, Ireland.

2. Respondent Forest is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 909 Third Avenue, New York, New York 10022-4731.

3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to an Agreement and Plan of Merger dated February 17, 2014, Actavis proposes to acquire 100% of the voting securities of Forest for approximately $25 billion (the "Acquisition"). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

5. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the development, license, manufacture, marketing, distribution, and sale of the following pharmaceutical products:

a. generic diltiazem hydrochloride extended release capsules (AB4) (generic Tiazac) ("generic diltiazem hydrochloride (AB4)");

b. generic ursodiol tablets ("generic ursodiol");

c. generic propranolol hydrochloride extended release capsules ("generic propranolol hydrochloride"); and

d. lamotrigine orally disintegrating tablets, a version of which is currently marketed under the brand name Lamictal ODT.

6. For the purposes of this Complaint, the United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in each of the relevant lines of commerce.

IV. THE STRUCTURE OF THE MARKETS

7. Generic diltiazem hydrochloride (AB4) is used to treat hypertension and chronic stable angina. The market for generic diltiazem hydrochloride (AB4) is highly concentrated with only three current suppliers—Actavis, Forest, and Sun Pharmaceutical Industries, Ltd. The Acquisition would reduce the number of suppliers of generic diltiazem hydrochloride (AB4) from three to two and increase the Herfindahl-Hirschman Index concentration ("HHI") by 2700, from 3550 to a post-merger total of 6250.

8. Generic ursodiol tablets are used to treat primary biliary cirrhosis of the liver. Four firms—Actavis, Forest, which distributes its product pursuant to an authorized generic arrangement with Prasco Laboratories, Par Pharmaceutical Companies, and Glenmark Pharmaceuticals, Ltd.—currently supply generic ursodiol in this highly concentrated market, which has an HHI in excess of 5000. The Acquisition would reduce the number of suppliers of generic ursodiol from four to three and increase the HHI by 342, from 5416 to a post-merger total of 5758.

9. Generic propranolol hydrochloride is an extended release capsule indicated for the treatment of hypertension. The market for generic propranolol hydrochloride is highly concentrated with

only four current suppliers—Actavis, Forest, which distributes its product through Breckenridge Pharmaceutical LLC ("Breckenridge"), Rouses Point Pharmaceuticals, and Upsher-Smith Laboratories. The Acquisition would reduce the number of suppliers of generic propranolol hydrochloride from four to three and increase the HHI by 1408, from 4523 to a post-merger total of 5931.

10. Lamictal ODT is a lamotrigine orally disintegrating tablet indicated for seizures. Forest currently manufactures Lamictal ODT for GlaxoSmithKline plc ("GSK"). GSK owns the New Drug Application for Lamictal ODT and markets the product. No companies currently market a generic version in the United States. Actavis holds the only approved Abbreviated New Drug Application to market generic Lamictal ODT. Thus, absent the Acquisition, Actavis is likely to be the first generic entrant and would be the sole competitor to Forest/GSK's branded Lamictal ODT product for a significant period of time. The Proposed Acquisition would likely delay or preclude the entry of Actavis' generic product.

V. ENTRY CONDITIONS

11. Entry into the relevant markets described in Paragraphs 5 and 6 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. De novo entry would not take place in a timely manner because the combination of drug development times and FDA approval requirements would be lengthy. In addition, no other entry is likely to occur such that it would be timely and sufficient to deter or counteract the competitive harm likely to result from the Acquisition.

VI. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

a. by eliminating actual, direct, and substantial competition between Actavis and Forest and reducing the number of significant competitors in the markets for (1) generic diltiazem hydrochloride (AB4); (2) generic ursodiol; and (3) generic propranolol hydrochloride, thereby increasing the likelihood that: (a) Actavis would be able to unilaterally exercise market power in these markets; (b) the remaining competitors would engage in coordinated interaction between or among each other; and (c) customers would be forced to pay higher prices; and

b. by eliminating future competition between Actavis and Forest in the market for lamotrigine orally disintegrating tablets, thereby (a) increasing the likelihood that the combined entity would forego or delay the launch of this product and (b) increasing the likelihood that the combined entity would delay, eliminate, or otherwise reduce the substantial additional price competition that would have resulted from an additional supplier of this product.

VII. VIOLATIONS CHARGED

13. The Agreement and Plan of Merger described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

14. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirtieth day of June, 2014 issues its Complaint against said Respondents.

By the Commission.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Actavis plc ("Actavis") of the voting securities of Respondent Forest Laboratories, Inc. ("Forest"), collectively "Respondents", and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Actavis is a corporation organized, existing and doing business under and by virtue of the laws of the Republic of Ireland, with its headquarters address located at 1 Grand Canal Square, Docklands, Dublin 2, Ireland.

2. Respondent Forest is a corporation organized, existing and doing business under and by virtue of the laws of

the State of Delaware with its headquarters address located at 909 Third Avenue, New York, New York 10022-4731.

3. The 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, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

A. "Actavis" means: Actavis plc, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Actavis plc (including, without limitation, Tango US Holding Inc., and Watson Laboratories, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Actavis shall include Forest.

B. "Forest" means: Forest Laboratories, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Forest Laboratories, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Actavis and Forest, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.

F. "Divestiture Product Business(es)" means the Business of Respondents within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products to the extent that such Business is owned, controlled, or managed by the Respondents and the assets related to such Business to the extent such assets are owned by, controlled by, managed by, or licensed to, the Respondents.

G. "Interim Monitor" means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.

H. "Transition Period" means, for each Diltiazem Product, the period beginning on the date this Order to Maintain Assets is issued and ending on the earlier of the following dates: (i) the date on which Valeant directs the Respondents to cease the marketing, distribution, and sale of the Diltiazem Product(s); (ii) the date on which Valeant commences the marketing, distribution, and sale of the Diltiazem Product(s); or (iii) six (6) months from the Order Date.

I. "Orders" means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

Order to Maintain Assets

A. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Divestiture Product Businesses, to minimize any risk of loss of competitive potential for such Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Divestiture Product Assets except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Divestiture Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the related Divestiture Product Businesses.

B. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain the operations of the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the full economic marketability, viability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; High Volume Accounts; end-use customers; Agencies; employees; and others having business relations with each of the respective Divestiture Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing each of the respective Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all

capital projects, business plans and promotional activities for such Divestiture Product Business;

2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;

3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Divestiture Product Assets to an Acquirer;

4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Divestiture Products that were marketed or sold by Respondents prior to February 17, 2014, at the related High Volume Accounts;

5. making available for use by each of the respective Divestiture Product Businesses funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such Divestiture Product Business; and

6. providing such support services to each of the respective Divestiture Product Businesses as were being provided to such Divestiture Product Business by Respondents as of the date the Consent Agreement was signed by Respondents.

C. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain a work force that

is (i) at least as large in size (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.

D. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondents shall:

1. for a period of six (6) months from the Closing Date or until the hiring of twenty (20) Divestiture Product Core Employees by that Acquirer or its Manufacturing Designee, whichever occurs earlier, provide that Acquirer or its Manufacturing Designee with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by that Acquirer. Each of these periods is hereinafter referred to as the "Divestiture Product Core Employee Access Period(s);"

2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer, provide that Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay; *provided, however*, that the provision of such information may be conditioned upon the Acquirer's or Proposed Acquirer's written confirmation that it will (i) treat the information as confidential and, more specifically, (ii) use the information solely in connection with considering whether to provide or providing to Divestiture Product Core Employees the opportunity to enter

into employment contracts during a Divestiture Product Core Employee Access Period, (iii) restrict access to the information to such of the Acquirer's or Proposed Acquirer's employees who need such access in connection with the specified and permitted use, and (iv) destroy or return the information without retaining copies at such time as the specified and permitted use ends;

3. during the Divestiture Product Core Employee Access Period(s), not interfere with the hiring or employing by that Acquirer or its Manufacturing Designee of the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by that Acquirer, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with that Acquirer or its Manufacturing Designee, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Divestiture Product or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by that Acquirer or its Manufacturing Designee. In addition, Respondents shall not make any counteroffer to such a Divestiture Product Core Employee who has received a written offer of employment from that Acquirer or its Manufacturing Designee;

   provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph shall not prohibit Respondents from continuing to employ any Divestiture Product Core Employee under the terms of that employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer or its Manufacturing Designee to that employee;

4. until the Closing Date, provide all Divestiture Product Core Employees with reasonable financial incentives to continue in their positions and to

research, Develop, manufacture and/or market the Divestiture Product(s) consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Product(s) and to ensure successful execution of the pre-Acquisition plans for that Divestiture Product(s). Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Closing Date(s) for the divestiture of the assets related to the Divestiture Product has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law); and

5. for a period of one (1) year from the Closing Date, not, directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer or its Manufacturing Designee with any amount of responsibility related to a Divestiture Product ("Divestiture Product Employee") to terminate his or her employment relationship with the Acquirer or its Manufacturing Designee; or hire any Divestiture Product Employee;

   provided, however, Respondents may hire any former Divestiture Product Employee whose employment has been terminated by the Acquirer or its Manufacturing Designee or who independently applies for employment with a Respondent, as long as that employee was not solicited in violation of the nonsolicitation requirements contained herein;

   provided further, however, that this Paragraph does not require nor shall be construed to require Respondents to terminate the employment of any employee or to prevent Respondents from continuing to employ the Divestiture Product Core Employees in connection with the Acquisition;

provided further, *however*, that any Respondent may do the following: (i) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Divestiture Product Employees; or (ii) hire a Divestiture Product Employee who contacts any Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from any Respondent.

E. With respect to the Diltiazem Products, during the Transition Period, Respondents, in consultation with Valeant, for the purposes of ensuring and orderly marketing and distribution transition, shall:

1. develop and implement a detailed transition plan to ensure that the commencement of the marketing, distribution and sale of the Diltiazem Products is not delayed or impaired by the Respondents;

2. designate employees of Respondents knowledgeable about the marketing, distribution and sale related to each of the Diltiazem Products who will be responsible for communicating directly with Valeant, and the Interim Monitor (if one has been appointed), for the purposes of assisting in the transfer of the Business related to the Diltiazem Products to Valeant;

3. subject to the delivery of sufficient levels of supply to Respondent Actavis by Valeant, maintain and manage inventory levels of the Diltiazem Products in consideration of the marketing and distribution transition;

4. continue to market, distribute and sell the Diltiazem Products;

5. allow Valeant access at reasonable business hours to all Confidential Business Information related to the Diltiazem Products and employees who possess or are able to locate such information for the

purposes of identifying the books, records, and files directly related to the Diltiazem Products that contain such Confidential Business Information pending the completed delivery of such Confidential Business Information to Valeant;

6. provide Valeant with a listing of inventory levels (week of supply) for each customer (*i.e.*, retailer, group purchasing organization, wholesaler or distributor) on a regular basis and in a timely manner;

7. provide Valeant with anticipated reorder dates for each customer on a regular basis and in a timely manner; and

8. establish projected time lines for accomplishing all tasks necessary to effect the marketing and distribution transition in an efficient and timely manner.

F. Pending divestiture of the Divestiture Product Assets, Respondents shall:

1. not use, directly or indirectly, any Confidential Business Information related to the Business of the Divestiture Products other than as necessary to comply with the following:

   a. the requirements of this Order;

   b. Respondents' obligations to each respective Acquirer under the terms of any related Remedial Agreement; or

   c. applicable Law;

2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer of the particular Divestiture Assets, (ii) other Persons specifically authorized by such Acquirer to receive such

information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed);

3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Divestiture Products to the employees associated with the Business related to those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products; and

4. institute procedures and requirements to ensure that the above-described employees:

   a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and

   b. do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.

G. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondents' personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.

H. Respondents shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the notification to the relevant Acquirer. Respondents shall maintain complete

records of all such notifications at Respondents' registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

I. Respondents shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.

J. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses within the Geographic Territory through their full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Product Businesses within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Product Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.

B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent

shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to

each Divestiture Product that is a Contract Manufacture Product, until the earliest of: (i) date the Acquirer of that Divestiture Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture that Divestiture Product and able to manufacture the Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of the Respondents; (ii) the date the Acquirer of that Divestiture Product notifies the Commission and Respondents of its intention to abandon its efforts to manufacture such Divestiture Product; (iii) the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the relevant Acquirer has abandoned its efforts to manufacture such Divestiture Product;

provided, however, that, with respect to each Divestiture Product, the Interim Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.

F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

H. Respondents shall report to the Interim Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by each Acquirer with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders; *provided, however*, beginning ninety (90) days after Respondents have filed their final report pursuant to Paragraph VII.B. of the Decision and Order, and ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining FDA approval to

manufacture each Divestiture Product and obtaining the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents.

I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.

L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

M. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every sixty (60) days thereafter until

Respondents have fully complied with this Order to Maintain Assets and the Paragraphs that are enumerated in Paragraph VII.B. of the related Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders. Respondents shall submit at the same time a copy of their report concerning compliance with the Orders to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a detailed description of their efforts to comply with the relevant paragraphs of the Orders, including:

N. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by the Respondents to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and

O. a detailed description of the timing for the completion of such obligations.

provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VII of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of a Respondent;

B. any proposed acquisition, merger or consolidation of a Respondent; or

C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution

of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

A. three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. with respect to the Diltiazem Product(s) only, the day after the day the Transition Period ends;

C. the day after the divestiture of all of the Divestiture Product Assets, as required by and described in the Decision and Order, has been completed and the Interim Monitor, in consultation with Commission staff and the Acquirer(s), notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Actavis plc ("Actavis") of the voting securities of Respondent Forest Laboratories, Inc. ("Forest"), collectively "Respondents", and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such

Complaint, other than jurisdictional facts, are true, 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment filed by an interested party, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Actavis is a corporation organized, existing and doing business under and by virtue of the laws of the Republic of Ireland, with its headquarters address located at 1 Grand Canal Square, Docklands, Dublin 2, Ireland.

2. Respondent Forest is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 909 Third Avenue, New York, New York 10022-4731.

3. The 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, as used in the Order, the following definitions shall apply:

A. "Actavis" means: Actavis plc, its directors, officers, employees, agents, representatives, successors, and

assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Actavis plc (including, without limitation, Tango US Holding Inc., and Watson Laboratories, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Actavis shall include Forest.

B. "Forest" means: Forest Laboratories, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Forest Laboratories, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Actavis and Forest, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer(s)" means the following:

1. a Person specified by name in this Order to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective; or

2. a Person approved by the Commission to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

F. "Acquisition" means Respondent Actavis' acquisition of fifty percent (50%) or more of the voting securities of Forest. Respondents entered an *Agreement and Plan of Merger* on February 17, 2014, to effect the Acquisition, by and among Actavis plc, Tango US

Holding Inc., Tango Merger Sub 1 LLC, and Tango Merger Sub 2 LLC, that was submitted to the Commission.

G. "Acquisition Date" means the date on which the Acquisition is consummated.

H. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term "Agency" includes, without limitation, the United States Food and Drug Administration ("FDA").

I. "Application(s)" means all of the following: "New Drug Application" ("NDA"), "Abbreviated New Drug Application" ("ANDA"), "Supplemental New Drug Application" ("SNDA"), or "Marketing Authorization Application" ("MAA"), the applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 314 et seq., and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between the Respondent and the FDA related thereto. The term "Application" also includes an "Investigational New Drug Application" ("IND") filed or to be filed with the FDA pursuant to 21 C.F.R. Part 312, and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between the Respondent and the FDA related thereto.

J. "Business" means the research, Development, manufacture, commercialization, distribution, marketing, importation, advertisement and sale of a Product.

K. "Catalent" means Catalent Pharma Solutions, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 14 Schoolhouse Road, Somerset, New Jersey 08873, or any of its wholly-owned subsidiaries.

L. "Categorized Assets" means the following assets and rights of the specified Respondent (as that Respondent is identified in the definition of the specified Divestiture Product), as such assets and rights are in existence as of the date the Respondent signs the Agreement Containing Consent Orders in this matter and as are maintained by the Respondent in accordance with the Asset Maintenance Order until the Closing Date:

1. all rights to all of the Applications related to the specified Divestiture Product;

2. all Product Intellectual Property related to the specified Divestiture Product that is not Product Licensed Intellectual Property;

3. all Product Approvals related to the specified Divestiture Product;

4. all Product Manufacturing Technology related to the specified Divestiture Product that is not Product Licensed Intellectual Property;

5. all Product Marketing Materials related to the specified Divestiture Product;

6. all Product Scientific and Regulatory Material related to the specified Divestiture Product;

7. all Website(s) related exclusively to the specified Divestiture Product;

8. the content related exclusively to the specified Divestiture Product that is displayed on any

Website that is not dedicated exclusively to the specified Divestiture Product;

9. a list of all of the NDC Numbers related to the specified Divestiture Product, and rights, to the extent permitted by Law:

   a. to require Respondents to discontinue the use of those NDC Numbers in the sale or marketing of the specified Divestiture Product *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement;

   b. to prohibit Respondents from seeking from any customer any type of cross- referencing of those NDC Numbers with any Retained Product(s) *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law;

   c. to seek to change any cross-referencing by a customer of those NDC Numbers with a Retained Product (including the right to receive notification from the Respondents of any such cross-referencing that is discovered by a Respondent);

   d. to seek cross-referencing from a customer of the Respondent's NDC Numbers related to such Divestiture Product with the Acquirer's NDC Numbers related to such Divestiture Product;

   e. to approve the timing of Respondent's discontinued use of those NDC Numbers in the sale or marketing of such Divestiture Product *except* for returns, rebates, allowances, and

adjustments for such Divestiture Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement; and

f. to approve any notification(s) from Respondents to any customer(s) regarding the use or discontinued use of such NDC numbers by the Respondents prior to such notification(s) being disseminated to the customer(s);

10. all Product Development Reports related to the specified Divestiture Product;

11. at the option of the Acquirer of the specified Divestiture Product, all Product Assumed Contracts related to the specified Divestiture Product (copies to be provided to that Acquirer on or before the Closing Date);

12. all patient registries related to the specified Divestiture Product, and any other systematic active post-marketing surveillance program to collect patient data, laboratory data and identification information required to be maintained by the FDA to facilitate the investigation of adverse effects related to the specified Divestiture Product (including, without limitation, any Risk Evaluation Mitigation Strategy as defined by the FDA);

13. for any specified Divestiture Product that has been marketed or sold by a Respondent prior to the Closing Date, a list of all customers and targeted customers for the specified Divestiture Product and a listing of the net sales (in either units or dollars) of the specified Divestiture Product to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described

information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the specified Divestiture Product on behalf of the High Volume Account and his or her business contact information;

14. for each specified Divestiture Product that is a Contract Manufacture Product:

    a. a list of the inventory levels (weeks of supply) for each customer (*i.e.*, retailer, group purchasing organization, wholesaler or distributor) as of the Closing Date; and

    b. anticipated reorder dates for each customer as of the Closing Date;

15. at the option of the Acquirer of the specified Divestiture Product and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the specified Divestiture Product;

16. copies of all unfilled customer purchase orders for the specified Divestiture Product as of the Closing Date, to be provided to the Acquirer of the specified Divestiture Product not later than five (5) days after the Closing Date;

17. at the option of the Acquirer of the specified Divestiture Product, all unfilled customer purchase orders for the specified Divestiture Product; and

18. all of the Respondent's books, records, and files directly related to the foregoing;

provided, however, that "Categorized Assets" shall not include: (i) documents relating to any Respondent's general business strategies or practices relating to the conduct of its Business of generic pharmaceutical Products, where such documents do not discuss with particularity the specified Divestiture Product; (ii) administrative, financial, and accounting records; (iii) quality control records that are determined not to be material to the manufacture of the specified Divestiture Product by the Interim Monitor or the Acquirer of the specified Divestiture Product; (iv) information that is exclusively related to the Retained Products; (v) any real estate and the buildings and other permanent structures located on such real estate; and (vi) all Product Licensed Intellectual Property;

provided further, *however*, that in cases in which documents or other materials included in the assets to be divested contain information: (i) that relates both to the specified Divestiture Product and to Retained Products or Businesses of any Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the specified Divestiture Product; or (ii) for which any Respondent has a legal obligation to retain the original copies, the specified Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer of the specified Divestiture Product, the specified Respondent shall provide that Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that the specified Respondent provides the Acquirer with the above-described information without requiring the Respondent completely to divest itself of information that, in content, also relates to Retained Product(s).

M. "cGMP" means current Good Manufacturing Practice as set forth in the United States Federal Food, Drug,

and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.

N. "Clinical Trial(s)" means a controlled study in humans of the safety or efficacy of a Product, and includes, without limitation, such clinical trials as are designed to support expanded labeling or to satisfy the requirements of an Agency in connection with any Product Approval and any other human study used in research and Development of a Product.

O. "Closing Date" means, as to each Divestiture Product, the date on which a Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets related to such Divestiture Product to an Acquirer pursuant to this Order.

P. "Confidential Business Information" means all information owned by, or in the possession or control of, any Respondent that is not in the public domain and that is directly related to the conduct of the Business related to a Divestiture Product(s). The term "Confidential Business Information" *excludes* the following:

1. information relating to any Respondent's general business strategies or practices that does not discuss with particularity the Divestiture Products;

2. information specifically excluded from the Divestiture Product Assets conveyed to the Acquirer of the related Divestiture Product(s);

3. information that is contained in documents, records or books of any Respondent that is provided to an Acquirer by a Respondent that is unrelated to the Divestiture Products acquired by that Acquirer or that is exclusively related to Retained Product(s); and

4. information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws.

Q. "Contract Manufacture" means the following:

1. to manufacture, or to cause to be manufactured, a Contract Manufacture Product on behalf of an Acquirer;

2. to manufacture, or to cause to be manufactured, a Product that is the therapeutic equivalent (as that term is defined by the FDA) and in the identical dosage strength, formulation and presentation as a Contract Manufacture Product on behalf of an Acquirer;

3. to provide, or to cause to be provided, any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of a Contract Manufacture Product on behalf of an Acquirer.

R. "Contract Manufacture Product(s)" means:

1. the Lamotrigine Products;

2. the Propranolol Products;

3. he Ursodiol Products; and

4. any ingredient, material, or component used in the manufacture of the foregoing Products including the active pharmaceutical ingredient, excipients or packaging materials;

provided however, that with the consent of the Acquirer of the specified Product, a Respondent may substitute a therapeutic equivalent (as that term is defined by the FDA) form of such Product in

performance of that Respondent's agreement to Contract Manufacture.

S. "Development" means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including any government price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.

T. "Diltiazem Product(s)" means the following: the Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Forest pursuant to NDA No. 020401, and any supplements, amendments, or revisions thereto.

U. "Diltiazem Product Assets" means the following:

1. for each Diltiazem Product, all of Respondent Forest's rights to commercialize, distribute, sell, advertise, market, promote, out-license, offer for sale, any of the Diltiazem Products. Such rights include, without limitation, all of the foregoing rights acquired or held by Respondent Forest pursuant to any of the following agreements:

   a. *Distribution and Supply Agreement* between Biovail Laboratories Incorporated and Forest Laboratories, Inc. dated October 1, 2000;

   b. *License Agreement* between Biovail Laboratories Incorporated and Forest

Laboratories, Inc. dated September 11, 1995; and

c. *Supply Agreement* between Biovail Laboratories Incorporated and Forest Laboratories, Inc. dated September 11, 1995;

2. all Product Marketing Materials related to each Diltiazem Product;

3. all content related exclusively to each Diltiazem Product that is displayed on any Website;

4. a list of all of the NDC Numbers related to the Diltiazem Products, and rights, to the extent permitted by Law:

   a. to require Respondents to discontinue the use of those NDC Numbers in the sale or marketing of the Diltiazem Products *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement;

   b. to prohibit Respondents from seeking from any customer any type of cross- referencing of those NDC Numbers with any Retained Product(s) *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law;

   c. to seek to change any cross-referencing by a customer of those NDC Numbers with a Retained Product (including the right to receive notification from the Respondents of any such cross-referencing that is discovered by a Respondent);

d. to seek cross-referencing from a customer of Respondent Forest's NDC Numbers related to such Diltiazem Product with the Acquirer's NDC Numbers related to such Diltiazem Product;

e. to approve the timing of Respondents' discontinued use of those NDC Numbers in the sale or marketing of such Diltiazem Product *except* for returns, rebates, allowances, and adjustments for such Diltiazem Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement; and

f. to approve any notification(s) from Respondents to any customer(s) regarding the use or discontinued use of such NDC numbers by the Respondents prior to such notification(s) being disseminated to the customer(s);

5. a list of all customers and targeted customers for each Diltiazem Product and, the following:

a. a listing of the net sales (in either units or dollars) of the Diltiazem Product to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the Diltiazem Product on behalf of the High Volume Account and his or her business contact information;

b. a listing of the inventory levels (weeks of supply) for each customer (*i.e.*, retailer, group purchasing organization, wholesaler or

distributor) as of the date the Order to Maintain Assets is issued;

c. anticipated reorder dates for each customer as of the date the Order to Maintain Assets is issued;

6. at the option of Valeant, copies of all unfilled customer purchase orders for any Diltiazem Product at any date from the date the Order to Maintain Assets is issued until Forest ceases distributing the Product;

7. at the option of Valeant, all unfilled customer purchase orders for any of the Diltiazem Products;

8. copies of all of Respondent Forest's books, records, and files directly related to the foregoing;

provided, however, that "Diltiazem Product Assets" shall not include: (i) documents relating to any Respondent's general business strategies or practices relating to the conduct of its Business of pharmaceutical Products, where such documents do not discuss with particularity the Diltiazem Product(s); (ii) administrative, financial, and accounting records; (iii) quality control records that are determined not to be material to the manufacture of the Diltiazem Product by the Interim Monitor or Valeant; (iv) information that is exclusively related to the Retained Products; (v) rights to the corporate names or corporate trade dress of "Forest", or the related corporate logos thereof, or the corporate names or corporate trade dress of any other corporations owned or controlled by Respondent Forest or the related corporate logos thereof, or general registered images or symbols by which Forest can be identified or defined; and (vi) information that is contained in documents, records, or books of Respondent Forest provided to Valeant by Respondent Forest that is unrelated to the Diltiazem Products;

provided further, *however*, that in cases in which documents or other materials included in the assets to be divested contain information: (i) that relates both to a Diltiazem Product and to Retained Products or Businesses of any Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Diltiazem Product; or (ii) for which any Respondent has a legal obligation to retain the original copies, Respondent Forest shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to Valeant, Respondent Forest shall provide Valeant access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that Respondent Forest provides Valeant with the above-described information without requiring Respondent Forest completely to divest itself of information that, in content, also relates to Retained Product(s).

V. "Diltiazem Product Divestiture Agreement" means the *Termination Agreement* by and between Actavis, plc, Valeant Pharmaceuticals Ireland, and Valeant International Bermuda, dated June 9, 2014 and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Diltiazem Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Diltiazem Product Divestiture Agreements are contained in Non-Public Appendix I

W. "Direct Cost" means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. "Direct Cost" to the Acquirer for its use of any of a Respondent's employees' labor shall not exceed the average hourly wage rate for such employee;

provided, however, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, "Direct Cost" means such cost as is provided in such Remedial Agreement for that Divestiture Product.

X. "Divestiture Product(s)" means the following, individually and collectively:

1. the Diltiazem Products;

2. the Lamotrigine Products;

3. the Propranolol Products; and

4. the Ursodiol Products.

Y. "Divestiture Product Assets" means the following:

1. the Diltiazem Product Assets;

2. the Lamotrigine/Ursodiol Product Assets; and

3. the Propranolol Product Assets.

Z. "Divestiture Product Core Employees" means the Product Research and Development Employees and the Product Manufacturing Employees related to each Contract Manufacture Product.

AA. "Divestiture Product License" means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) under a Remedial Agreement with rights to sublicense to all Product Licensed Intellectual Property and all Product Manufacturing Technology related to general manufacturing know-how that was owned, licensed, or controlled by the specified Respondent (as that Respondent is identified in the definition of the specified Divestiture Product):

1. to research and Develop the specified Divestiture Product(s) for marketing, distribution or sale within the Geographic Territory;

2. to use, make, have made, distribute, offer for sale, promote, advertise, or sell the specified Divestiture Product(s) within the Geographic Territory;

3. to import or export the specified Divestiture Product(s) to or from the Geographic Territory to the extent related to the marketing, distribution or sale of the specified Divestiture Products in the Geographic Territory; and

4. to have the specified Divestiture Product(s) made anywhere in the World for distribution or sale within, or import into the Geographic Territory;

provided however, that for any Product Licensed Intellectual Property that is the subject of a license from a Third Party entered into by a Respondent prior to the Acquisition, the scope of the rights granted hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to that Respondent.

BB. "Divestiture Product Releasee(s)" means the following Persons:

1. the Acquirer for the assets related to a particular Divestiture Product;

2. any Person controlled by or under common control with that Acquirer; and

3. any Manufacturing Designees, licensees, sublicensees, manufacturers, suppliers, distributors, and customers of that Acquirer, or of such Acquirer-affiliated entities.

CC. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.

DD. "Domain Name" means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration; *provided, however*, "Domain Name" shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.

EE. "Drug Master Files" means the information submitted to the FDA as described in 21 C.F.R. Part 314.420 related to a Product.

FF. "Geographic Territory" shall mean the United States of America, including all of its territories and possessions, unless otherwise specified.

GG. "Government Entity" means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.

HH. "High Volume Account(s)" means any retailer, wholesaler or distributor whose annual or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of a Divestiture Product in the United States of America from the Respondent was, or is projected to be among the top twenty highest of such purchase amounts by the Respondent's U.S. customers on any of the following dates: (i) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; (ii) the end of the last quarter that immediately preceded the Acquisition Date; (iii) the end of the last quarter that immediately preceded the Closing Date for the relevant assets; or (iv) the end of the last quarter following the Acquisition or the Closing Date.

II. "Impax" means Impax Laboratories, Inc. a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 30831 Huntwood Avenue, Hayward, California 94544.

JJ. "Interim Monitor" means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.

KK. "Lamotrigine Product(s)" means the following: the Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Actavis pursuant to ANDA No. 200828, and any supplements, amendments, or revisions thereto.

LL. "Lamotrigine/Ursodiol Product Assets" all rights, title and interest in and to all assets related to the Business within the Geographic Territory of the specified Respondent (as that Respondent is identified in the definition of the respective Divestiture Product) related to each of the Lamotrigine Products and the Ursodiol Products, to the extent legally transferable, including, without limitation, the Categorized Assets related to the Lamotrigine Products and the Ursodiol Products.

MM. "Lamotrigine/Ursodiol Product Divestiture Agreements" means the following:

1. *Asset Purchase Agreement* between Watson Laboratories, Inc. and Impax Laboratories, Inc., dated as of June 9, 2014;

2. *Supply Agreement* between Watson Pharma Private Limited and Impax Laboratories, Inc., dated as of June 9, 2014; and,

all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Lamotrigine/Ursodiol Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Lamotrigine/Ursodiol

Product Divestiture Agreements are contained in Non-Public Appendix I.

NN. "Law" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.

OO. "Manufacturing Designee" means any Person other than a Respondent that has been designated by an Acquirer to manufacture a Divestiture Product for that Acquirer.

PP. "NDC Number(s)" means the National Drug Code number, including both the labeler code assigned by the FDA and the additional numbers assigned by the labeler as a product code for a specific Product.

QQ. "Orders" means this Decision and Order and the related Order to Maintain Assets.

RR. "Order Date" means the date on which the final Decision and Order in this matter is issued by the Commission.

SS. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.

TT. "Patent(s)" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case filed, or in existence, on or before the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

UU. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.

VV. "Product(s)" means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient and/or that is the subject of an Application.

WW. "Product Approval(s)" means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of a Product within the United States of America, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application related to that Product.

XX. "Product Assumed Contracts" means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):

1. that make specific reference to the specified Divestiture Product and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, the specified Divestiture Product from the Respondent unless such contract applies generally to the Respondent's sales of Products to that Third Party;

2. pursuant to which the Respondent had or has as of the Closing Date the ability to independently

purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) or had planned to purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) from any Third Party for use in connection with the manufacture of the specified Divestiture Product;

3. relating to any Clinical Trials involving the specified Divestiture Product;

4. with universities or other research institutions for the use of the specified Divestiture Product in scientific research;

5. relating to the particularized marketing of the specified Divestiture Product or educational matters relating solely to the specified Divestiture Product(s);

6. pursuant to which a Third Party manufactures the specified Divestiture Product on behalf of the Respondent;

7. pursuant to which a Third Party provides any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of the specified Divestiture Product on behalf of the Respondent;

8. pursuant to which a Third Party provides the Product Manufacturing Technology related to the specified Divestiture Product to the Respondent;

9. pursuant to which a Third Party is licensed by the Respondent to use the Product Manufacturing Technology;

10. constituting confidentiality agreements involving the specified Divestiture Product;

11. involving any royalty, licensing, covenant not to sue, or similar arrangement involving the specified Divestiture Product;

12. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the specified Divestiture Product to the Respondent including, but not limited to, consultation arrangements; and/or

13. pursuant to which any Third Party collaborates with the Respondent in the performance of research, Development, marketing, distribution or selling of the specified Divestiture Product or the Business related to such Divestiture Product;

provided, however, that where any such contract or agreement also relates to a Retained Product(s), the Respondent shall assign the Acquirer all such rights under the contract or agreement as are related to the specified Divestiture Product, but concurrently may retain similar rights for the purposes of the Retained Product(s).

YY. "Product Copyrights" means rights to all original works of authorship of any kind directly related to a Divestiture Product and any registrations and applications for registrations thereof within the Geographic Territory, including, but not limited to, the following: all such rights with respect to all promotional materials for healthcare providers, all promotional materials for patients, and educational materials for the sales force; copyrights in all preclinical, clinical and process development data and reports relating to the research and Development of that Product or of any materials used in the research, Development, manufacture, marketing or sale of that Product, including all copyrights in raw data relating to Clinical Trials of that Product, all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or

function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information, promotional and marketing materials, that Product's sales forecasting models, medical education materials, sales training materials, and advertising and display materials; all records relating to employees of a Respondent who accept employment with an Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to that Product or relating to its biology; all copyrights in adverse experience reports and files related thereto (including source documentation) and all copyrights in periodic adverse experience reports and all data contained in electronic databases relating to adverse experience reports and periodic adverse experience reports; all copyrights in analytical and quality control data; and all correspondence with the FDA or any other Agency.

ZZ. "Product Development Reports" means:

1. Pharmacokinetic study reports related to the specified Divestiture Product;

2. Bioavailability study reports (including reference listed drug information) related to the specified Divestiture Product;

3. Bioequivalence study reports (including reference listed drug information) related to the specified Divestiture Product;

4. all correspondence, submissions, notifications, communications, registrations or other filings

made to, received from or otherwise conducted with the FDA relating to the Application(s) related to the specified Divestiture Product;

5. annual and periodic reports related to the above-described Application(s), including any safety update reports;

6. FDA approved Product labeling related to the specified Divestiture Product;

7. currently used or planned product package inserts (including historical change of controls summaries) related to the specified Divestiture Product;

8. FDA approved patient circulars and information related to the specified Divestiture Product;

9. adverse event reports, adverse experience information, descriptions of material events and matters concerning safety or lack of efficacy related to the specified Divestiture Product;

10. summary of Product complaints from physicians related to the specified Divestiture Product;

11. summary of Product complaints from customers related to the specified Divestiture Product;

12. Product recall reports filed with the FDA related to the specified Divestiture Product, and all reports, studies and other documents related to such recalls;

13. investigation reports and other documents related to any out of specification results for any impurities found in the specified Divestiture Product;

14. reports related to the specified Divestiture Product from any consultant or outside contractor engaged to investigate or perform testing for the purposes of resolving any product or process issues, including

without limitation, identification and sources of impurities;

15. reports of vendors of the active pharmaceutical ingredients, excipients, packaging components and detergents used to produce the specified Divestiture Product that relate to the specifications, degradation, chemical interactions, testing and historical trends of the production of the specified Divestiture Product;

16. analytical methods development records related to the specified Divestiture Product;

17. manufacturing batch records related to the specified Divestiture Product;

18. stability testing records related to the specified Divestiture Product;

19. change in control history related to the specified Divestiture Product; and

20. executed validation and qualification protocols and reports related to the specified Divestiture Product.

AAA. "Product Employee Information" means the following, for each Divestiture Product Core Employee, as and to the extent permitted by Law:

1. a complete and accurate list containing the name of each Divestiture Product Core Employee (including former employees who were employed by the specified Respondent within ninety (90) days of the execution date of any Remedial Agreement);

2. with respect to each such employee, the following information:

   a. the date of hire and effective service date;

b. job title or position held;

c. a specific description of the employee's responsibilities related to the relevant Divestiture Product; *provided, however*, in lieu of this description, the specified Respondent may provide the employee's most recent performance appraisal;

d. the base salary or current wages;

e. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year and current target or guaranteed bonus, if any;

f. employment status (*i.e.,* active or on leave or disability; full-time or part-time);

g. and any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees;

3. at the Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

BBB. "Product Intellectual Property" means all of the following related to a Divestiture Product (other than Product Licensed Intellectual Property):

1. Patents;

2. Product Copyrights;

3. Product Trademarks, Product Trade Dress, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and

4. rights to obtain and file for patents, trademarks, and copyrights and registrations thereof and to bring suit against a Third Party for the past, present or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;

5. for any Divestiture Product that is the subject of an NDA, the Drug Master File related to that NDA;

provided, however, "Product Intellectual Property" does not include the corporate names or corporate trade dress of "Actavis" or "Forest" or the related corporate logos thereof, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by the Respondent or the related corporate logos thereof, or general registered images or symbols by which Actavis, or Forest can be identified or defined.

CCC. "Product Licensed Intellectual Property" means the following:

1. Patents that are related to a Divestiture Product that the Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Date;

2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the Geographic Territory to limit the use or disclosure thereof, that are related to a Divestiture Product and that the Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Date; and

3. for any Divestiture Product that is the subject of an ANDA, all Right(s) of Reference or Use that is either owned or controlled by, or has been granted or licensed to the Respondent that is related to the Drug Master File of an NDA of a Product that is the therapeutic equivalent (as that term is defined by the FDA) of the specified Divestiture Product.

DDD. "Product Manufacturing Employees" means all salaried employees of a Respondent who have directly participated in the planning, design, implementation or operational management of the Product Manufacturing Technology of the specified Divestiture Product (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the eighteen (18) month period immediately prior to the Closing Date.

EEE. "Product Manufacturing Technology" means all of the following related to a Divestiture Product:

1. all technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of that Product, including, but not limited to, the following: all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Application(s) conformance and cGMP compliance, and labeling and all other information related to the manufacturing process, and supplier lists;

2. all ingredients, materials, or components used in the manufacture of that Product including the active pharmaceutical ingredient, excipients or packaging materials; and,

3. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer's option, all such equipment used to manufacture that Product.

FFF. "Product Marketing Materials" means all marketing materials used specifically in the marketing or sale of the specified Divestiture Product in the Geographic Territory as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, detailing reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, television masters and other similar materials related to the specified Divestiture Product.

GGG. "Product Research and Development Employees" means all salaried employees of a Respondent who have directly participated in the research, Development, regulatory approval process, or clinical studies of the specified Divestiture Product (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the eighteen (18) month period immediately prior to the Closing Date.

HHH. "Product Scientific and Regulatory Material" means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and Clinical Trial materials and information.

III. "Product Trade Dress" means the current trade dress of a Product, including but not limited to, Product packaging, and the lettering of the Product trade name or brand name.

JJJ. "Product Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for a Product.

KKK. "Proposed Acquirer" means a Person proposed by a Respondent (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission as the acquirer for particular assets or rights required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to this Order.

LLL. "Propranolol Product(s)" means the following: the Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Forest pursuant to ANDA No. 78703, and any supplements, amendments, or revisions thereto.

MMM. "Propranolol Product Assets" means all rights, title and interest in and to all assets related to the Business within the Geographic Territory of Respondent Forest related to each of the respective Propranolol Products, to the extent legally transferable, including, without limitation, the Categorized Assets related to the Propranolol Products.

NNN. "Propranolol Product Divestiture Agreements" means the following:

1. *Asset Purchase Agreement* between Aptalis Pharmatech, Inc. and R.P. Scherer Technologies, LLC (a wholly-owned subsidiary of Catalent Pharma Solutions LLC), dated as of June 9, 2014;

2. *Supply Agreement* between Aptalis Pharmatech, Inc. and Catalent Pharma Solutions LLC, dated as of June 9, 2014; and,

all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Propranolol Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Propranolol Product Divestiture Agreements are contained in Non-Public Appendix I.

OOO. "Remedial Agreement(s)" means the following:

1. any agreement between a Respondent(s) and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;

2. any agreement between a Respondent(s) and a Third Party to effect the assignment of assets or rights of that Respondent(s) related to a Divestiture Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been

approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;

3. any agreement between a Respondent(s) and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement by that Respondent(s) to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of this Order; and/or

4. any agreement between a Respondent(s) and a Third Party to effect the assignment of assets or rights of that Respondent(s) related to a Divestiture Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

PPP. "Retained Product" means any Product(s) other than a Divestiture Product.

QQQ. "Right of Reference or Use" means the authority to rely upon, and otherwise use, an investigation for the purpose of obtaining approval of an Application or to defend an Application, including the ability to make available the underlying raw data from the investigation for FDA audit.

RRR. "Supply Cost" means a cost not to exceed the Respondent's (as that Respondent is identified in the definition of the respective Divestiture Product)

average direct per unit cost in United States dollars of manufacturing the specified Divestiture Product for the twelve (12) month period immediately preceding the Acquisition Date. "Supply Cost" shall expressly exclude any intracompany business transfer profit; *provided, however*, that in each instance where: (i) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, "Supply Cost" means the cost as specified in such Remedial Agreement for that Divestiture Product.

SSS. "Technology Transfer Standards" means requirements and standards sufficient to ensure that the information and assets required to be delivered to an Acquirer pursuant to this Order are delivered in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner. Such standards and requirements shall include, *inter alia*,

1. designating employees of the Respondent(s) knowledgeable about the Product Manufacturing Technology (and all related intellectual property) related to each of the Divestiture Products who will be responsible for communicating directly with the Acquirer or its Manufacturing Designee, and the Interim Monitor (if one has been appointed), for the purpose of effecting such delivery;

2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the specified Divestiture Product that are acceptable to the Acquirer;

3. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all such

Product Manufacturing Technology (including all related intellectual property) to the Acquirer or its Manufacturing Designee; and

4. providing, in a timely manner, assistance and advice to enable the Acquirer or its Manufacturing Designee to:

   a. manufacture the specified Divestiture Product in the quality and quantities achieved by the specified Respondent (as that Respondent is identified in the definition of the specified Divestiture Product), or the manufacturer and/or developer of such Divestiture Product;

   b. obtain any Product Approvals necessary for the Acquirer or its Manufacturing Designee, to manufacture, distribute, market, and sell the specified Divestiture Product in commercial quantities and to meet all Agency-approved specifications for such Divestiture Product; and

   c. receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to the specified Divestiture Product.

TTT. "Third Party(ies)" means any non-governmental Person other than the following: the Respondents; or, the Acquirer of particular assets or rights pursuant to this Order.

UUU. "Ursodiol Product(s)" means the following: the Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Actavis pursuant to ANDA No. 200826, and any supplements, amendments, or revisions thereto.

VVV. "Valeant" means Valeant Pharmaceuticals International, Inc., a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its headquarters address located at 2150

Saint Elzear Blvd. West, Laval, Quebec Canada H7L 4A8, and any wholly owned subsidiary of it, including, (i) Valeant Pharmaceuticals Ireland and (ii) Valeant International Bermuda.

WWW. "Website" means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by a Respondent; *provided, however,* "Website" shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by a Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that a Respondent can convey its rights, if any, therein; or (2) content unrelated to any of the Divestiture Products.

II.

IT IS FURTHER ORDERED that:

XXX. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondents shall divest the Lamotrigine/Ursodiol Product Assets and grant the related Divestiture Product License, absolutely and in good faith, to Impax pursuant to, and in accordance with, the Lamotrigine/Ursodiol Product Divestiture Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Impax or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Lamotrigine/Ursodiol Product Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Lamotrigine/Ursodiol Product Assets to Impax prior to the Order Date, and if, at the time the Commission determines to make this Order final and

effective, the Commission notifies Respondents that Impax is not an acceptable purchaser of the Lamotrigine/Ursodiol Product Assets, then Respondents shall immediately rescind the transaction with Impax, in whole or in part, as directed by the Commission, and shall divest the Lamotrigine/Ursodiol Product Assets within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondents have divested the Lamotrigine/Ursodiol Product Assets to Impax prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Divestiture Product Assets to Impax (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

YYY. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondents shall divest the Propranolol Product Assets and grant the related Divestiture Product License, absolutely and in good faith, to Catalent pursuant to, and in accordance with, the Propranolol Product Divestiture Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Catalent or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Propranolol Product Assets is

incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Propranolol Product Assets to Catalent prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that Catalent is not an acceptable purchaser of the Propranolol Product Assets, then Respondents shall immediately rescind the transaction with Catalent, in whole or in part, as directed by the Commission, and shall divest the Propranolol Product Assets within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondents have divested the Propranolol Product Assets to Catalent prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Propranolol Product Assets to Catalent (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

ZZZ. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondents shall divest the Diltiazem Product Assets (to the extent that such assets are not already owned, controlled, or in the possession of Valeant), absolutely and in good faith, to Valeant pursuant to, and in accordance with, the Diltiazem Product Divestiture Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or

contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Valeant or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Diltiazem Product Assets is incorporated by reference into this Order and made a part hereof.

provided, however, that if Respondents have divested the Diltiazem Product Assets to Valeant prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Diltiazem Product Assets to Valeant (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

AAAA. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the assets required to be divested pursuant to this Order to an Acquirer, and to permit the relevant Acquirer to continue the Business of the Divestiture Product(s) being acquired by that Acquirer;

provided, however, Respondents may satisfy this requirement by certifying that the relevant Acquirer for the Divestiture Product has executed all such agreements directly with each of the relevant Third Parties.

BBBB. Respondents shall:

1. submit to each Acquirer, at Respondents' expense, all Confidential Business Information related to the

Divestiture Products being acquired by that Acquirer;

2. deliver all Confidential Business Information related to the Divestiture Products being acquired by that Acquirer to that Acquirer:

   a. in good faith;

   b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

   c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

3. pending complete delivery of all such Confidential Business Information to the relevant Acquirer, provide that Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Divestiture Products acquired by that Acquirer that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

4. not use, directly or indirectly, any such Confidential Business Information related to the Business of the Divestiture Products other than as necessary to comply with the following:

   a. the requirements of this Order;

   b. Respondents' obligations to each respective Acquirer under the terms of any related Remedial Agreement; or

   c. applicable Law;

5. not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer of the particular Divestiture Products, (ii) other Persons specifically authorized by that Acquirer to receive such information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed); and

6. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the marketing or sales of the Divestiture Products to the marketing or sales employees associated with the Business related to those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products.

CCCC. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondents shall provide, or cause to be provided to that Acquirer in a manner consistent with the Technology Transfer Standards the following:

1. all Product Manufacturing Technology (including all related intellectual property) related to the Divestiture Product(s) being acquired by that Acquirer; and

2. all rights to all Product Manufacturing Technology (including all related intellectual property) that is owned by a Third Party and licensed to any Respondent related to the Divestiture Products being acquired by that Acquirer.

Respondents shall obtain any consents from Third Parties required to comply with this provision. No Respondent shall enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of that Acquirer to use or to acquire from the Third Party the Product Manufacturing Technology (including all related intellectual property) related to the Divestiture

Products acquired by that Acquirer. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to such agreements that allows the Third Party to provide the relevant Product Manufacturing Technology to that Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to that Acquirer.

DDDD. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondents shall:

1. upon reasonable written notice and request from that Acquirer to Respondents, Contract Manufacture and deliver, or cause to be manufactured and delivered, to the requesting Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products related to the Divestiture Products acquired by that Acquirer at Supply Cost, for a period of time sufficient to allow that Acquirer (or the Manufacturing Designee of the Acquirer) to obtain all of the relevant Product Approvals necessary to manufacture in commercial quantities, and in a manner consistent with cGMP, the finished drug product independently of Respondents, and to secure sources of supply of the active pharmaceutical ingredients, excipients, other ingredients, and necessary components listed in Application(s) of the relevant Respondent (as that Respondent is identified in the definition of the respective Divestiture Product) for the Divestiture Product(s) acquired by that Acquirer from Persons other than Respondents;

2. make representations and warranties to such Acquirer that the Contract Manufacture Product(s) supplied by a Respondent pursuant to a Remedial

Agreement meet the relevant Agency-approved specifications. For the Contract Manufacture Product(s) to be marketed or sold in the Geographic Territory, the supplying Respondent shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Contract Manufacture Product(s) supplied to the Acquirer pursuant to a Remedial Agreement by that Respondent to meet cGMP. This obligation may be made contingent upon the Acquirer giving that Respondent prompt written notice of such claim and cooperating fully in the defense of such claim;

provided, however, that a Respondent may reserve the right to control the defense of any such claim, including the right to settle the claim, so long as such settlement is consistent with that Respondent's responsibilities to supply the Contract Manufacture Products in the manner required by this Order; *provided further, however,* that this obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by a Respondent to the Acquirer in an agreement to Contract Manufacture;

provided further, however, that in each instance where: (i) an agreement to divest relevant assets or Contract Manufacture is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on a Respondent's aggregate liability resulting from the failure of the Contract Manufacture Products supplied to the Acquirer pursuant to such Remedial Agreement to meet cGMP;

3. give priority to supplying a Contract Manufacture Product to the relevant Acquirer over

manufacturing and supplying of Products for Respondents' own use or sale;

4. make representations and warranties to each Acquirer that Respondents shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure of the Contract Manufacture Products to be delivered in a timely manner as required by the Remedial Agreement(s) unless Respondents can demonstrate that the failure was beyond the control of Respondents and in no part the result of negligence or willful misconduct by Respondents;

provided, however, that in each instance where: (i) an agreement to divest relevant assets or Contract Manufacture is specifically referenced and attached to this Order and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on a Respondent's aggregate liability for such a failure;

5. during the term of any agreement to Contract Manufacture, upon written request of that Acquirer or the Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate directly to the manufacture of the relevant Contract Manufacture Products that are generated or created after the Closing Date;

6. during the term of any agreement to Contract Manufacture, Respondents shall take all actions as are reasonably necessary to ensure an uninterrupted supply of the Contract Manufacture Product(s);

7. in the event Respondents become (i) unable to supply or produce a Contract Manufacture Product from the facility or facilities originally contemplated under a Remedial Agreement with an Acquirer and (ii) that Product is the subject of an

ANDA, then Respondents shall provide a therapeutically equivalent (as that term is defined by the FDA) Product from another of Respondents' facility or facilities in those instances where such facilities are being used or have previously been used, and are able to be used, by Respondents to manufacture such Product(s);

8. provide access to all information and facilities, and make such arrangements with Third Parties, as are necessary to allow the Interim Monitor to monitor compliance with the obligations to Contract Manufacture;

9. during the term of any agreement to Contract Manufacture, provide consultation with knowledgeable employees of the Respondents and training, at the written request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling that Acquirer (or the Manufacturing Designee of that Acquirer) to obtain all Product Approvals to manufacture the Contract Manufacture Products acquired by that Acquirer in the same quality achieved by, or on behalf of, the relevant Respondent (as that Respondent is identified in the definition of the respective Divestiture Product) and in commercial quantities, and in a manner consistent with cGMP, independently of Respondents and sufficient to satisfy management of the Acquirer that its personnel (or the Manufacturing Designee's personnel) are adequately trained in the manufacture of the Contract Manufacture Products;

The foregoing provisions, II.G.1. - 9., shall remain in effect with respect to each Contract Manufacture Product until the earliest of: (i) the date the Acquirer of that Contract Manufacture Product (or the Manufacturing Designee(s) of that Acquirer), respectively, is approved by the FDA to manufacture and sell such Contract Manufacture Product in the United States and able to manufacture such Contract

Manufacture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents; (ii) the date the Acquirer of a particular Contract Manufacture Product notifies the Commission and Respondents of its intention to abandon its efforts to manufacture such Contract Manufacture Product; (iii) the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer of a particular Contract Manufacture Product has abandoned its efforts to manufacture such Contract Manufacture Product, or (iv) the date five (5) years from the Closing Date.

EEEE. Respondents shall require, as a condition of continued employment post-divestiture of the assets required to be divested pursuant to this Order, that each employee that has had responsibilities related to the marketing or sales of the Divestiture Products within the one (1) year period prior to the Closing Date and each employee that has responsibilities related to the marketing or sales of those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products, in each case who have or may have had access to Confidential Business Information, and the direct supervisor(s) of any such employee sign a confidentiality agreement pursuant to which that employee shall be required to maintain all Confidential Business Information related to the Divestiture Products as strictly confidential, including the nondisclosure of that information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

FFFF. Not later than thirty (30) days after the Closing Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondents' personnel to all of their employees who (i) may be in possession of

such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondents shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the notification to the relevant Acquirer. Respondents shall maintain complete records of all such notifications at Respondents' registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

GGGG. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondents shall:

1. for a period of six (6) months from the Closing Date or until the hiring of twenty (20) Divestiture Product Core Employees by that Acquirer or its Manufacturing Designee, whichever occurs earlier, provide that Acquirer or its Manufacturing Designee with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by that Acquirer. Each of these periods is hereinafter referred to as the "Divestiture Product Core Employee Access Period(s);"

2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer, provide that Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Divestiture Product Core Employee within the

time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay; *provided, however*, that the provision of such information may be conditioned upon the Acquirer's or Proposed Acquirer's written confirmation that it will (i) treat the information as confidential and, more specifically, (ii) use the information solely in connection with considering whether to provide or providing to Divestiture Product Core Employees the opportunity to enter into employment contracts during a Divestiture Product Core Employee Access Period, (iii) restrict access to the information to such of the Acquirer's or Proposed Acquirer's employees who need such access in connection with the specified and permitted use, and (iv) destroy or return the information without retaining copies at such time as the specified and permitted use ends;

3. during the Divestiture Product Core Employee Access Period(s), not interfere with the hiring or employing by that Acquirer or its Manufacturing Designee of the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by that Acquirer, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with that Acquirer or its Manufacturing Designee, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Divestiture Product or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by that Acquirer or its Manufacturing Designee. In addition, Respondents shall not make any counteroffer to such a Divestiture Product Core Employee who has received a written offer of employment from that Acquirer or its Manufacturing Designee;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph shall not prohibit Respondents from continuing to employ any Divestiture Product Core Employee under the terms of that employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer or its Manufacturing Designee to that employee;

4. until the Closing Date, provide all Divestiture Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, manufacture and/or market the Divestiture Product(s) consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Product(s) and to ensure successful execution of the pre-Acquisition plans for that Divestiture Product(s). Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Closing Date(s) for the divestiture of the assets related to the Divestiture Product has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

provided, however, that this Paragraph does not require nor shall be construed to require Respondents to terminate the employment of any employee or to prevent Respondents from continuing to employ the Divestiture Product Core Employees in connection with the Acquisition; and

5. for a period of one (1) year from the Closing Date, not, directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer or its Manufacturing Designee with any amount of responsibility related to a Divestiture Product ("Divestiture Product Employee") to terminate his or her employment relationship with the Acquirer

or its Manufacturing Designee; or hire any Divestiture Product Employee;

provided, however, Respondents may hire any former Divestiture Product Employee whose employment has been terminated by the Acquirer or its Manufacturing Designee or who independently applies for employment with a Respondent, as long as that employee was not solicited in violation of the nonsolicitation requirements contained herein;

provided further, *however*, that any Respondent may do the following: (i) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Divestiture Product Employees; or (ii) hire a Divestiture Product Employee who contacts any Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from any Respondent.

HHHH. Until Respondents complete the divestitures required by this Order and fully provide, or cause to be provided, the Product Manufacturing Technology related to a particular Divestiture Product to the relevant Acquirer,

1. Respondents shall take actions as are necessary to:

   a. maintain the full economic viability and marketability of the Businesses associated with that Divestiture Product;

   b. minimize any risk of loss of competitive potential for that Business;

   c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to that Divestiture Product;

   d. ensure the assets related to each Divestiture Product are provided to the relevant Acquirer in a manner without disruption, delay, or

impairment of the regulatory approval processes related to the Business associated with each Divestiture Product;

e. ensure the completeness of the transfer and delivery of the Product Manufacturing Technology; and

2. Respondents shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Businesses associated with that Divestiture Product.

IIII. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against an Acquirer or the Divestiture Product Releasee(s) of that Acquirer under the following:

1. any Patent owned by or licensed to a Respondent as of the day after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;

2. any Patent that was filed or in existence on or before the Acquisition Date that is acquired by or licensed to a Respondent at any time after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;

if such suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or

(ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer. Each Respondent shall also covenant to that Acquirer that as a condition of any assignment or license from that Respondent to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue that Acquirer or the related Divestiture Product Releasee(s) under such Patents, if the suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer. The provisions of this Paragraph do not apply to any Patent owned by, acquired by or licensed to or from a Respondent that claims inventions conceived by and reduced to practice after the Acquisition Date.

JJJJ. Upon reasonable written notice and request from an Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondents to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation brought by a Third Party related to the Product Intellectual Property related to any of the Divestiture Product(s) acquired by that Acquirer, if such litigation would have the potential to interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within,

import into, export from, or the supply, distribution, or sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer.

KKKK. For any patent infringement suit filed prior to the Closing Date in which any Respondent is alleged to have infringed a Patent of a Third Party or any potential patent infringement suit from a Third Party that any Respondent has prepared or is preparing to defend against as of the Closing Date, and where such a suit would have the potential directly to limit or interfere with the relevant Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Products; or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of such Divestiture Product(s), that Respondent shall:

1. cooperate with that Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from that Respondent in connection with obtaining resolution of any pending patent litigation related to that Divestiture Product;

2. waive conflicts of interest, if any, to allow that Respondent's outside legal counsel to represent that Acquirer in any ongoing patent litigation related to that Divestiture Product; and

3. permit the transfer to that Acquirer of all of the litigation files and any related attorney work-product in the possession of that Respondent's outside counsel related to that Divestiture Product.

LLLL. The purpose of the divestiture of the Divestiture Product Assets and the provision of the related Product Manufacturing Technology (for the Contract

Manufacture Products) and the related obligations imposed on the Respondents by this Order is:

1. to ensure the continued use of such assets for the purposes of the Business associated with each Divestiture Product within the Geographic Territory; and

2. to create a viable and effective competitor, that is independent of Respondents in the Business of each Divestiture Product within the Geographic Territory; and,

3. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

MMMM. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements.

NNNN. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

OOOO. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

PPPP. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Divestiture Product that is a Contract Manufacture Product, until the earliest of: (i) the date the Acquirer of that Divestiture Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture and sell that Divestiture Product and able to manufacture the Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents; (ii) the date the Acquirer of that

Divestiture Product notifies the Commission and Respondents of its intention to abandon its efforts to manufacture that Divestiture Product; or (iii) the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture that Divestiture Product;

provided, however, that, the Interim Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

QQQQ. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.

RRRR. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

SSSS. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses,

claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

TTTT. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by each Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order. *provided, however*, beginning ninety (90) days after Respondents have filed their final report pursuant to Paragraph VII.B., and ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining FDA approval to manufacture each Divestiture Product and obtaining the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents.

UUUU. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

VVVV. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

WWWW. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.

XXXX. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

YYYY. The Interim Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

ZZZZ. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Divestiture Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or

otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

AAAAA. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

BBBBB. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

CCCCC. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the

assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional

obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless

against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order or the Order to Maintain Assets in this matter.

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

DDDDD. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

EEEEE. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

FFFFF. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, each Respondent shall assure that its own counsel (including its own in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

A. To assure such Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or

B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Divestiture Products or the assets and Businesses associated with those Divestiture Products;

provided, *however*, that a Respondent may disclose such information as necessary for the purposes set forth in this Paragraph V pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, *however,* that pursuant to this Paragraph V, the Respondent needing such access to original documents shall: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if that Acquirer withholds such agreement unreasonably); and (ii) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VI.

IT IS FURTHER ORDERED that:

A. Any Remedial Agreement shall be deemed incorporated into this Order.

B. Any failure by a Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

C. Respondents shall include in each Remedial Agreement related to each of the Divestiture Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligation to the Acquirer pursuant to this Order.

D. For each Divestiture Product that is a Contract Manufacture Product, Respondents shall include in the Remedial Agreement(s) related to that Divestiture Product a representation from the Acquirer that the Acquirer shall use commercially reasonable efforts to secure the FDA approval(s) necessary to manufacture, or to have manufactured by a Third Party, in commercial quantities, each such Divestiture Product, as applicable, and to have any such manufacture to be

independent of the Respondents, all as soon as reasonably practicable.

E. No Respondent shall seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Divestiture Products a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.

F. No Respondent shall modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VII.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Within thirty (30) days after the Order Date, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II.A., II.B., II.C., II.D., II.E.1. – II.E.3, II.F., II.G., II.I. II.J. and II.K., Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed.

Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Order, including:

1. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by the Respondents to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and

2. a detailed description of the timing for the completion of such obligations.

C. One (1) year after the Order Date, annually for the next nine years on the anniversary of the Order Date, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with the Order.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

D. any proposed dissolution of a Respondent;

E. any proposed acquisition, merger or consolidation of a Respondent; or

F. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject

to any legally recognized privilege, and upon written request and upon five (5) days' notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on August 29, 2024.

By the Commission.

NON-PUBLIC APPENDIX I

AGREEMENTS RELATED TO THE DIVESTITURES

[Redacted From the Public Record Version, But Incorporated By Reference]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Actavis plc ("Actavis") that is designed to remedy the anticompetitive effects in three current generic pharmaceutical markets and two future markets resulting from Actavis' acquisition of Forest Laboratories, Inc. ("Forest"). Under the terms of the proposed Consent Agreement, the parties are required to: (1) return all of Forest's rights and assets related to generic diltiazem hydrochloride (AB4) to Valeant Pharmaceuticals International, Inc. ("Valeant"), (2) divest all of Actavis' rights and assets to generic ursodiol and generic lamotrigine ODT to Impax Laboratories, Inc. ("Impax"), and (3) divest all of Forest's rights and assets to generic propranolol hydrochloride to Catalent Pharma Solutions, Inc. ("Catalent").

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the proposed Consent Agreement, along with the comments received, in order to make a final decision as to whether it should withdraw from the proposed Consent Agreement, or make final the Decision and Order ("Order").

Pursuant to an Agreement and Plan of Merger dated February 17, 2014, Actavis plans to acquire, 100% of the voting securities of Forest for a total value of approximately $25 billion (the "Proposed Acquisition"). The Commission alleges in its Complaint that the Proposed Acquisition, if consummated, would violate 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, by lessening competition in three current relevant product markets: (1) generic diltiazem hydrochloride extended release capsules (AB4) (generic Tiazac) ("generic diltiazem hydrochloride (AB4)"; (2) generic ursodiol tablets ("generic ursodiol"); and (3) generic propranolol hydrochloride extended release capsules ("generic propranolol hydrochloride"), and the future relevant market of lamotrigine orally disintegrating tablets

("ODT") and its generic equivalent. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Proposed Acquisition.

The Products and Structure of the Markets

The Proposed Acquisition would reduce the number of suppliers in three current relevant markets, each of which has only a limited number of market participants. It would also likely delay the introduction of generic competition against Lamictal ODT, the branded lamotrigine orally disintegrating tablets marketed by Forest.

Generic versions of drugs are usually launched after a branded product's patents expire, or a generic supplier successfully challenges such patents in court or reaches a legal settlement with the branded manufacturer. When only one generic product is available, the price for the branded product acts as a ceiling above which the generic manufacturer cannot price its product. During this period, the branded product competes directly with the generic. Once multiple generic suppliers enter a market, the branded drug manufacturer usually ceases to provide any competitive constraint on the prices for generic versions of the drug. Rather, the generic suppliers compete only against each other. In generic pharmaceutical product markets, price generally decreases as the number of generic competitors increases. Accordingly, the reduction in the number of suppliers within each relevant market would likely have a direct and substantial anticompetitive effect on pricing.

The Proposed Acquisition would reduce current competition in markets for three currently marketed generic prescription drugs—generic diltiazem hydrochloride (AB4), which is used to treat hypertension and chronic stable angina, generic ursodiol, which is used to treat primary biliary cirrhosis of the liver, and generic propranolol hydrochloride, an extended release drug indicated for the treatment of hypertension. The structure of these markets is as follows:

- The generic diltiazem hydrochloride (AB4) market currently has three suppliers: Actavis, Forest, and Sun

Pharmaceutical Industries, Ltd. The Proposed Acquisition would reduce the number of suppliers in this market from three to two.

- The generic ursodiol market currently has four suppliers: Actavis, Forest, which distributes its product through Prasco Laboratories, Glenmark Pharmaceuticals, Ltd., and Par Pharmaceutical Companies. The Proposed Acquisition would reduce the number of suppliers in this market from four to three.

- The generic propranolol hydrochloride market currently has four suppliers: Actavis, Forest, which distributes its product through Breckenridge Pharmaceutical, LLC, Rouses Point Pharmaceuticals, and Upsher-Smith Laboratories. The Proposed Acquisition would reduce the number of suppliers in this market from four to three.

In addition to reducing current competition in three generic prescription markets, the proposed transaction would significantly reduce competition in the future market of lamotrigine orally disintegrating tablets:

- Lamictal ODT is a lamotrigine orally disintegrating tablet indicated for seizures. Forest currently manufactures Lamictal ODT for GlaxoSmithKline plc ("GSK"). GSK owns the New Drug Application for Lamictal ODT and markets the product. Actavis holds the only approved Abbreviated New Drug Application to market generic lamotrigine ODT. Thus, Actavis appears likely to be the first generic entrant and would be the sole competitor to Forest/GSK's branded Lamictal ODT product for a significant period of time. The Acquisition would likely delay or preclude the entry of Actavis' generic product.

Entry

Entry into the markets for the Products would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. The combination of drug development times and regulatory requirements, including U.S. Food and Drug Administration

("FDA") approval, is costly and lengthy. Industry participants also note that expertise and facilities associated with manufacturing extended release products and orally disintegrating tablets is sufficiently specialized that a relatively small number of firms participate in such markets.

Effects

The Proposed Acquisition would likely cause significant anticompetitive harm to consumers in the relevant generic pharmaceutical markets by eliminating current and/or future competition in concentrated existing generic markets or in future generic markets. In generic pharmaceuticals markets, price is heavily influenced by the number of participants with sufficient supply. Market participants consistently characterize generic drug markets as commodity markets in which the number of generic suppliers has a direct impact on pricing. Customers and competitors alike have confirmed that the prices of the generic pharmaceutical products at issue continue to decrease with new entry even after a number of suppliers have entered these generic markets. Further, customers generally believe that having at least four suppliers in a generic pharmaceutical market produces more competitive prices than if fewer suppliers are available to them.

The evidence shows that anticompetitive effects are likely to result from the Proposed Acquisition due to a decrease in the number of independent competitors in the markets at issue. In each of the current generic prescription markets, industry participants have indicated that the presence of Forest as a competitor has allowed them to negotiate lower prices from other suppliers, including Actavis, and has allowed them to locate additional supply in times of product shortages from their existing suppliers.

The evidence also shows that the Proposed Acquisition would eliminate significant future competition between Actavis and Forest in the market for lamotrigine orally disintegrating tablets because, absent the Proposed Acquisition, Actavis likely would have been the first generic supplier to enter the market.

By eliminating the significant current and future competition between the parties, the Proposed Acquisition will likely cause

U.S. consumers to pay significantly higher prices for these generic drugs, absent a remedy.

The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in each of the relevant product markets. Pursuant to the Consent Agreement, the parties are required to return all of Forest's rights and assets related to generic diltiazem hydrochloride (AB4) to Valeant, divest all of Actavis' rights and assets to generic ursodiol and generic lamotrigine ODT to Impax, and provide all of Forest's rights and assets to generic propranolol hydrochloride to Catalent. The parties must accomplish these divestitures and relinquish their rights no later than ten days after the Proposed Acquisition is consummated.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. If the Commission determines that Valeant, Impax, or Catalent is not an acceptable acquirer, or that the manner of the divestiture is not acceptable, the proposed D&O requires the parties to unwind the sale and then divest the products within six months of the date the D&O becomes final to another Commission-approved acquirer or acquirers. The proposed D&O further allows the Commission to appoint a trustee in the event the parties fail to divest the products.

The proposed Consent Agreement contains several provisions to help ensure that the divestitures are successful. With regard to generic diltiazem hydrochloride (AB4), the proposed Consent Agreement requires that Forest transfer to Valeant all confidential business information and requires that Actavis and Forest take all actions that are necessary to maintain the full viability and marketability of the product until Valeant commences the distribution, marketing, and sale of the product. With regard to generic ursodiol, generic lamotrigine ODT, and generic propranolol hydrochloride (termed "Contract Manufacture Products" in the Consent Agreement), the proposed Consent Agreement requires Actavis and Forest to manufacture and supply generic ursodiol and generic lamotrigine ODT to Impax and

generic propranolol to Catalent following the divestiture while they seek the necessary FDA approval.

The Commission has agreed to appoint Frank Civille to act as an interim monitor to assure that Actavis and Forest expeditiously comply with all of their obligations and perform all of their responsibilities pursuant to the Consent Agreement. In order to ensure that the Commission remains informed about the status of the transfer of rights and assets, the Consent Agreement requires Actavis and Forest to file reports with the interim monitor who will report in writing to the Commission concerning performance by the parties of their obligations under the Consent Agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

LORNAMEAD, INC.

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

Docket No. C-4488; File No. 122 3255
Complaint, September 16, 2014 – Decision, September 16, 2014

This consent order addresses Lornamead, Inc.'s advertising, marketing, and sale of a line of products including "Lice Shield Shampoo & Conditioner in 1," "Lice Shield Leave In Spray," and "Lice Shield Gear Guard" (collectively, "Lice Shield products"). The complaint alleges that respondent's claims in various advertisements regarding the efficacy of Lice Shield products to deter lice are unsubstantiated and thus violate the FTC Act. The consent order requires respondent to pay five hundred thousand dollars ($500,000) to be deposited in the United States Treasury as disgorgement. The order also prohibits respondent from representing that use of any drug, cosmetic, or pesticide is effective in: a) preventing pediculosis, b) eliminating or reducing the risk of pediculosis by a specific percentage or amount, or c) repelling all lice, or a specific percentage or amount of lice from a person's head, unless the representation is non-misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true.

Participants

For the *Commission*: *Linda K. Badger* and *Sylvia Kundig.*

For the *Respondent*: *Leonard L. Gordon* and *Gary D. Hailey, Venable, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Lornamead, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Lornamead, Inc., is a Delaware corporation with its principal office or place of business at 175 Cooper Avenue, Tonawanda, New York 14150.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including the "Lice Shield" product line. This line of products has embraced a number of products for use on hair or head gear, including: "Lice Shield Leave In Spray;" "Lice Shield Gear Guard;" and "Lice Shield Shampoo & Conditioner in 1." Lice Shield products are "cosmetics" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Lice Shield products are hair care products that contain citronella and other ingredients. Respondent promotes Lice Shield products as a way to avoid, or to reduce the risk of, getting head lice. All Lice Shield products are intended for use as deterrents, and they do not kill lice, kill lice eggs, or treat an infestation.

5. Respondent has disseminated or has caused to be disseminated advertisements for Lice Shield products including, but not necessarily limited to, the attached Exhibits A through H. These advertisements have contained the following statements and depictions:

a. Internet Banner Advertisement (Exhibit A)

Lice Shield: REPELS HEAD LICE: **The Best Way To Treat Lice? Avoid Getting Them!** [Depicts child dressed in knight's helmet with shield, wielding a sword, while cartoon lice bounce off helmet.]

b. Website Advertisement (Exhibit B)

THE BEST WAY TO TREAT LICE IS TO AVOID GETTING THEM Introducing Lice Shield - a new line of hair care products demonstrated to repel lice while, at the same time, gently cleansing and conditioning hair. Specially formulated with a proprietary blend of natural oil extracts that repel lice, regular use of Lice Shield will dramatically reduce the

likelihood your child will contract head lice when there is an outbreak.

Don't Get Lice, Get Lice Shield. [Depicts child dressed in knight's helmet with shield, wielding a sword, while cartoon lice bounce off helmet.]

c. Website Advertisement: FAQ's (Exhibit C)

ITCHING FOR ANSWERS?

. . .

HOW EFFECTIVE IS LICE SHIELD AT HELPING TO REPEL HEAD LICE? Scientific studies have shown that the use of Lice Shield Shampoo & Conditioner in 1 and Lice Shield Leave In Spray decreases the chance of lice infestation by over 80%.

d. Print Advertisement (Exhibit D)

Don't Get Lice, Get Lice Shield.

AVOIDING IS BETTER THAN TREATING.

Specially formulated with a proprietary blend of essential oils to repel lice, Lice Shield is remarkably effective, easy to use, and free of harmful pesticides.

Lice Shield products are scientifically proven to provide over 80% lice repellency, dramatically reducing a child's chance of catching lice during an outbreak.

The Results

Treatment Arm	Repellency Rate	P-Value
Control (tap water) vs. Untreated	--	0.29
Lice Shield Shampoo vs. Untreated	53%	0.04
Lice Shield Leave In Spray vs. Untreated	86%	<0.0001

For best results, use both products in combination.

School lice outbreaks are a fact of life, but now you can help reduce the risk of infestation.

e. Print Advertisement (Exhibit E)

The Best Way To Treat Lice Is To Avoid Getting Them.

Be Prepared with Lice Shield

Scientifically shown to repel head lice
Reducing a child's chance of catching lice during an outbreak.

Safe & pesticide free
Formulated with a proprietary blend of essential oils to repel lice.

Created with kids' scalps in mind
A Shampoo and Leave In Spray, gentle enough to use every day, with a refreshing, clean fragrance. And, Gear Guard, a spray product developed specially for your child's possessions.

Be Prepared with Lice Shield
School lice outbreaks are a fact of life, but now you can reduce the risk of infestation.

Don't Get Lice, Get Lice Shield.

f. Lice Shield Shampoo and Conditioner In 1 Product Label (Exhibit F)

[Front] **Lice Shield**
REPELS HEAD LICE

Shampoo & Conditioner in 1

. . .

[Back] **The best way to
treat lice is to avoid
getting them.**

. . .

For best results, use daily with Lice Shield Leave In Spray.

g. Lice Shield Leave In Spray Product Label (Exhibit G)

[Front] **Lice Shield**
REPELS HEAD LICE

LEAVE IN SPRAY

. . .

[Back] **The best way to
treat lice is to avoid
getting them.**

. . .

For best results, use daily after Lice Shield Shampoo & Conditioner in 1.

h. Lice Shield Gear Guard Product Label (Exhibit H)

[Front] ***Now shield your stuff!***

Lice Shield
REPELS HEAD LICE

GEAR GUARD

. . .

-*Use on hats, helmets, clothing*

. . .

[Back] **The best way to treat lice is to avoid getting them.**

GEAR GUARD
***Specially formulated to help repel lice from all types of objects.**

6. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that:

a. When used as directed, Lice Shield products prevent head lice infestations;

b. When used as directed, Lice Shield products decrease the likelihood or chance of a head lice infestation by over 80%;

c. When used as directed, Lice Shield products dramatically reduce the likelihood or chance of a head lice infestation during an outbreak;

d. When used as directed, Lice Shield products reduce the likelihood or chance of a head lice infestation during an outbreak;

e. Spraying Lice Shield Gear Guard on objects, such as hats or helmets, reduces the likelihood or chance of a head lice infestation; and

f. Lice Shield Shampoo & Conditioner In 1 and Lice Shield Leave In Spray are most effective when they are used together.

7. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set

forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

9. Through the means described in Paragraph 5, respondent has represented, expressly or by implication that scientific tests prove that, when used as directed, Lice Shield products significantly reduce the likelihood or chance of a head lice infestation.

10. In truth and in fact, scientific tests do not prove that, when used as directed, Lice Shield products significantly reduce the likelihood or chance of a head lice infestation.

11. The representation set forth in Paragraph 9 was, and is, false or misleading.

12. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, this sixteenth day of September, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeny not participating.

Complaint

Exhibit A

EXHIBIT A

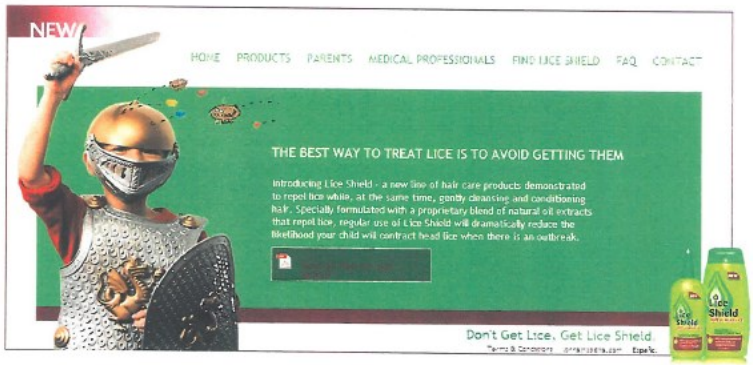
LICE SHIELD BANNER ADS

LORNAMEAD-FTC 000067

Exhibit B

EXHIBIT B

LICESHIELD.NET – JULY 2010 – APRIL 2012



LORNAMEAD-FTC 000003

Complaint

Exhibit C

EXHIBIT C

LORNAMEAD-FTC 000011

Complaint

Exhibit D

EXHIBIT D

Complaint

Exhibit E

EXHIBIT E

Complaint

Exhibit F

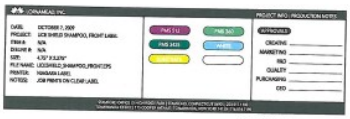
EXHIBIT F - 1

LICE SHIELD SHAMPOO & CONDITIONER IN 1 FRONT LABEL

4.75" x 2.375"

TRIMMED LABEL

4.75" x 2.375"



LORNAMEAD-FTC 000464

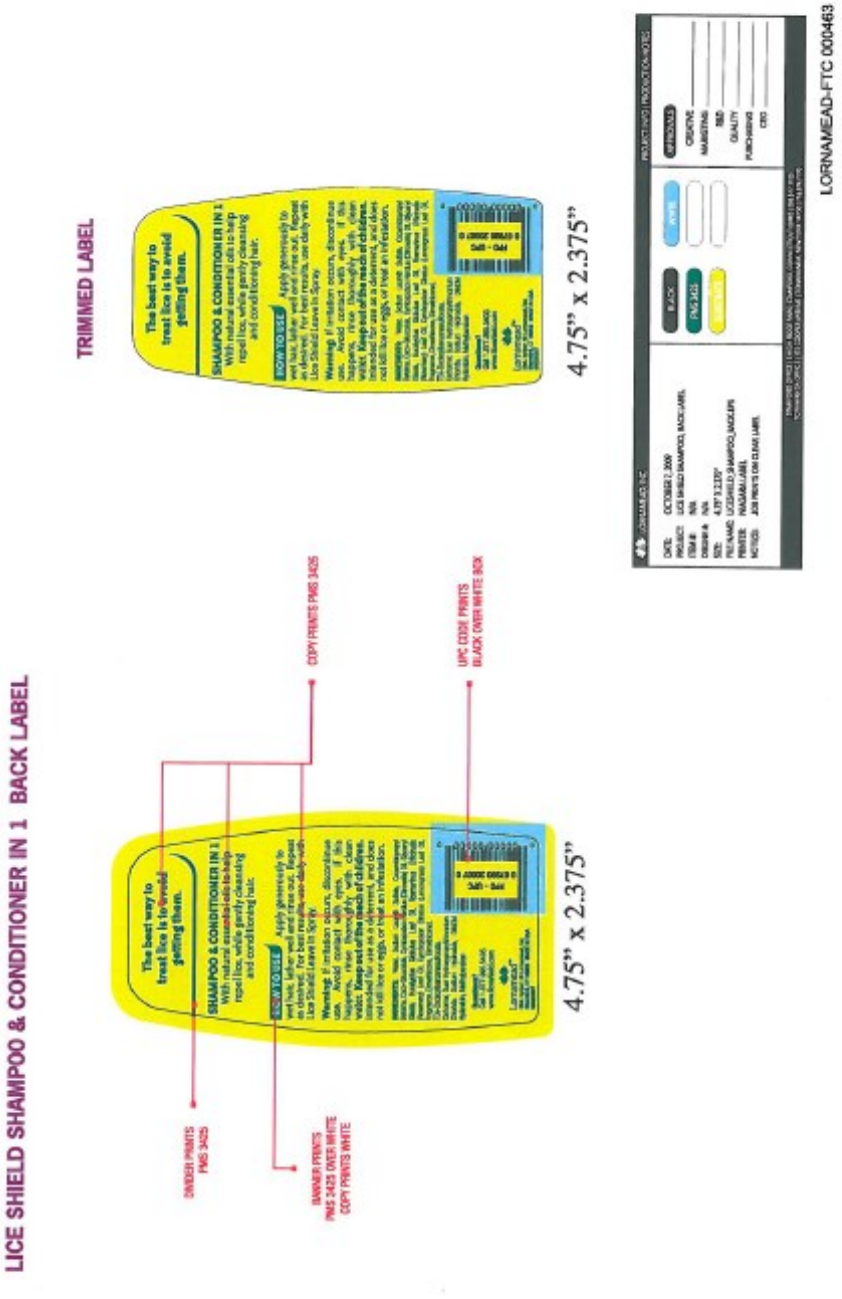

LICE SHIELD SHAMPOO & CONDITIONER IN 1 BACK LABEL
TRIMMED LABEL
4.75" x 2.375"
4.75" x 2.375"
COPY PRINTS PMS 3425
UPC CODE PRINTS BLACK OVER WHITE BOX
BANNER PRINTS PMS 3425
BANNER PRINTS PMS 3425 OVER WHITE COPY PRINTS WHITE
LORNAMEAD-FTC 000463

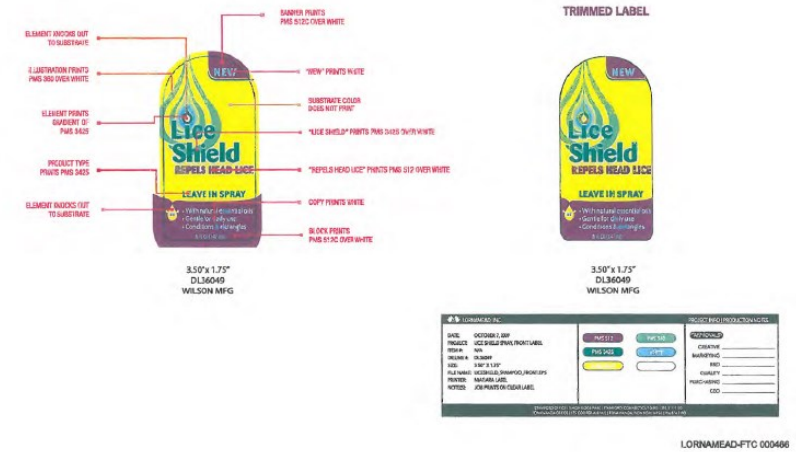
EXHIBIT F - 2

Complaint

Exhibit G

EXHIBIT G - 1

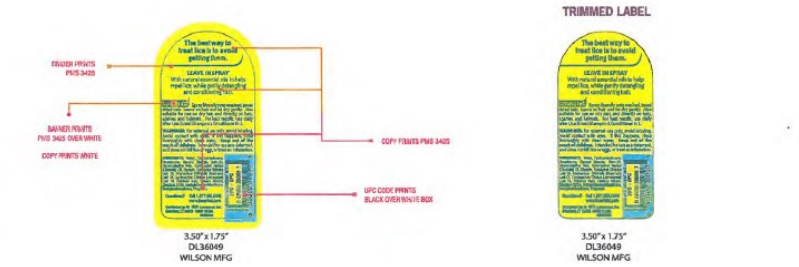
LICE SHIELD SPRAY FRONT LABEL



LORNAMEAD-FTC 000466

EXHIBIT G - 2

LICE SHIELD SPRAY BACK LABEL



LORNAMEAD-FTC 000468

Exhibit H

DECISION AND ORDER

The Federal Trade Commission ("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 a complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violations of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("consent agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 Federal Trade Commission Act, and that a 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 thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Lornamead, Inc., is a Delaware corporation with its principal office or place of business at 175 Cooper Avenue, Tonawanda, New York 14150.

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

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "respondent" shall mean Lornamead, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.

B. "Adequate and well-controlled human clinical study" means a human clinical study that is randomized, double-blind, placebo controlled, and conducted by persons qualified by training and experience to conduct such study.

C. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

D. "Covered Product" means any drug, cosmetic, or pesticide, including but not limited to Lice Shield Products.

E. "Drug" and "cosmetic" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55. "Pesticide" means any product intended to prevent, destroy, repel, or mitigate any pest.

F. "Essentially Equivalent Product" means a product that contains the identical ingredients, except for inactive ingredients (e.g., binders, colors, fillers, excipients), in the same form and dosage, and with the same route of administration (e.g., orally, sublingually), as the Covered Product; *provided that* the Covered Product may contain additional ingredients if reliable scientific evidence generally accepted by experts in the field demonstrates that the amount and combination of additional ingredients is unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

G. "Lice Shield Products" means any lice repellent product containing essential oils such as citronella, including, but not limited to Lice Shield Shampoo & Conditioner in 1, Lice Shield Leave In Spray, Lice Shield Gear Guard, and Lice Shield Long Lasting Spot Stick.

H. "Pediculosis" means infestation of the scalp by head lice.

I. The term "including" in this order means "without limitation."

J. The terms "and" and "or" in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that the Covered Product is effective in: a) preventing pediculosis, b) eliminating or reducing the risk of pediculosis by a specific percentage or amount, or c) repelling all lice, or a specific percentage or amount of lice, from a person's head, unless the representation is non-misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Part I, competent and reliable scientific evidence shall consist of at least one adequate and well-controlled human clinical study of the Covered Product, or of an Essentially Equivalent Product, that conforms to an acceptable design and protocol and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true. Respondent shall have the burden of proving that a product satisfies the definition of Essentially Equivalent Product.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, other than representations covered by Part I of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that the Covered Product will reduce the risk of a head lice infestation or repel head lice, unless the representation is non-misleading, and, at the time of making such representation, the respondent possesses and relies upon competent and reliable scientific evidence that is sufficient

in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part II, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, other than representations covered under Part I of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the health benefits of any Covered Product unless the representation is non-misleading, and, at the time of making such representation, the respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part III, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of any product name or

endorsement, depiction, or illustration, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

V.

IT IS FURTHER ORDERED that nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI.

IT IS FURTHER ORDERED that respondent shall pay to the Federal Trade Commission the sum of five hundred thousand dollars ($500,000). This payment shall be made in the following manner:

A. The payment shall be made by electronic funds transfer within ten (10) days after the date that this order becomes final and in accordance with instructions provided by a representative of the Federal Trade Commission.

B. In the event of default on any obligation to make payment under this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.

C. All funds paid to the Commission pursuant to this order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress to consumers (which shall be

the first priority for dispensing the funds set forth above) is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to respondent's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Respondent shall be notified as to how the funds are distributed, but shall have no right to challenge the Commission's choice of remedies under this Part. Respondent shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment under this Part shall be deemed a payment of any fine, penalty, or punitive assessment.

D. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

E. Respondent agrees that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy case. Respondent further agrees that the facts alleged in the complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this order shall have collateral estoppel effect for such purposes.

F. In accordance with 31 U.S.C. § 7701, respondent is hereby required, unless it has done so already, to furnish to the Commission its taxpayer identifying number, which shall be used for the purposes of collecting and reporting on any delinquent amount

arising out of respondent's relationship with the government.

G. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VII.

IT IS FURTHER ORDERED that respondent Lornamead, Inc., and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, upon reasonable notice and request, make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

IT IS FURTHER ORDERED that respondent Lornamead, Inc., and its successors and assigns shall deliver a copy of this order to all current and, for the next three (3) years, all future principals, officers, directors, and other employees having primary responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent Lornamead, Inc., and its successors and assigns shall deliver this

order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

IT IS FURTHER ORDERED that respondent Lornamead, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of Lornamead, Inc., FTC File Number 122-3255. *Provided, however*, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

X.

IT IS FURTHER ORDERED that respondent Lornamead, Inc., and its successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

XI.

This order will terminate on September 16, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeny not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing consent order from Lornamead, Inc. ("respondent"). The proposed consent order has been placed on the public record for

thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves respondent's advertising, marketing, and sale of a line of products including "Lice Shield Shampoo & Conditioner in 1," "Lice Shield Leave In Spray," and "Lice Shield Gear Guard" (collectively, "Lice Shield products"). Respondent marketed Lice Shield products in retail stores and on the Internet. According to the FTC's proposed complaint, respondent promoted Lice Shield products, which contain essential oils such as citronella, as a way to avoid, or to reduce the risk of, getting a head lice infestation ("pediculosis"). Lice Shield products are intended strictly as a means to deter lice, and not as a means to treat an existing head lice infestation. These products do not kill head lice or their eggs.

The proposed complaint alleges that respondent made several claims in various advertisements regarding the efficacy of Lice Shield products to deter lice, including that applying the products to hair or head gear: prevents head lice infestations; decreases the likelihood of an infestation by over 80%; dramatically reduces the likelihood of an infestation during an outbreak; or reduces the likelihood of an infestation during an outbreak. Respondent also allegedly represented that Lice Shield products are more effective when consumers use both the shampoo and the leave-in spray. The proposed complaint alleges that these claims are unsubstantiated and thus violate the FTC Act. Further, the proposed complaint alleges that respondent represented, in various advertisements, that scientific tests prove that, when used as directed, Lice Shield products will significantly reduce the likelihood or chance of a head lice infestation. The complaint alleges that this claim is false and thus violates the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Part I of the order prohibits respondent from representing that use of any drug, cosmetic, or pesticide is effective in: a) preventing pediculosis, b) eliminating or reducing

the risk of pediculosis by a specific percentage or amount, or c) repelling all lice, or a specific percentage or amount of lice from a person's head, unless the representation is non-misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Part I, competent and reliable scientific evidence shall consist of at least one adequate and well-controlled human clinical study of the product, or of an essentially equivalent product, that conforms to an acceptable design and protocol and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

Part II of the proposed order prohibits any representation, other than those covered under Part I, that use of any drug, cosmetic, or pesticide, will reduce the risk of a head lice infestation or repel lice, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results.

Part III of the proposed order prohibits any representation, other than those covered under Part I, about the health benefits of any drug, cosmetic, or pesticide, unless the representation is non-misleading, and at the time of making such representation, the respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified

persons, and that are generally accepted in the profession to yield accurate and reliable results.

Part IV of the proposed order addresses the allegedly false claim that scientific tests prove that use of Lice Shield products significantly reduces the risk or likelihood of a head lice infestation. Part IV prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, when advertising any drug, cosmetic, or pesticide.

Part V of the proposed order states that the order does not prohibit respondent from making representations for any drug that are permitted in labeling for that drug under any tentative or final standard promulgated by the Food and Drug Administration ("FDA"), or under any new drug application approved by the FDA.

Part VI of the proposed order requires respondent to pay five hundred thousand dollars ($500,000) to the Commission. This payment shall be deposited in the United States Treasury as disgorgement.

Parts VII, VIII, IX, and X of the proposed order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XI provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

AKORN, INC.

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

Docket No. C-4479; File No. 141 0162
Complaint, August 1, 2014 – Decision, September 16, 2014

This consent order addresses the $324 million acquisition by Akorn, Inc. of certain assets of VersaPharm Inc. The complaint alleges that the acquisition violates Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening future competition in the sale of generic rifampin. The consent order requires Akorn to divest its rights related to generic rifampin to Watson Laboratories, Inc., a wholly-owned subsidiary of Actavis plc.

Participants

For the *Commission*: *Jasmine Y. Rosner.*

For the *Respondents*: *Marin Boney* and *Mark Kovner, Kirkland & Ellis LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Akorn, Inc. ("Akorn"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire VPI Holdings Corp., the parent company of VersaPharm Incorporated ("VersaPharm"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Akorn is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its headquarters address located at 1925 West Field Court, Suite 300, Lake Forest, Illinois 60045.

2. Respondent is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. ACQUIRED COMPANY

3. VersaPharm is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 1775 West Oak Parkway, Suite 800, Marietta, Georgia 30062.

4. VersaPharm is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. PROPOSED ACQUISITION

5. Pursuant to an Agreement and Plan of Merger dated May 9, 2014, Akorn proposes to acquire 100% of the voting securities of VersaPharm for approximately $324 million (the "Acquisition"). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

IV. RELEVANT MARKETS

6. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the development, license, manufacture, marketing, distribution, and sale of generic rifampin 600 mg/vial injection ("generic rifampin").

7. For the purposes of this Complaint, the United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in the relevant line of commerce.

V. MARKET STRUCTURE

8. Generic rifampin is an injectable pharmaceutical used to treat all forms of tuberculosis. Currently, the U.S. Food and Drug Administration ("FDA") has approved only three firms to sell generic rifampin in the United States: VersaPharm, Mylan Inc., and Bedford Laboratories. Respondent is one of a limited number of firms awaiting FDA approval for a generic rifampin product, which is expected in the foreseeable future. As a result, the Acquisition would reduce the number of likely future suppliers of generic rifampin.

VI. ENTRY CONDITIONS

9. Entry into the relevant market described in Paragraphs 6 and 7 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. De novo entry would not take place in a timely manner because the combination of drug development and FDA approval requirements would be lengthy. Although a limited number of firms other than Respondent plan to enter the relevant market in the future, such entry would not be sufficient to prevent the competitive harm likely to result from the Acquisition. In addition, no other entry is likely to occur such that it would be timely and sufficient to deter or counteract the competitive harm likely to result from the Acquisition.

VII. EFFECTS OF THE ACQUISITION

10. The effect of the Acquisition, if consummated, would likely be to substantially lessen competition or to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by eliminating future competition between Akorn and VersaPharm in the market for generic rifampin, thereby (a) increasing the likelihood that the combined entity would forego or delay the launch of this product and (b) increasing the likelihood that the combined entity would

delay, eliminate, or otherwise reduce the substantial additional price competition that would have resulted from an additional supplier of this product.

VIII. VIOLATIONS CHARGED

11. The Agreement and Plan of Merger described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. The Acquisition described in Paragraph 5, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of August, 2014 issues its Complaint against said Respondent.

By the Commission.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Akorn, Inc. ("Akorn" or "Respondent") of the voting securities of VersaPharm Incorporated ("VersaPharm"), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent 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; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent

Orders ("Consent Agreement"), containing 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 Consent Agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its headquarters address located at 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

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

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

A. "Akorn" means Akorn, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions,

groups and affiliates in each case controlled by Akorn, Inc. (including, without limitation, Akorn Enterprises, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Akorn shall include VersaPharm.

B. "VersaPharm" means VersaPharm Incorporated, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by VersaPharm Incorporated, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondent" means Akorn.

D. "Commission" means the Federal Trade Commission.

E. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.

F. "Monitor" means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order

G. "Orders" means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

Order to Maintain Assets

A. Until Respondent fully transfers and delivers the Akorn Rifampin Product Assets to the Acquirer, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of Akorn Rifampin Product Assets, to minimize any risk of loss of competitive potential for the Akorn Rifampin Product Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of Akorn Rifampin Product Assets except for ordinary wear and tear. Respondent shall not sell, transfer, encumber, or otherwise impair the Akorn Rifampin Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Akorn Rifampin Product Assets.

B. Until Respondent fully transfers and delivers the Akorn Rifampin Product Assets to the Acquirer, Respondent shall:

1. provide, or cause to be provided to the Acquirer all correspondence, submissions, notifications, communications, registrations, or other filings made to, received from, or otherwise conducted with the FDA relating to the Application(s) related to the Akorn Rifampin Product in an organized, comprehensive, complete, useful, timely (i.e., ensuring no unreasonable delays in transmission), and meaningful manner; and

2. cooperate with, and assist, Acquirer in responding to all correspondence, submissions, notifications, communications, registrations, or other filings received from, or otherwise conducted with the FDA relating to the Application(s) related to the Akorn Rifampin Product in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner, with copies and notice to the Monitor and the Acquirer of such contacts with the FDA in an organized, comprehensive,

complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner.

C. Until Respondent fully transfers and delivers the Akorn Rifampin Product Assets to the Acquirer, Respondent shall:

1. not use, directly or indirectly, any Confidential Business Information related to the Business of the Akorn Rifampin Product other than as necessary to comply with the following:

   a. the requirements of this Order;

   b. Respondent's obligations to the Acquirer under the terms of any related Remedial Agreement; or

   c. applicable Law;

2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by the Acquirer to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed);

3. not provide, disclose, or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Akorn Rifampin Product to the employees associated with the Business related to the Retained Product that is the therapeutic equivalent (as that term is defined by the FDA) of the Akorn Rifampin Product; and

4. institute procedures and requirements to ensure that the above-described employees:

   a. do not provide, disclose or otherwise make available, directly or indirectly, any

Confidential Business Information in contravention of this Order to Maintain Assets; and

b. do not solicit, access, or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.

D. Not later than thirty (30) days from the earlier of: (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondent shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Akorn Rifampin Product by Respondent's personnel to all of its employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.

E. Respondent shall give the above-described notification by e-mail with return receipt requested or similar transmission and keep a file of those receipts for one (1) year after the Closing Date. Respondent shall provide a copy of the notification to the Acquirer. Respondent shall maintain complete records of all such notifications at Respondent's registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondent shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to Respondent's personnel.

F. Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.

G. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability, and competitiveness of the Akorn Rifampin Product Assets within the Geographic Territory through the full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Akorn Rifampin Product Assets within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Akorn Rifampin Product Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

A. Quantic Regulatory Services, LLC (F. William Rahe) shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent and attached as Appendix A ("Monitor Agreement") and Non-Public Appendix B ("Monitor Compensation"). The Monitor is appointed to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements.

B. Not later than ten (10) days after the appointment of the Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

C. If a Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Monitor shall serve until the date of completion by Respondent of the divestiture of the Akorn Rifampin Product Assets, the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Divestiture Product that is a Contract Manufacture Product, until the earliest of: (i) the date the Acquirer of the Akorn Rifampin Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture and sell the Akorn Rifampin Product and able to manufacture the Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent; (ii) the date the Acquirer of the Akorn Rifampin Product notifies the Commission and Respondent of its intention to abandon its efforts to manufacture the Akorn Rifampin Product; or (iii) the date of written notification from staff of the Commission that the Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture the Akorn Rifampin Product;

Provided, however, that, with respect to each Divestiture Product, the Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to extend or modify this period as

may be necessary or appropriate to accomplish the purposes of the Orders.

D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Orders.

E. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

F. Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

G. Respondent shall report to the Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the

Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders; *provided, however*, beginning ninety (90) days after Respondent filed its final report pursuant to Paragraph VII.B of the Decision and Order, and ninety (90) days thereafter, the Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining FDA approval to manufacture the Akorn Rifampin Product and obtaining the ability to manufacture the Akorn Rifampin Product in commercial quantities, in a manner consistent with cGMP, independently of the Respondent.

H. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

I. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

J. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:

1. The Commission shall select the substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld.

If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.

2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order in the same manner as provided in this Paragraph.

K. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

L. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every sixty (60) days thereafter until Respondent has fully complied with this Order to Maintain Assets, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders. Respondent shall submit at the same time a copy of their report concerning compliance with the Orders to the Monitor, if any Monitor has been appointed. Respondent shall include in their reports, among other things that are required from time to

time, a detailed description of their efforts to comply with the relevant paragraphs of the Orders, including:

A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by the Respondent to the relevant Acquirer, and (iii) the agreement to Contract Manufacture; and

B. a detailed description of the timing for the completion of such obligations.

Provided, however, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph VII of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of a Respondent;

B. any proposed acquisition, merger or consolidation of the Respondent; or

C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to the Respondent made to its principal United States offices, registered office of its United States

subsidiary, or its headquarters address, the Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

A. three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. the day after the later of (i) the divestiture of all of the Akorn Rifampin Product Assets, as required by and described in Paragraph II.A. of the Decision and Order, has been completed, or (ii) the Order Date; or

C. the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

APPENDIX A
MONITOR AGREEMENT

NON-PUBLIC APPENDIX B
MONITOR COMPENSATION

[Redacted From the Public Record Version, But Incorporated By Reference]

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Akorn, Inc. ("Akorn" or "Respondent") of the voting securities of VersaPharm Incorporated ("VersaPharm"), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Akorn 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; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such

Complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Akorn is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its headquarters address located at 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

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

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

A. "Akorn" means Akorn, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Akorn, Inc. (including, without limitation, Akorn Enterprises, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Akorn shall include VersaPharm.

B. "VersaPharm" means VersaPharm Incorporated, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by VersaPharm Incorporated, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Actavis" means Actavis plc, a corporation organized, existing and doing business under and by virtue of the laws of Ireland, with its world headquarters located in Dublin, Ireland, and its United States headquarters address located at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, New Jersey 07054.

D. "Watson" means Watson Laboratories, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, New Jersey 07054. Watson Laboratories, Inc. is a wholly owned subsidiary of Actavis plc.

E. "Respondent" means Akorn.

F. "Commission" means the Federal Trade Commission.

G. "Acquirer(s)" means the following:

1. a Person specified by name in this Order to acquire particular assets or rights that the Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective; or

2. a Person approved by the Commission to acquire particular assets or rights that the Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

H. "Acquisition" means Respondent's acquisition of the voting securities of VersaPharm. Respondent entered an *Agreement and Plan of Merger* between Akorn, Inc., Akorn Enterprises II, Inc., VPI Holdings Corp., and Tailwind Management LP, dated as of May 9, 2014, that was submitted to the Commission.

I. "Acquisition Date" means the date on which the Acquisition is consummated.

J. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term "Agency" includes, without limitation, the United States Food and Drug Administration ("FDA").

K. "Akorn Rifampin Product" means the Product in Development, manufactured, owned or controlled by Respondent pursuant to ANDA No. 206736 filed with the FDA on December 27, 2013, and any supplements, amendments, or revisions thereto.

L. "Akorn Rifampin Product Assets" means all rights, title and interest in and to all assets related to the Business within the Geographic Territory of Respondent related to the Akorn Rifampin Product, to the extent legally transferable, including, without limitation, the following assets and rights of Respondent, as such assets and rights are in existence as of the date Respondent signs the Consent Agreement in this matter and as are maintained by Respondent in accordance with the Order to Maintain Assets until the Closing Date:

1. all rights to all of the Applications related to the Akorn Rifampin Product;

2. all Product Intellectual Property related to the Akorn Rifampin Product that is not Product Licensed Intellectual Property;

3. all Product Approvals related to the Akorn Rifampin Product;

4. all Product Manufacturing Technology related to the Akorn Rifampin Product that is not Product Licensed Intellectual Property;

5. all Product Marketing Materials related to the Akorn Rifampin Product;

6. all Product Scientific and Regulatory Material related to the Akorn Rifampin Product;

7. all Website(s) related exclusively to the Akorn Rifampin Product;

8. the content related exclusively to the Akorn Rifampin Product that is displayed on any Website that is not dedicated exclusively to the Akorn Rifampin Product;

9. a list of all of the NDC Numbers related to the Akorn Rifampin Product, and rights, to the extent permitted by Law, and to the extent they are assigned to the Respondent:

    a. to require Respondent to discontinue the use of those NDC Numbers in the sale or marketing of the Akorn Rifampin Product *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement;

    b. to prohibit Respondent from seeking from any customer any type of cross-referencing of those

NDC Numbers with any Retained Product(s) *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law;

c. to seek to change any cross-referencing by a customer of those NDC Numbers with a Retained Product (including the right to receive notification from the Respondent of any such cross-referencing that is discovered by Respondent);

d. to seek cross-referencing from a customer of the Respondent's NDC Numbers related to the Akorn Rifampin Product with the Acquirer's NDC Numbers related to the Akorn Rifampin Product;

e. to approve the timing of Respondent's discontinued use of those NDC Numbers in the sale or marketing of the Akorn Rifampin Product *except* for returns, rebates, allowances, and adjustments for the Akorn Rifampin Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement; and

f. to approve any notification(s) from Respondent to any customer(s) regarding the use or discontinued use of such NDC numbers by Respondent prior to such notification(s) being disseminated to the customer(s);

10. all Product Development Reports related to the Akorn Rifampin Product;

11. at the option of the Acquirer of the Akorn Rifampin Product, all Product Assumed Contracts related to the Akorn Rifampin Product (copies to

be provided to that Acquirer on or before the Closing Date);

12. all patient registries related to the Akorn Rifampin Product, and any other systematic active post-marketing surveillance program to collect patient data, laboratory data, and identification information required to be maintained by the FDA to facilitate the investigation of adverse effects related to the Akorn Rifampin Product (including, without limitation, any Risk Evaluation Mitigation Strategy as defined by the FDA); and

13. all of the Respondent's books, records, and files directly related to the foregoing;

Provided, however, that "Akorn Rifampin Product Assets" shall not include: (i) documents relating to Respondent's general business strategies or practices relating to the conduct of its Business of generic pharmaceutical Products, where such documents do not discuss with particularity the Akorn Rifampin Product; (ii) administrative, financial, and accounting records; (iii) quality control records that are determined not to be material to the manufacture of the Akorn Rifampin Product by the Monitor or the Acquirer of the Akorn Rifampin Product; (iv) any real estate and the buildings and other permanent structures located on such real estate; and (vi) all Product Licensed Intellectual Property;

Provided further, however, that in cases in which documents or other materials included in the assets to be divested contain information: (i) that relates both to the Akorn Rifampin Product and to Retained Products or Businesses of Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Akorn Rifampin Product; or (ii) for which Respondent has a legal obligation to retain the original copies, the Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing

this information. In instances where such copies are provided to the Acquirer of the Akorn Rifampin Product, Respondent shall provide that Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that Respondent provides the Acquirer with the above-described information without requiring Respondent completely to divest itself of information that, in content, also relates to Retained Product(s).

M. "Akorn Rifampin Product Divestiture Agreements" means the following:

1. The Asset Purchase Agreement between Akorn, Inc. and Watson Laboratories, Inc., dated as of July 21, 2014; and

2. The Manufacturing Supply Agreement attached as an exhibit to the above-described Asset Purchase Agreement to be executed as of the Closing Date;

all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Akorn Rifampin Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Akorn Rifampin Product Divestiture Agreements are contained in Non-Public Appendix A.

N. "Application(s)" means "New Drug Application" ("NDA"), "Abbreviated New Drug Application" ("ANDA"), "Supplemental New Drug Application" ("SNDA"), or "Marketing Authorization Application" ("MAA"), the applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 314 *et seq*., and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between the Respondent and the FDA related thereto. The term "Application" also includes an "Investigational New Drug Application" ("IND") filed or to be filed with the FDA pursuant to

21 C.F.R. Part 312, and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between the Respondent and the FDA related thereto.

O. "Business" means the research, Development, manufacture, commercialization, distribution, marketing, importation, advertisement, and sale of a Product.

P. "cGMP" means current Good Manufacturing Practice as set forth in the United States Federal Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.

Q. "Clinical Trial(s)" means a controlled study in humans of the safety or efficacy of a Product, and includes, without limitation, such clinical trials as are designed to support expanded labeling or to satisfy the requirements of an Agency in connection with any Product Approval and any other human study used in research and Development of a Product.

R. "Closing Date" means the date on which Respondent (or a Divestiture Trustee) consummates the transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets related to the Akorn Rifampin Product to an Acquirer pursuant to this Order.

S. "Confidential Business Information" means all information owned by, or in the possession or control of, Respondent that is not in the public domain and that is directly related to the conduct of the Business related to the Akorn Rifampin Product. The term "Confidential Business Information" *excludes* the following:

1. information relating to Respondent's general business strategies or practices that does not discuss with particularity the Akorn Rifampin Products;

2. information specifically excluded from the Akorn Rifampin Product Assets conveyed to the Acquirer; and

3. information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws.

T. "Contract Manufacture" means:

1. to manufacture, or to cause to be manufactured, a Contract Manufacture Product on behalf of an Acquirer;

2. to manufacture, or to cause to be manufactured, a Product that is the therapeutic equivalent (as that term is defined by the FDA) and in the identical dosage strength, formulation and presentation as a Contract Manufacture Product on behalf of an Acquirer; and

3. to provide, or to cause to be provided, any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of a Contract Manufacture Product on behalf of an Acquirer.

U. "Contract Manufacture Product(s)" means :

1. the Akorn Rifampin Product; and

2. any ingredient, material, or component used in the manufacture of the Akorn Rifampin Product, including the active pharmaceutical ingredient, excipients, or packaging materials;

Provided however, that with the consent of the Acquirer of the Akorn Rifampin Product, Respondent may substitute a therapeutic equivalent (as that term is defined by the FDA) form of such Product in

performance of Respondent's agreement to Contract Manufacture.

V. "Development" means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including any government price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.

W. "Direct Cost" means a cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. "Direct Cost" to the Acquirer for its use of any of Respondent's employees' labor shall not exceed the average hourly wage rate for such employee;

Provided, however, in each instance where (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, "Direct Cost" means such cost as is provided in such Remedial Agreement for the Akorn Rifampin Product.

X. "Divestiture Product License" means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) under a Remedial Agreement with rights to sublicense to all Product Licensed Intellectual Property and all Product Manufacturing Technology related to general

manufacturing know-how that was owned, licensed, or controlled by Respondent:

1. to research and Develop the Akorn Rifampin Products for marketing, distribution, or sale within the Geographic Territory;

2. to use, make, have made, distribute, offer for sale, promote, advertise, or sell the Akorn Rifampin Products within the Geographic Territory;

3. to import or export the Akorn Rifampin Products to or from the Geographic Territory to the extent related to the marketing, distribution, or sale of the Akorn Rifampin Products in the Geographic Territory; and

4. to have the Akorn Rifampin Products made anywhere in the world for distribution or sale within, or imported into, the Geographic Territory;

Provided, however, that for any Product Licensed Intellectual Property that is the subject of a license from a Third Party entered into by the Respondent prior to the Acquisition, the scope of the rights granted hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to Respondent.

Y. "Divestiture Product Releasee(s)" means the following Persons:

1. the Acquirer for the assets related to the Akorn Rifampin Product;

2. any Person controlled by or under common control with the Acquirer; and

3. any Manufacturing Designees, licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Acquirer, or Acquirer-affiliated entities.

Z. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.

AA. "Domain Name" means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration; *Provided, however*, "Domain Name" shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.

BB. "Drug Master Files" means the information submitted to the FDA as described in 21 C.F.R. Part 314.420 related to a Product.

CC. "Geographic Territory" shall mean the United States of America, including all of its territories and possessions, unless otherwise specified.

DD. "Government Entity" means any federal, state, local, or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.

EE. "Law" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.

FF. "Manufacturing Designee" means any Person other than the Respondent that has been designated by an Acquirer to manufacture a Divestiture Product for that Acquirer.

GG. "Monitor" means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.

HH. "NDC Number(s)" means the National Drug Code number, including both the labeler code assigned by

the FDA and the additional numbers assigned by the labeler as a product code for a specific Product.

II. "Orders" means this Decision and Order and the related Order to Maintain Assets.

JJ. "Order Date" means the date on which the Decision and Order in this matter is issued by the Commission.

KK. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.

LL. "Patent(s)" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention, and applications for certificates of invention and statutory invention registrations, in each case filed, or in existence, on or before the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions, and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

MM. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups, or affiliates thereof.

NN. "Product(s)" means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient and/or that is the subject of an Application.

OO. "Product Approval(s)" means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by

applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of a Product within the United States of America, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application related to that Product.

PP. "Product Assumed Contracts" means all contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):

1. that make specific reference to the Akorn Rifampin Product and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, the Akorn Rifampin Product from the Respondent unless such contract applies generally to the Respondent's sales of Products to that Third Party;

2. pursuant to which Respondent had or has as of the Closing Date the ability to independently purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) or had planned to purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) from any Third Party for use in connection with the manufacture of the Akorn Rifampin Product;

3. relating to any Clinical Trials involving the Akorn Rifampin Product;

4. with universities or other research institutions for the use of the Akorn Rifampin Product in scientific research;

5. relating to the particularized marketing of the Akorn Rifampin Product or educational matters relating solely to the Akorn Rifampin Product(s);

6. pursuant to which a Third Party manufactures the Akorn Rifampin Product on behalf of Respondent;

7. pursuant to which a Third Party provides any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of the Akorn Rifampin Product on behalf of Respondent;

8. pursuant to which a Third Party provides the Product Manufacturing Technology related to the Akorn Rifampin Product to Respondent;

9. pursuant to which a Third Party is licensed by Respondent to use the Product Manufacturing Technology;

10. constituting confidentiality agreements involving the Akorn Rifampin Product;

11. involving any royalty, licensing, covenant not to sue, or similar arrangement involving the Akorn Rifampin Product;

12. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture, or distribution of the Akorn Rifampin Product to the Respondent including, but not limited to, consultation arrangements; and/or

13. pursuant to which any Third Party collaborates with the Respondent in the performance of research, Development, marketing, distribution or selling of the Akorn Rifampin Product or the Business related to the Akorn Rifampin Product;

Provided, however, that where any such contract or agreement also relates to a Retained Product(s),

Respondent shall assign the Acquirer all such rights under the contract or agreement as are related to the Akorn Rifampin Product, but concurrently may retain similar rights for the purposes of the Retained Product(s).

QQ. "Product Copyrights" means rights to all original works of authorship of any kind directly related to the Akorn Rifampin Product and any registrations and applications for registrations thereof within the Geographic Territory, including, but not limited to, all such rights with respect to all promotional materials for healthcare providers, all promotional materials for patients, and educational materials for the sales force; copyrights in all preclinical, clinical, and process development data and reports relating to the research and Development of that Product or of any materials used in the research, Development, manufacture, marketing, or sale of that Product, including all copyrights in raw data relating to Clinical Trials of that Product, all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports, and statistical programs (if any) used for marketing and sales research; all copyrights in customer information, promotional and marketing materials, that Product's sales forecasting models, medical education materials, sales training materials, and advertising and display materials; all records relating to employees of Respondent who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to that Product or relating to its biology; all copyrights in adverse experience reports and files related thereto (including source documentation) and

all copyrights in periodic adverse experience reports and all data contained in electronic databases relating to adverse experience reports and periodic adverse experience reports; all copyrights in analytical and quality control data; and all correspondence with the FDA or any other Agency.

RR. "Product Development Reports" means:

1. pharmacokinetic study reports related to the Akorn Rifampin Product;

2. bioavailability study reports (including reference listed drug information) related to the Akorn Rifampin Product;

3. bioequivalence study reports (including reference listed drug information) related to the Akorn Rifampin Product;

4. all correspondence, submissions, notifications, communications, registrations or other filings made to, received from, or otherwise conducted with, the FDA relating to the Application(s) related to the Akorn Rifampin Product;

5. annual and periodic reports related to the above-described Application(s), including any safety update reports;

6. FDA approved Product labeling related to the Akorn Rifampin Product;

7. currently used or planned Product package inserts (including historical change of controls summaries) related to the Akorn Rifampin Product;

8. FDA-approved patient circulars and information related to the Akorn Rifampin Product;

9. adverse event reports, adverse experience information, descriptions of material events and

matters concerning safety or lack of efficacy related to the Akorn Rifampin Product;

10. summary of Product complaints from physicians related to the Akorn Rifampin Product;

11. summary of Product complaints from customers related to the Akorn Rifampin Product;

12. Product recall reports filed with the FDA related to the Akorn Rifampin Product, and all reports, studies and other documents related to such recalls;

13. investigation reports and other documents related to any out of specification results for any impurities found in the Akorn Rifampin Product;

14. reports related to the Akorn Rifampin Product from any consultant or outside contractor engaged to investigate or perform testing for the purposes of resolving any product or process issues, including without limitation, identification and sources of impurities;

15. reports of vendors of the active pharmaceutical ingredients, excipients, packaging components, and detergents used to produce the Akorn Rifampin Product that relate to the specifications, degradation, chemical interactions, testing, and historical trends of the production of the Akorn Rifampin Product;

16. analytical methods development records related to the Akorn Rifampin Product;

17. manufacturing batch records related to the Akorn Rifampin Product;

18. stability testing records related to the Akorn Rifampin Product;

19. change in control history related to the Akorn Rifampin Product; and

20. executed validation and qualification protocols and reports related to the Akorn Rifampin Product.

SS. "Product Intellectual Property" means all of the following related to a Divestiture Product (other than Product Licensed Intellectual Property):

1. Patents;

2. Product Copyrights;

3. Product Trademarks, Product Trade Dress, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information; and

4. rights to obtain and file for patents, trademarks, and copyrights and registrations thereof and to bring suit against a Third Party for the past, present, or future infringement, misappropriation, dilution, misuse, or other violations of any of the foregoing;

Provided, however, "Product Intellectual Property" does not include the corporate names or corporate trade dress of "Akorn" or "VersaPharm" or the related corporate logos thereof, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by Respondent or the related corporate logos thereof, or general registered images or symbols by which Respondent, or VersaPharm can be identified or defined.

TT. "Product Licensed Intellectual Property" means the following:

1. Patents that are related to the Akorn Rifampin Product that the Respondent can demonstrate have

been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Date; and

2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the Geographic Territory to limit the use or disclosure thereof, that are related to the Akorn Rifampin Product and that the Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Date.

UU. "Product Manufacturing Technology" means all of the following related to the Akorn Rifampin Divestiture Product:

1. all technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable, or otherwise) related to the manufacture of that Product, including, but not limited to, all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Application(s) conformance and cGMP compliance, and labeling and all other information related to the manufacturing process, and supplier lists;

2. all ingredients, materials, or components used in the manufacture of that Product including the

active pharmaceutical ingredient, excipients, or packaging materials; and

3. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer's option, all such equipment used to manufacture that Product.

VV. "Product Marketing Materials" means all marketing materials used specifically in the marketing or sale of the Akorn Rifampin Product in the Geographic Territory, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, detailing reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter, or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, television masters, and other similar materials related to the Akorn Rifampin Product.

WW. "Product Scientific and Regulatory Material" means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory, and Clinical Trial materials and information.

XX. "Product Trade Dress" means the current trade dress of a Product including, but not limited to, Product packaging and the lettering of the Product trade name or brand name.

YY. "Product Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and

applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for a Product.

ZZ. "Remedial Agreement(s)" means the following:

1. any agreement between Respondent and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;

2. any agreement between Respondent and a Third Party to effect the assignment of assets or rights of Respondent related to the Akorn Rifkamin Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;

3. any agreement between Respondent and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including

without limitation, any agreement by Respondent to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of this Order; and/or

4. any agreement between the Respondent and a Third Party to effect the assignment of assets or rights of the Respondent related to a Divestiture Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

AAA. "Retained Product" means any Product(s) other than the Akorn Rifampin Product.

BBB. "Supply Cost" means a cost not to exceed the Respondent's average direct per unit cost in United States dollars of manufacturing the Akorn Rifampin Product for the twelve (12) month period immediately preceding the Acquisition Date. "Supply Cost" shall expressly exclude any intracompany business transfer profit; *Provided, however*, that in each instance where: (i) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, "Supply Cost" means the cost as specified in such Remedial Agreement for the Akorn Rifampin Product.

CCC. "Technology Transfer Standards" means requirements and standards sufficient to ensure that the information and assets required to be delivered to an Acquirer pursuant to this Order are delivered in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner. Such standards and requirements shall include, *inter alia*,

1. designating employees of the Respondent knowledgeable about the Product Manufacturing Technology (and all related intellectual property) related to each of the Divestiture Products who will be responsible for communicating directly with the Acquirer, or its Manufacturing Designee, and the Monitor (if one has been appointed), for the purpose of effecting such delivery;

2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the Akorn Rifampin Product that are acceptable to the Acquirer;

3. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all such Product Manufacturing Technology (including all related intellectual property) to the Acquirer or its Manufacturing Designee; and

4. providing, in a timely manner, assistance and advice to enable the Acquirer or its Manufacturing Designee to:

    a. manufacture the Akorn Rifampin Product in the quality and quantities achieved by Respondent, or the manufacturer and/or developer of the Akorn Rifampin Product;

    b. obtain any Product Approvals necessary for the Acquirer or its Manufacturing Designee to manufacture, distribute, market, and sell the Akorn Rifampin Product in commercial quantities and to meet all Agency-approved specifications for the Akorn Rifampin Product; and

c. receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to the Akorn Rifampin Product.

DDD. "Third Party(ies)" means any non-governmental Person other than the Respondent, or the Acquirer.

EEE. "Website" means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondent; *Provided, however,* "Website" shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by the Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that Respondent can convey its rights, if any, therein; or (2) content unrelated to the Akorn Rifampin Product.

II.

IT IS FURTHER ORDERED that:

FFF. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondent shall divest the Akorn Rifampin Product Assets and grant the related Divestiture Product License, absolutely and in good faith, to Watson pursuant to, and in accordance with, the Akorn Rifampin Product Divestiture Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Watson or to reduce any obligations of Respondent under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Akorn Rifampin Product Assets is incorporated by reference into this Order and made a part hereof;

Provided, however, that if Respondent has divested the Akorn Rifampin Product Assets to Watson prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent that Watson is not an acceptable purchaser of the Akorn Rifampin Product Assets, then Respondent shall immediately rescind the transaction with Watson, in whole or in part, as directed by the Commission, and shall divest the Akorn Rifampin Product Assets within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

Provided further, however, that if Respondent has divested the Akorn Rifampin Product Assets to Watson prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Akorn Rifampin Product Assets to Watson (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

GGG. Prior to the Closing Date, Respondent shall secure all consents and waivers from all Third Parties that are necessary to permit Respondent to divest the assets required to be divested pursuant to this Order to an Acquirer, and to permit the relevant Acquirer to continue the Business of the Akorn Rifampin Product;

Provided, however, Respondent may satisfy this requirement by certifying that the relevant Acquirer for the Divestiture Product has executed all such agreements directly with each of the relevant Third Parties.

HHH. Respondent shall:

1. submit to the Acquirer, at Respondent's expense, all Confidential Business Information related to the Akorn Rifampin Product being acquired;

2. deliver all Confidential Business Information related to the Akorn Rifampin Product being acquired:

   a. in good faith;

   b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

   c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

3. pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Akorn Rifampin Product that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

4. not use, directly or indirectly, any such Confidential Business Information related to the Business of the Akorn Rifampin Product other than as necessary to comply with the following:

   a. the requirements of this Order;

   b. Respondent's obligations to the Acquirer under the terms of the Remedial Agreement; or

   c. applicable Law;

5. not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer of the Akorn Rifampin Product, (ii) other Persons specifically authorized by the Acquirer to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed); and

6. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the marketing or sales of the Akorn Rifampin Product to the marketing or sales employees associated with the Business related to those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Akorn Rifampin Product.

III. Until the Acquirer (or the Manufacturing Designee of the Acquirer) (i) obtains all of the relevant Product Approvals necessary to manufacture in commercial quantities, and in a manner consistent with cGMP, the finished drug product independently of Respondent, and (ii) identifies sources of supply of the active pharmaceutical ingredients, excipients, other ingredients, and necessary components listed in the Application(s) of Respondent for the Akorn Rifampin Product, Respondent shall:

1. provide, or cause to be provided to the Acquirer all correspondence, submissions, notifications, communications, registrations, or other filings made to, received from, or otherwise conducted with the FDA relating to the Application(s) related to the Akorn Rifampin Product in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner; and

2. cooperate with, and assist, Acquirer in responding to all correspondence, submissions, notifications, communications, registrations, or other filings received from, or otherwise conducted with the

FDA relating to the Application(s) related to the Akorn Rifampin Product in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner, with copies and notice to the Monitor and the Acquirer of such contacts with the FDA in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner.

JJJ. Respondent shall provide, or cause to be provided to the Acquirer in a manner consistent with the Technology Transfer Standards the following:

1. all Product Manufacturing Technology (including all related intellectual property) related to the Akorn Rifampin Product; and

2. all rights to all Product Manufacturing Technology (including all related intellectual property) that is owned by a Third Party and licensed to Respondent related to the Akorn Rifampin Product.

Respondent shall obtain any consents from Third Parties required to comply with this provision. Respondent shall not enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of that Acquirer to use or to acquire from the Third Party the Product Manufacturing Technology (including all related intellectual property) related to the Akorn Rifampin Product acquired by the Acquirer. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology. Not later than ten (10) days after the Closing Date, Respondent shall grant a release to each Third Party that is subject to such agreements that allows the Third Party to provide the relevant Product Manufacturing Technology to that Acquirer. Within five (5) days of the execution of each such release,

Respondent shall provide a copy of the release to that Acquirer.

KKK. Respondent shall:

1. No later than the date on which the Acquirer obtains all of the relevant Product Approvals necessary to manufacture in commercial quantities (and in a manner consistent with cGMP) the Akorn Rifampin Product, Contract Manufacture and deliver, or cause to be manufactured and delivered, to the Acquirer, in a timely manner and under reasonable terms and conditions, a supply of the Akorn Rifampin Product(s) at Supply Cost;

2. continue to Contract Manufacture and deliver such supply of Akorn Rifampin Product(s) to the Acquirer, until the earlier of (i) thirty (30) months from the date of Respondent's first delivery of the Akorn Rifampin Product to the Acquirer, or (ii) the date the Acquirer (or the Manufacturing Designee of the Acquirer) obtains all of the relevant Product Approvals necessary to manufacture in commercial quantities, and in a manner consistent with cGMP, the finished drug product independently of Respondent, and to secure sources of supply of the active pharmaceutical ingredients, excipients, other ingredients, and necessary components listed in the Application(s) of Respondent for the Akorn Rifampin Product ("Acquirer Rifampin Manufacture Date");

3. make representations and warranties to such Acquirer that the Contract Manufacture Product supplied by Respondent pursuant to a Remedial Agreement meet the relevant Agency-approved specifications. For the Contract Manufacture Product to be marketed or sold in the Geographic Territory, the Respondent shall agree to indemnify, defend, and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses, or losses alleged to result from the

failure of the Contract Manufacture Product supplied to the Acquirer pursuant to a Remedial Agreement by the Respondent to meet cGMP. This obligation may be made contingent upon the Acquirer giving the Respondent prompt written notice of such claim and cooperating fully in the defense of such claim;

Provided, however, that Respondent may reserve the right to control the defense of any such claim, including the right to settle the claim, so long as such settlement is consistent with the Respondent's responsibilities to supply the Contract Manufacture Products in the manner required by this Order;

Provided further, however, that this obligation shall not require Respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondent to the Acquirer in an agreement to Contract Manufacture;

Provided further, however, that in each instance where: (i) an agreement to divest relevant assets or Contract Manufacture is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for an Akorn Rifampin Product, each such agreement may contain limits on the Respondent's aggregate liability resulting from the failure of the Contract Manufacture Products supplied to the Acquirer pursuant to such Remedial Agreement to meet cGMP;

4. give priority to supplying a Contract Manufacture Product to the Acquirer over manufacturing and supplying of Products for Respondent's own use or sale;

5. make representations and warranties to each Acquirer that Respondent shall hold harmless and indemnify the Acquirer for any liabilities or loss of

profits resulting from the failure of the Contract Manufacture Products to be delivered in a timely manner as required by the Remedial Agreement(s) unless Respondent can demonstrate that the failure was beyond the control of Respondent and in no part the result of negligence or willful misconduct by Respondent;

Provided, however, that in each instance where: (i) an agreement to divest relevant assets or Contract Manufacture is specifically referenced and attached to this Order and (ii) such agreement becomes a Remedial Agreement for an Akorn Rifampin Product, each such agreement may contain limits on Respondent's aggregate liability for such a failure;

6. during the term of any agreement to Contract Manufacture, upon written request of the Acquirer or the Monitor (if any has been appointed), make available to the Acquirer and the Monitor (if any has been appointed) all records that relate directly to the manufacture of the relevant Contract Manufacture Products that are generated or created after the Closing Date;

7. during the term of any agreement to Contract Manufacture, Respondent shall take all actions as are reasonably necessary to ensure an uninterrupted supply of the Contract Manufacture Product(s);

8. in the event (i) Respondent becomes unable to supply or produce a Contract Manufacture Product from the facility or facilities originally contemplated under a Remedial Agreement with an Acquirer, and (ii) that Product is the subject of an ANDA, then Respondent shall provide a therapeutically equivalent (as that term is defined by the FDA) Product from another of Respondent's facility or facilities in those instances where such facilities are being used or have previously been

used, and are able to be used, by Respondent to manufacture such Product;

9. provide access to all information and facilities, and make such arrangements with Third Parties, as are necessary to allow the Monitor to monitor compliance with the obligations to Contract Manufacture; and

10. during the term of any agreement to Contract Manufacture, provide consultation with knowledgeable employees of Respondent and training, at the written request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling that Acquirer (or the Manufacturing Designee of that Acquirer) to obtain all Product Approvals to manufacture the Contract Manufacture Products acquired by that Acquirer in the same quality achieved by, or on behalf of, Respondent and in commercial quantities, and in a manner consistent with cGMP, independently of Respondent and sufficient to satisfy management of the Acquirer that its personnel (or the Manufacturing Designee's personnel) are adequately trained in the manufacture of the Contract Manufacture Products;

The foregoing provisions, II.F.3-10., shall remain in effect for the time period described in Paragraph II.F.2.

LLL. Respondent shall not terminate any agreement with the Acquirer before the end of the term without:

1. prior approval of the Commission;

2. written agreement of the Acquirer, and thirty-days (30) notice to the Commission; or

3. in cases of a proposed unilateral termination by Respondent due to an alleged breach of an agreement by the Acquirer, sixty-days (60) notice of such termination. *Provided, however,* that such

sixty-days (60) notice shall be given only after Respondent and Acquirer have:

a. attempted to settle the dispute between themselves, and

b. either engaged in arbitration, and received an arbitrator's decision, or received a final court decision after all appeals. *Provided, however,* that in the event the Acquirer fails to make any payment more than sixty (60) days after it is due, and such payment is not disputed in good faith by the Acquirer, upon ninety-days' (90) notice to the Acquirer, Respondent may discontinue or withhold manufacturing, supplying, or delivery of the disputed product or service until such payment of all overdue and outstanding undisputed amounts are made.

MMM. Respondent shall require, as a condition of continued employment post-divestiture of the assets required to be divested pursuant to this Order, that each employee that has had responsibilities related to the marketing or sales of the Akorn Rifampin Product within the one (1) year period prior to the Closing Date and each employee that has responsibilities related to the marketing or sales of those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products, in each case who have or may have had access to Confidential Business Information, and the direct supervisor(s) of any such employee sign a confidentiality agreement pursuant to which that employee shall be required to maintain all Confidential Business Information related to the Divestiture Products as strictly confidential, including the nondisclosure of that information to all other employees, executives or other personnel of Respondent (other than as necessary to comply with the requirements of this Order).

NNN. Not later than thirty (30) days after the Closing Date, Respondent shall provide written notification of the

restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondent's personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondent shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondent shall provide a copy of the notification to the Acquirer. Respondent shall maintain complete records of all such notifications at Respondent's registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondent shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondent's personnel.

OOO. For the Acquirer of the Akorn Rifampin Product, Respondent shall, for a period of one (1) year from the Acquirer Rifampin Manufacture Date, not, directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer or its Manufacturing Designee with any amount of responsibility related to a Divestiture Product ("Divestiture Product Employee") to terminate his or her employment relationship with the Acquirer or its Manufacturing Designee; or hire any Divestiture Product Employee;

Provided, however, Respondent may hire any former Divestiture Product Employee whose employment has been terminated by the Acquirer or its Manufacturing Designee or who independently applies for employment with Respondent, as long as that employee was not solicited in violation of the nonsolicitation requirements contained herein;

Provided further, however, that Respondent may do the following: (i) advertise for employees in newspapers, trade publications or other media not

targeted specifically at the Divestiture Product Employees; or (ii) hire a Divestiture Product Employee who contacts Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from Respondent.

PPP. Until Respondent completes the divestiture required by this Order and fully provides, or causes to be provided, the Product Manufacturing Technology related to the Akorn Rifampin Product to the Acquirer,

1. Respondent shall take actions as are necessary to:

   a. maintain the full economic viability and marketability of the Businesses associated with the Akorn Rifampin Product;

   b. minimize any risk of loss of competitive potential for that Business;

   c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Akorn Rifampin Product;

   d. ensure the assets related to each Divestiture Product are provided to the relevant Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the Business associated with each Divestiture Product; and

   e. ensure the completeness of the transfer and delivery of the Product Manufacturing Technology; and

2. Respondent shall not sell, transfer, encumber, or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Businesses associated with the Akorn Rifampin Product.

QQQ. Respondent shall not join, file, prosecute, or maintain any suit, in law or equity, against the Acquirer or the Divestiture Product Releasee(s) of the Acquirer under the following:

1. any Patent owned by or licensed to Respondent as of the day after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof; or

2. any Patent that was filed or in existence on or before the Acquisition Date that is acquired by or licensed to Respondent at any time after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;

if such suit would have the potential directly to limit or interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Akorn Rifampin Product for the purposes of marketing, sale or offer for sale within the United States of America of the Akorn Rifampin Product; or (ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of the Akorn Rifampin Product. Respondent shall also covenant to the Acquirer that as a condition of any assignment or license from Respondent to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Acquirer or the related Divestiture Product Releasee under such Patents, if the suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Akorn Rifampin Product for the purposes of marketing, sale, or offer for sale within the United States of America of the Akorn Rifampin Product; or (ii) the use within, import into, export

from, or the supply, distribution, or sale, or offer for sale within, the United States of America of the Akorn Rifampin Product. The provisions of this Paragraph do not apply to any Patent owned by, acquired by or licensed to or from Respondent that claims inventions conceived by and reduced to practice after the Acquisition Date.

RRR. Upon reasonable written notice and request from an Acquirer to Respondent, Respondent shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent to assist the Acquirer to defend against, respond to, or otherwise participate in any litigation brought by a Third Party related to the Product Intellectual Property related to the Akorn Rifampin Product, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Akorn Rifampin Product for the purposes of marketing, sale, or offer for sale within the United States of America of the Akorn Rifampin Product; or (ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of the Akorn Rifampin Product.

SSS. For any patent infringement suit filed prior to the Closing Date in which Respondent is alleged to have infringed a Patent of a Third Party or any potential patent infringement suit from a Third Party that Respondent has prepared or is preparing to defend against as of the Closing Date, and where such a suit would have the potential directly to limit or interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Akorn Rifampin Product for the purposes of marketing, sale, or offer for sale within the United States of America of the Akorn Rifampin Product; or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer

for sale within, the United States of America of the Akorn Rifampin Product, that Respondent shall:

1. cooperate with the Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from Respondent in connection with obtaining resolution of any pending patent litigation related to the Akorn Rifampin Product;

2. waive conflicts of interest, if any, to allow Respondent's outside legal counsel to represent the Acquirer in any ongoing patent litigation related to the Akorn Rifampin Product; and

3. permit the transfer to the Acquirer of all of the litigation files and any related attorney work-product in the possession of Respondent's outside counsel related to the Akorn Rifampin Product.

TTT. The purpose of the divestiture of the Akorn Rifampin Product Assets and the provision of the related Product Manufacturing Technology and the related obligations imposed on the Respondent by this Order is:

1. to ensure the continued use of such assets for the purposes of the Business associated with the Akorn Rifampim Product within the Geographic Territory; and

2. to create a viable and effective competitor that is independent of Respondent and VersaPharm the Business of each Divestiture Product within the Geographic Territory; and,

3. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

A. Quantic Regulatory Services, LLC (F. William Rahe) shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent and attached as Appendix B ("Monitor Agreement") and Non-Public Appendix C ("Monitor Compensation"). The Monitor is appointed to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements.

B. Not later than ten (10) days after the appointment of the Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

C. If a Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Monitor shall serve until the date of completion by Respondent of the divestiture of the Akorn Rifampin Product Assets, the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Divestiture Product that is a Contract Manufacture Product, until the earliest of: (i) the date the Acquirer of the Akorn Rifampin Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture and sell the Akorn Rifampin Product and able to manufacture the Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent; (ii) the date the Acquirer of the Akorn Rifampin Product notifies the Commission and Respondent of its intention to abandon its efforts to manufacture the Akorn Rifampin Product; or (iii) the date of written notification from staff of the Commission that the Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture the Akorn Rifampin Product;

Provided, however, that, the Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to

interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Orders.

E. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

F. Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

G. Respondent shall report to the Monitor in accordance with the requirements of this Order and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondent with respect to the performance of Respondent's obligations under the Order or the Remedial Agreement. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Order. *Provided, however*, beginning ninety (90) days after Respondent has filed its final report pursuant to Paragraph VII.B, and ninety (90) days thereafter, the Monitor shall report in writing to the Commission concerning progress by the Acquirer toward obtaining FDA approval to manufacture each Divestiture Product and obtaining

the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent.

H. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *Provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

I. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

J. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:

1. The Commission shall select the substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.

2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.

K. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

L. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

M. If Respondent has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Akorn Rifampin Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

N. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and

expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

O. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

P. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *Provided, however*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *Provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission; *Provided further, however*, that Respondent shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary

terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *Provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant

provisions of this Order or the Order to Maintain Assets in this matter.

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *Provided, however,* that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

Q. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

R. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

S. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business

Information in this Order, Respondent shall assure that its own counsel (including its own in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

A. To assure Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or

B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena, or other proceeding relating to the divestiture or any other aspect of the Akorn Rifampin Products or the assets and Businesses associated with the Akorn Rifampin Products;

Provided, however, that Respondent may disclose such information as necessary for the purposes set forth in this Paragraph V pursuant to an appropriate confidentiality order, agreement or arrangement;

Provided further, however, that pursuant to this Paragraph V, Respondent needing such access to original documents shall: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if that Acquirer withholds such agreement unreasonably); and (ii) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VI.

IT IS FURTHER ORDERED that:

A. Any Remedial Agreement shall be deemed incorporated into this Order.

B. Any failure by Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

C. Respondent shall include in each Remedial Agreement related to each of the Divestiture Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligation to the Acquirer pursuant to this Order.

D. Respondent shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Divestiture Products a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.

E. Respondent shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VII.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Within thirty (30) days after the Order Date, and every sixty (60) days thereafter until Respondent has fully complied with Paragraph II.F.2., Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Monitor, if any Monitor has been appointed. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Order, including:

1. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by Respondent to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and

2. a detailed description of the timing for the completion of such obligations.

C. One (1) year after the Order Date, annually for the next nine years on the anniversary of the Order Date, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

D. any proposed dissolution of Respondent;

E. any proposed acquisition, merger or consolidation of Respondent; or

F. any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and

B. to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on September 16, 2024.

By the Commission.

NON-PUBLIC APPENDIX A

AGREEMENTS RELATED TO THE DIVESTITURE

[Redacted From the Public Record Version, But Incorporated By Reference]

PUBLIC APPENDIX B

MONITOR AGREEMENT

NON-PUBLIC APPENDIX C

MONITOR COMPENSATION

[Redacted From the Public Record Version, But Incorporated By Reference]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Akorn, Inc. ("Akorn") that is designed to remedy the anticompetitive effects in the market for generic injectable rifampin ("generic rifampin") resulting from Akorn's acquisition of VersaPharm Inc. ("VersaPharm"). Under the terms of the proposed Consent Agreement, Akorn is required to divest its Abbreviated New Drug Application ("ANDA") for generic rifampin to Watson Laboratories, Inc. ("Watson"), a wholly-owned subsidiary of Actavis plc.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the proposed Consent Agreement, along with the comments received, to make a final decision as to whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order ("Order").

Pursuant to an Agreement and Plan of Merger dated May 9, 2014, Akorn plans to acquire all of VPI Holdings Corp., the parent company of VersaPharm, for approximately $324 million (the "Proposed Acquisition"). The Commission alleges in its Complaint that the Proposed Acquisition, if consummated, would violate 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, by lessening future competition in the sale of generic rifampin. The proposed Consent Agreement will remedy the alleged violations by preserving the future competition that would otherwise be eliminated by the Proposed Acquisition.

The Product and Structure of the Market

The Proposed Acquisition would reduce the number of future suppliers in the market for generic rifampin. Generic rifampin is an antibacterial medication used as a first-line treatment to kill or prevent the growth of tuberculosis. There are currently three

generic drug companies with approved ANDAs for rifampin: VersaPharm, Mylan/Agila, and Bedford. Akorn is one of a limited number of firms that have a generic rifampin product in development and an ANDA under review by the U.S. Food and Drug Administration ("FDA"). As a result, the Proposed Acquisition would significantly reduce the number of future suppliers for generic rifampin.

Entry

Entry into the market for generic rifampin would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Proposed Acquisition. The combination of drug development times and regulatory requirements, including FDA approval, is costly and lengthy. In addition, the expertise and facilities required to manufacture injectable products is sufficiently specialized that only a limited number of firms are capable of participating in such markets. The stability and sterility requirements specific to manufacturing injectable pharmaceuticals present a number of problems and costs that discourage new entry or expansion in the market for generic rifampin.

Effects

The Proposed Acquisition would likely cause significant anticompetitive harm to consumers by eliminating the future competition that would otherwise have occurred when Akorn's generic rifampin product entered the market. Market participants consistently characterize generic drug markets as commodity markets in which the number of generic suppliers has a direct impact on pricing. Customers and competitors alike have confirmed that the price of generic pharmaceutical products decreases with new entry even after a number of suppliers has entered the market. Further, customers have confirmed that, in pharmaceutical markets that can experience significant manufacturing problems and shortages, such as the market for generic rifampin, the entry of a fourth, fifth, sixth, or even subsequent generic competitor produces more competitive prices than if fewer suppliers are available to them.

The Proposed Acquisition would eliminate significant future competition between Akorn and VersaPharm. The evidence shows that anticompetitive effects are likely to result from the Proposed Acquisition due to a decrease in the number of independent competitors in the market for generic rifampin. Absent the Proposed Acquisition, the presence of Akorn as an additional competitor likely would have allowed customers to negotiate lower prices, as well as secure supply in times of product shortages. Thus, the Proposed Acquisition will likely cause U.S. consumers to pay significantly higher prices for generic rifampin, absent a remedy.

The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the relevant product market. Pursuant to the Consent Agreement, Akorn is required to divest its rights related to generic rifampin to Watson. Akorn must accomplish this divestiture no later than ten days after the Proposed Acquisition is consummated.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. If the Commission determines that Watson is not an acceptable acquirer of the divested asset, or that the manner of the divestiture is not acceptable, the parties must unwind the sale of rights to Watson and divest the asset to a Commission-approved acquirer within six months of the date the Order becomes final. In that circumstance, the Commission may appoint a trustee to divest the asset if the parties fail to divest it as required.

The proposed Consent Agreement contains several provisions to help ensure that the divestiture is successful. The Order requires Akorn to take all action necessary to maintain the economic viability, marketability, and competitiveness of the asset to be divested. Akorn must assist Watson in securing FDA approval for the pending ANDA. Akorn must also provide transitional services to assist Watson in setting up its generic rifampin manufacturing process, which includes conveying all know-how, data, and other information necessary to transfer its manufacturing capabilities. To allow Watson to enter the market

while it validates its manufacturing process, the Order requires Akorn to provide Watson with a supply of product.

The Commission has agreed to appoint F. William Rahe from Quantic Regulatory Services, LLC to act as an interim monitor to assure that Akorn expeditiously complies with all of its obligations and perform all of its responsibilities pursuant to the Consent Agreement. To ensure that the Commission remains informed about the status of the transfer of rights and assets, the Consent Agreement requires Akorn to file reports with the interim monitor who will report in writing to the Commission concerning performance by the parties of their obligations under the Consent Agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

L'ORÉAL USA, INC.

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

Docket No. C-4489; File No. 122 3016
Complaint, September 24, 2014 – Decision, September 24, 2014

This consent order addresses L'Oréal USA, Inc.'s advertising for its Lancôme Génifique ("Génifique") and L'Oréal Paris Youth Code ("Youth Code") facial skincare product lines. The complaint alleges that the company violated Sections 5(a) and 12 of the Federal Trade Commission Act by making unsubstantiated representations that Génifique boosts the activity of genes, thereby resulting in visibly younger skin in seven days, and that Youth Code targets specific genes to make skin look younger, act younger, and respond five times faster to aggressors such as stress, fatigue, and aging. The consent order prohibits L'Oréal from making claims that any Lancôme brand or L'Oréal Paris brand facial skincare product targets or boosts the activity of genes, thereby resulting in skin that looks or acts younger, or skin that responds five times faster to aggressors, without competent and reliable scientific evidence for these claims.

Participants

For the *Commission*: *Katherine Campbell, Christine DeLorme,* and *Elizabeth Nach.*

For the *Respondent*: *Lydia Parnes, Wilson Sonsini Goodrich & Rosati PC*; *Jeremy Feigelson, Debevoise & Plimpton LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe L'Oréal USA, Inc. ("Respondent"), a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent L'Oréal USA, Inc., is a Delaware corporation with its principal office or place of business at 575 Fifth Avenue, New York, NY 10017.

2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to consumers, including the "Lancôme Génifique" and "L'Oréal Paris Youth Code" skincare products. These products are "cosmetics," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has conducted research to identify skincare ingredients that increase activity of genes responsible for the production of proteins associated with skin function. As set forth herein, Respondent represented that the Lancôme Génifique and L'Oréal Paris Youth Code products boost the activity of or target such genes, thereby resulting in visibly younger skin.

Lancôme Génifique Products

5. Respondent has marketed the Lancôme Génifique line of products since February 2009, including Génifique Youth Activating Concentrate, Génifique Repair Youth Activating Night Cream, Génifique Cream Serum, and Génifique Youth Activating Eye Concentrate. The Génifique products are sold at prices ranging between $60 and $132 at Lancôme counters in department stores and beauty specialty stores nationwide.

6. From approximately February 2009 to April 2013, Respondent disseminated or caused to be disseminated advertisements, packaging, and promotional materials for the Lancôme Génifique products, including, but not necessarily limited to the attached Exhibits A through C. These materials contained the following statements:

a. **Youth is in your genes.** ***Reactivate it.***[1]
See visibly younger skin in just 7 days.

GÉNIFIQUE
YOUTH ACTIVATING CONCENTRATE

At the very origin of your skin's youth: your genes.
Genes produce specific proteins. With age, their presence diminishes.
Now, boost genes' activity[2] and stimulate the production of youth proteins.[3]

Discover the skin you were born to have.
Breathtakingly beautiful, skin looks as if lit-from-within. Its youthful quality returns: cushiony soft, astonishingly even, dramatically refined.

Clinically proven. Use AM and PM for powerful skin results in 7 days.[4]

[Graph showing that 85% of users had perfectly luminous skin, 82% had astonishingly even skin, 91% had cushiony soft skin, and 82% found skin appearance is improved.]

Learn more at **lancome.com**

[1]Activate skin's youthful look. [2]In-vitro test on genes. [3]Clinical study on skin proteins, associated with young skin – France. [4]Based upon consumer evaluations in a clinical study, which also consists of expert evaluations

(Exhibit A, Génifique Youth Activating Concentrate print ad (July 2011)).

b. You sleep. Genes don't.
Wake up to visibly repaired skin. As if you had slept 2 extra hours.[1]

NEW
GÉNIFIQUE
REPAIR
YOUTH ACTIVATING NIGHT CREAM

During the night, **the speed of cell regeneration doubles.**
By screening over 4,000 genes, our laboratories identified genes responsible for cellular regeneration.

Today, Lancôme creates Génifique Repair,
our first night care that **boosts the activity of genes.**[2]

Visibly repair and restore your skin while you sleep.
The first morning, skin looks smoother and fresher.
Night after night, skin is visibly younger and rested,
as if you had slept 2 extra hours.[1]

[1]Based upon consumer evaluations.[2] In-vitro test on genes.

10 YEARS OF RESEARCH – 7 INTERNATIONAL PATENTS

(Exhibit B, Génifique Repair Youth Activating Night Cream print ad (May 2010)).

c. **LANCOME TV – GÉNIFIQUE :15**

Voice over:	Youth is in your genes . . .
On screen:	Activate skin's youthful look.
Voice over:	Reactivate it.
On screen super:	Activate skin's youthful look.
Voice over:	Lancôme invents Génifique.
On screen:	GÉNIFIQUE Youth Activating Concentrate
On screen super:	Activate skin's youthful look.
Voice over:	Our first skincare that boosts the activity of genes.
On screen super:	In-vitro test on genes.
Voice over:	See visibly . . .
On screen super:	Based upon consumer evaluation.

Voice over:	. . . younger skin . . .
On screen super:	Based upon consumer evaluation.
Voice over:	. . . in just 7 days.
On screen:	Visibly younger skin in just 7 days
On screen super:	Based upon consumer evaluation.
Voice over:	Génifique. Lancôme.
On screen:	GÉNIFIQUE Youth Activating Concentrate

(Exhibit C, Génifique Youth Activating Concentrate 15-second TV ad (Feb. 2010)).

7. Respondent has represented with a bar graph that a clinical study proves that Génifique Youth Activating Concentrate produces "perfectly luminous" skin in 85% of women, "astonishingly even" skin in 82% of women, and "cushiony soft" skin in 91% of women, in seven days (*see* Exhibit A). In the study depicted in that bar graph, 34 women who applied Génifique twice daily for 8 weeks answered questionnaires about their experience with the product. The women answered each question on a nine-point scale, with one on the scale equivalent to "disagree completely" and nine equivalent to "agree completely." Among others, the questionnaire included the following three questions:

- Skin appears more radiant/luminous;
- Skin tone/complexion appears more even; and
- Skin feels softer.

8. Subjects were not asked to rate the magnitude of results achieved, but merely to indicate whether there was any improvement in a particular measure (*e.g.*, the women were not asked *how* radiant or luminous their skin felt after using Génifique, but how strongly they agreed or disagreed that there was *any* improvement in their skin's radiance or luminosity after using the product). While 85.3% of women gave a positive response to the question asking if their skin appeared more radiant/luminous after 7 days, only 35.5% of subjects indicated that they "agree[d] completely" that their skin was more

luminous. Similarly, only 29.4% of women agreed completely with the statement that their skin tone appeared more even, and only 58.8% agreed completely with the statement that their skin felt softer.

L'Oréal Paris Youth Code Products

9. Respondent has marketed the L'Oréal Paris Youth Code line of products since November 2010, including Youth Code Serum Intense, Youth Code SPF 30 Day Lotion, Youth Code Day/Night Cream, Youth Code Eye Cream, and a Youth Code Clinical Strength Starter System comprised of three Youth Code products bundled together. The Youth Code products are sold at drugstores and mass market retail stores, with individual products priced at approximately $15-25 and the Clinical Strength Starter Set priced at approximately $25-35.

10. From approximately November 2010 to April 2013, Respondent disseminated or caused to be disseminated advertisements, packaging, and promotional materials for the L'Oréal Paris Youth Code products, including but not necessarily limited to the attached Exhibits D through F. These materials contained the following statements:

a. [Left side of print ad]

ONE DROP
INSTANTLY IMPROVES SKIN QUALITY

ONE WEEK
SKIN BEGINS TO LOOK YOUNGER

ONE MONTH
REVEAL THE NEW YOUTH OF YOUR SKIN**

[Center of print ad]

NOW, CRACK THE CODE
TO YOUNGER ACTING SKIN.

Complaint

NEW
YOUTH CODE
Youth Regenerating Skincare

10 YEARS OF GENE RESEARCH
INTERNATIONAL PATENT

[Right side of print ad]

THE NEW ERA OF SKINCARE:
GENE SCIENCE.

Imagine, what if you could grow young?
Every great discovery begins by pushing the boundaries of science. After 10 years of research, now we know that recovery genes in youthful skin respond **5x faster** to aggressions than aging skin does. So even though you can't grow young, we now have the knowledge to help you begin cracking the code to younger acting skin.

[Bar graph depicting a "CLINICAL STUDY" indicating that "GENE RESPONSE TO AGGRESSIONS" is "5X FASTER" in "YOUTHFUL SKIN" compared to "AGING SKIN."]

A dramatic new possibility against the signs of aging:
L'Oréal introduces Youth Regenerating Skincare: **New Youth Code Serum Intense** with GenActiv Technology.™ Designed to help increase skin's ability to recover faster from aggressions more like it did when it was younger.* With Youth Code, now you can instantly improve skin quality while revealing the new youth of your skin.**

Discover all of the Youth Code products and learn more about gene science:
LOREALPARIS.COM/YOUTHCODE

*Based on in-vitro testing **Skin is more youthful looking

(Exhibit D, Youth Code print ad (Feb. 2011)).

b. [Left side of print ad]

UNA GOTA
MEJORA AL INSTANTE EL ESTADO DE LA PIEL

UNA SEMANA
LA PIEL COMIENZA A LUCIR MÁS JOVEN

UN MES
DESCUBRE LA NUEVA JUVENTUD DE TU PIEL*

[Center of print ad]

AHORA, DESCIFRA EL CÓDIGO
PARA REJUVENECER LA PIEL.

NUEVO
YOUTH CODE
Youth Regenerating Skincare

10 AÑOS DE INVESTIGACIÓN GENÉTICA
PATENTE INTERNACIONAL

[Right side of print ad]

LA NUEVA ERA EN EL
CUIDADO FACIAL:
LA CIENCIA DE LOS GENES.
¿Te imaginas que con el paso de los años pudieras lucir más joven?
Todo gran descubrimiento comienza sobrepasando los límites de la ciencia. Tras 10 años de investigación, ahora sabemos que los genes de recuperación de una piel joven reaccionan ante las agresiones 5 veces más rápido que los de una piel madura. Así que aunque no puedas detener

el paso del tiempo, ahora tenemos los conocimientos para ayudarte a descifrar el código para rejuvenecer la piel.

[Bar graph depicting an "ESTUDIO CLÍNICO" indicating that "REACCIÓN DE LOS GENES ANTE LAS AGRESIONES" is "5 VECES MÁS RÁPIDO" in "PIEL JOVEN" compared to "PIEL MADURA."]

Un gran avance contra las señales del envejecimiento: L'Oréal presenta su gama de Cuidados Faciales Rejuvenecedores: Comenzando con el nuevo suero **Youth Code Serum Intense** con la Tecnología GenActiv.™ Diseñado para aumentar la capacidad de recuperación de la piel contra las agresiones como cuando era más joven.** Con Youth Code, podrás mejorar la apariencia de tu piel al instante y lucir su nueva juventud.*

Descubre todos los productos Youth Code y conoce más sobre la ciencia de los genes visitando: LOREALPARIS.COM/YOUTHCODE
*La piel adquiere una apariencia más joven
**Basado en pruebas in vitro

(Exhibit E, Youth Code print ad (Apr. 2011)).

c. [Front of Youth Code Clinical Strength Starter System package]

NEW
INNOVATION
FROM GENE
SCIENCE

L'ORÉAL®
PARIS
SKIN EXPERTISE

CLINICAL
STRENGTH
Starter
System

YOUTH CODE™

Youth Regenerating
Skincare

10 YEARS OF GENE RESEARCH
REDUCES SIGNS OF
STRESS, FATIGUE AND AGING

[Back of Youth Code Clinical Strength Starter System package]

YOUTH REGENERATING DISCOVERY
Innovation derived from GENE Science

After 10 years of research, L'Oréal scientists unlock the code of skin's youth by discovering a specific set of genes[1] that are responsible for skin's natural power of regeneration.

INTERNATIONAL PATENT[2]

GenActiv TECHNOLOGY™ . . .

[1] In-vivo study [2]Patented in Germany, Spain, France, UK, Italy, and Japan; US Pat. Pending

(Exhibit F, Youth Code product package).

11. Respondent has represented that the L'Oréal Paris Youth Code products target specific genes to make skin act younger and respond five times faster to aggressors such as stress, fatigue, and aging. The bar graph accompanying this representation in Complaint Exhibits D and E, titled "CLINICAL STUDY," presents the results of a study that did not involve a L'Oréal Paris Youth Code product, or the ingredients in any such product.

12. The study population in the clinical study referred to in Complaint Exhibits D and E included two groups of males: a "young" group with an average age of 27 years, and an "aged" group with an average age of 67 years. Both groups were subjected to repeated physical stress on the forearm, and gene expression (the process by which genes produce proteins) of skin cell samples was measured at several time points. The study concluded that expression of certain genes following physical stress was delayed in aged skin compared to young skin; specifically, the young skin expressed the same number of genes within six hours as aged skin expressed in 30 hours.

Count I

13. In connection with the advertising, promotion, offering for sale, or sale of the Lancôme Génifique Products, Respondent has represented, directly or indirectly, expressly or by implication, that:

a. Génifique Youth Activating Concentrate boosts the activity of genes, thereby resulting in visibly younger skin in seven days.

b. Génifique Repair Youth Activating Night Cream boosts the activity of the genes responsible for nighttime cellular regeneration, thereby resulting in visibly younger skin.

14. The representations set forth in Paragraph 13 were not substantiated at the time the representations were made.

Count II

15. In connection with the advertising, promotion, offering for sale, or sale of the Lancôme Génifique products, Respondent has represented, directly or indirectly, expressly or by implication, that scientific studies prove:

a. Génifique Youth Activating Concentrate boosts the activity of genes, thereby resulting in visibly younger skin in seven days.

b. Génifique Youth Activating Concentrate is clinically proven to produce perfectly luminous skin in 85% of women, astonishingly even skin in 82% of women, and cushiony soft skin in 91% of women, in seven days.

16. In fact, scientific studies do not prove the representations set forth in Paragraph 15. Therefore, the representations set forth in Paragraph 15 are false or misleading.

Count III

17. In connection with the advertising, promotion, offering for sale, or sale of the L'Oréal Paris Youth Code Products, Respondent has represented, directly or indirectly, expressly or by implication, that:

a. Youth Code targets specific genes to make skin look younger.

b. Youth Code targets specific genes to make skin act younger and respond five times faster to aggressors such as stress, fatigue, and aging.

18. The representations set forth in Paragraph 17 were not substantiated at the time the representations were made.

Count IV

19. In connection with the advertising, promotion, offering for sale, or sale of the L'Oréal Paris Youth Code products, Respondent has represented, directly or indirectly, expressly or by implication, that scientific studies prove:

a. Youth Code targets specific genes to make skin look younger.

b. Youth Code targets specific genes to make skin act younger and respond five times faster to aggressors such as stress, fatigue, and aging.

20. In fact, scientific studies do not prove the representations set forth in Paragraph 19. Therefore, the representations set forth in Paragraph 19 are false or misleading.

Violations of Sections 5 and 12

21. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twenty-fourth day of September, 2014, has issued this complaint against Respondent.

By the Commission, Commissioner McSweeny not participating.

Complaint

Exhibit A

Complaint

Exhibit B

Complaint

Exhibit C

Complaint

Exhibit D

Complaint

Exhibit E

Complaint

Exhibit F

DECISION AND ORDER

The Federal Trade Commission ("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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order ("consent agreement") that includes: a statement that the agreement is for settlement purposes only and does not constitute an admission that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true; 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 has reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comment, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent L'Oréal USA, Inc. is a Delaware corporation with its principal office or place of business at 575 Fifth Avenue, New York, NY 10017.

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

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "respondent" shall mean L'Oréal USA, Inc., a corporation, its successors and assigns, and officers, and each of the above's agents, representatives, and employees.

B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

C. "Competent and reliable scientific evidence" shall mean evidence, consisting of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

D. "Cosmetic" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

E. "Covered Product" shall mean any Lancôme brand or L'Oréal Paris brand cosmetic, excluding hair, nail, fragrance, mascara, and sunscreen products. For the purpose of this definition, "sunscreen" refers to products that are marketed primarily for sun protection and does not include makeup or facial skincare products that contain sunscreen.

F. The term "including" in this order shall mean "without limitation."

G. The terms "and" and "or" in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Lancôme brand or L'Oréal Paris brand facial skincare product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of a trade name, product name, endorsement, depiction, or illustration, that such product boosts the activity of genes or targets specific genes, thereby:

A. Resulting in skin that looks younger or acts younger; or

B. Causing skin to respond five times faster to aggressors such as stress, fatigue, and aging;

unless the representation is true, non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific field, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not represent in any manner, expressly or by implication, including through the use of a trade name, product name, endorsement, depiction, or illustration, that such product affects genes, unless the representation is true, non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific field, when considered in light of the entire

body of relevant and reliable scientific evidence, to substantiate that the representation is true.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

IT IS FURTHER ORDERED that respondent and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

V.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, for a period of five (5) years, deliver a copy of this order to all current and future principals, officers, directors, and other employees having responsibilities with

respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Acknowledgment by electronic mail or similar means will be deemed a signature for purposes of this order. Respondent shall deliver this order to current personnel within thirty (30) days after date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondent and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: L'Oréal USA, Inc., FTC File No. 122-3016.

VII.

IT IS FURTHER ORDERED that respondent and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate reports.

VIII.

This order will terminate on September 24, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeny not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from L'Oréal USA, Inc. ("L'Oréal").

Analysis to Aid Public Comment

The proposed consent order ("proposed order") has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves L'Oréal's advertising for its Lancôme Génifique ("Génifique") and L'Oréal Paris Youth Code ("Youth Code") facial skincare product lines. The Commission's complaint alleges that L'Oréal advertised that Génifique and Youth Code provided anti-aging benefits by targeting users' genes, and that Génifique provided results to particular percentages of users.

The complaint alleges that the company violated Sections 5(a) and 12 of the Federal Trade Commission Act by making unsubstantiated representations that Génifique boosts the activity of genes, thereby resulting in visibly younger skin in seven days, and that Youth Code targets specific genes to make skin look younger, act younger, and respond five times faster to aggressors such as stress, fatigue, and aging. The complaint also alleges that L'Oréal violated Sections 5(a) and 12 by making false representations that scientific studies prove these claims.

The complaint further alleges that L'Oréal violated Sections 5(a) and 12 by falsely representing that Génifique is clinically proven to produce specific results for particular percentages of users, including perfectly luminous skin in 85% of women, astonishingly even skin in 82% of women, and cushiony soft skin in 91% of women, in seven days. These purported results were presented in a bar graph under the words "clinically proven."

The proposed order includes injunctive relief that prohibits these alleged violations and fences in similar and related violations. For purposes of the order, "Covered Product" means any Lancôme brand or L'Oréal Paris brand cosmetic, excluding hair, nail, fragrance, mascara, and sunscreen products.

Part I of the proposed order prohibits L'Oréal from making claims that any Lancôme brand or L'Oréal Paris brand facial

skincare product targets or boosts the activity of genes, thereby resulting in skin that looks or acts younger, or skin that responds five times faster to aggressors, without competent and reliable scientific evidence for these claims. "Competent and reliable scientific evidence" is defined to mean "evidence, consisting of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results."

Part II of the proposed order is a fencing-in provision that prohibits L'Oréal from representing that any Covered Product affects genes. The fencing-in provision provides broader product and claims coverage than Part I of the proposed order. It extends to products other than "facial skincare products," such as lip products and makeup, and covers any gene claims.

Part III of the proposed order prohibits L'Oréal from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research in connection with the manufacturing, labeling, advertising, promotion, offering for sale, and sale or distribution of any Covered Product.

Part IV contains recordkeeping requirements for advertisements and substantiation relevant to representations covered by Parts I through III of the order.

Parts V through VII of the proposed order require L'Oréal to: deliver a copy of the order to principals, officers, and employees having responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part VIII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

NATIONAL ASSOCIATION OF TEACHERS OF SINGING, INC.

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

Docket No. C-4491; File No. 131 0127
Complaint, October 1, 2014 – Decision, October 1, 2014

This consent order addresses National Association of Teachers of Singing, Inc.'s ("NATS") adopting and maintaining a provision in its Code of Ethics that restrains solicitation of teaching work. The complaint alleges that NATS violated Section 5 of the Federal Trade Commission Act by restraining competition among singing teachers through adoption and enforcement of the non-solicitation provision of its Code of Ethics. The consent order requires NATS to cease and desist from restraining or declaring unethical the solicitation of teaching work.

Participants

For the *Commission*: *Armando Irizarry* and *Karen A. Mills.*

For the *Respondent*: *James A. Nolan, III, GrayRobinson.*

COMPLAINT

The Federal Trade Commission ("Commission"), 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, having reason to believe that the National Association of Teachers of Singing, Inc. ("Respondent" or "NATS"), a corporation, has violated and is violating the provisions of 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 this Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent National Association of Teachers of Singing, Inc. is a non-profit 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 9957 Moorings Drive, Suite 401, Jacksonville FL 32257.

2. Respondent is a professional association of teachers of singing with over 7,300 members. Many of Respondent's members provide singing teaching services for a fee. Some are employed at schools, universities and music studios as teachers of singing. Except to the extent that competition has been restrained as alleged herein, many of Respondent's members have been and are now in competition among themselves and with other teachers of singing.

3. Respondent has state and local chapters organized in 14 regions. Members of the NATS chapters also are members of Respondent. The NATS Bylaws permit chapters to establish their own Bylaws and operating procedures consistent with the NATS Bylaws, and with the review and consent of the NATS Board of Directors.

II. JURISDICTION

4. Respondent conducts business for the pecuniary benefit of its members and is therefore a "corporation," as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

5. The acts and practices of Respondent, including the acts and practices alleged herein, are in or affecting "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. NATURE OF THE CASE

6. Respondent maintains a Code of Ethics applicable to the commercial activities of its members, requires its members to agree to abide by the Code of Ethics, and encourages its members to follow its Code of Ethics. Some NATS chapters have the same Code of Ethics that the NATS has. Some NATS chapters have adopted different codes of ethics.

7. Respondent has acted as a combination of its members, and in agreement with at least some of those members, to restrain competition by restricting through its Code of Ethics the ability of its members to solicit the customers of competing teachers of singing. Specifically, the NATS Code of Ethics contains a provision in its Code of Ethics section titled "Ethical Standards Relating to Colleagues" that states:

> "Members will not, either by inducements, innuendos, or other acts, proselytize students of other teachers."

8. In furtherance of the combination alleged in Paragraph 7, Respondent established a process for receiving complaints about and resolving alleged violations of the Code of Ethics. Respondent encourages its members to resolve disputes arising out of the Code of Ethics, and mediates disputes. Respondent's Bylaws reserve to the Board of Directors the right to terminate membership for violations of the Code of Ethics.

IV. VIOLATION CHARGED

9. The purpose, effects, tendency, or capacity of the combination, agreement, acts and practices alleged in Paragraphs 7 and 8 has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among teachers of singing, and by depriving consumers and others of the benefits of free and open competition among teachers of singing.

10. The combination, agreement, acts and practices alleged in Paragraphs 7 and 8 constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested herein.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of October, 2014, issues its Complaint against Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission, ("Commission"), having initiated an investigation of certain acts and practices of National Association of Teachers of Singing, Inc. ("Respondent" or "NATS") and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order ("Order"):

1. Respondent National Association of Teachers of Singing, Inc., is a non-profit 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 9957 Moorings Drive, Suite 401, Jacksonville, Florida 32257.

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.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" or "NATS" means National Association of Teachers of Singing, Inc., its directors, boards, officers, employees, agents, representatives, councils, committees, foundations, divisions, successors, and assigns.

B. "Antitrust Compliance Officer" means a person appointed under Paragraph IV.A. of this Order.

C. "Antitrust Counsel" means a lawyer admitted to practice law in Federal court or in the highest court of any State or Territory of the United States.

D. "Antitrust Laws" means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et.seq.*, the Sherman Act, 15 U.S.C. § 1 *et.seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*

E. "Certification" means the document attached to this Order as Appendix A.

F. "Chapter" means any state or local association of teachers of singing that is recognized by NATS as a chapter.

G. "Code of Ethics" means a statement setting forth the principles, values, standards, or rules of behavior that guide the conduct of an organization and its members.

H. "FTC Settlement Statement" means the statement attached to this Order as Appendix B.

I. "Leaders" means NATS's board of directors, executive director, officers, and regional governors.

J. "Member" means a member of NATS, including any full, emeritus, associate, and affiliate member.

K. "Notification Date" means the date on which Respondent makes the notification required by Paragraph III.A.3. of this Order.

L. "Organization Documents" means any documents relating to the governance, management, or direction of the relevant organization, including, but not limited to, bylaws, rules, regulations, Codes of Ethics, policy statements, interpretations, commentaries, or guidelines.

M. "Prohibited Practice" means Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against any of the activities described in Paragraph II.B.1., II.B.2., and II.B.3.

N. "Regulating" means (1) adopting, maintaining, recommending, or encouraging that Members follow any rule, regulation, interpretation, ethical ruling, policy, commentary, or guideline; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in or in connection with Respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from:

A. Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against solicitation of teaching work, through any legal means, by any Member, or advising or encouraging any organization with which Members are affiliated to do the same; and

B. Accepting a Chapter, or maintaining a relationship with any Chapter, that NATS learns, or obtains information that would lead a reasonable person to conclude, engages in conduct Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against:

1. Solicitation of teaching work, through any means, by any Member;

2. Advertising or publishing the prices, terms or conditions of sale of teaching services, or information about teaching services that are offered for sale or made available by Members; and

3. Price-related competition by its Members, including, but not limited to, restricting the provision of free or discounted services, restricting terms of payment, or restricting Members from offering their services unless they conform to rules established by NATS;

Provided, however, that nothing in this Paragraph II. shall prohibit Respondent from adopting and enforcing, or accepting as a Chapter or maintaining an affiliate relationship with any Chapter that adopts and enforces, reasonable principles, rules, guidelines, or policies governing the (i) conduct of its Members with respect to representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act or (ii) conduct of judges during singing competitions sponsored or held by Respondent or any Chapter.

III.

IT IS FURTHER ORDERED that:

A. No later than thirty (30) days from the date this Order is issued, Respondent shall:

1. Post and maintain for five (5) years on the Code of Ethics page of NATS's website, together with a link from Respondent's home or menu page that is entitled "Antitrust Compliance," the following items:

   a. An announcement that states "NATS agreed to change its Code of Ethics and will not adopt, encourage its members to follow, or enforce any Code of Ethics provision relating to solicitation of teaching work that does not comply with the FTC Consent Order,"

   b. The FTC Settlement Statement; and

   c. A link to the Federal Trade Commission's website that contains the press release issued by the Commission in this matter; and

2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its Leaders, employees, Members, and Chapters; and

3. Notify each Chapter that, as a condition of continued affiliation with NATS, such Chapter must execute and return a Certification to Respondent no later than one hundred twenty (120) days from the date Respondent notifies such Chapter.

B. No later than sixty (60) days from the date this Order is issued Respondent shall:

1. Remove from NATS's Organization Documents and NATS's website any statement that is inconsistent with Paragraph II. of this Order, and

2. Publish on NATS's website any revisions of NATS's Organization Documents.

C. Respondent shall publish, in the font that is customarily used for feature articles:

1. Any revisions of NATS's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement in the next available editions of the "Journal of Singing" and "Inter Nos" publications; and

2. The FTC Settlement Statement, on or as close as possible to the first and second anniversary dates of the first publication of the FTC Settlement Statement, in the "Journal of Singing" and "Inter Nos" publications, or any successor publications.

D. For a period of five (5) years after this Order is issued, distribute electronically or by other means, a copy of the FTC Settlement Statement to each:

1. New Chapter no later than thirty (30) days after the date the organization becomes a Chapter;

2. New Member no later than thirty (30) days after the date of commencement of the membership; and

3. Member who receives a membership renewal notice, at the time the Member receives such notice.

E. Respondent shall:

1. Immediately terminate any Chapter that fails to provide an executed Certification no later than one hundred twenty (120) days from the Notification

Date and shall not permit the terminated Chapter to claim itself as a Chapter of the National Association of Teachers of Singing until such time as the Chapter provides an executed Certification; and

2. Terminate for a period of one (1) year, no later than one hundred twenty (120) days after Respondent learns or obtains information that would lead a reasonable person to conclude that the Chapter has, following the date this Order is issued, engaged in a Prohibited Practice; unless, prior to the expiration of the one hundred twenty (120) day period, said Chapter informs Respondent in a verified written statement of an officer that the Chapter has eliminated and will not reengage in such Prohibited Practice, and Respondent has no reasonable grounds to believe otherwise.

F. Respondent shall maintain and make available to Commission staff for inspection and copying upon reasonable notice records adequate to describe in detail any:

1. Action against any Member or Chapter taken in connection with the activities covered by Paragraph II. of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and

2. Complaint received from any person relating to Respondent's compliance with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws:

A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint and retain an Antitrust Compliance Officer for the duration of this

Order to supervise Respondent's antitrust compliance program.

B. For a period of three (3) years from the date this Order is issued, the Antitrust Compliance Officer shall be the Executive Director of Respondent, after which a new Antitrust Compliance Officer may be appointed who shall be Antitrust Counsel, a member of the Board of Directors, or employee of Respondent.

C. For a period of five (5) years from the date this Order is issued, Respondent shall provide in-person annual training to its Leaders and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct.

D. No later than sixty (60) days after the date this Order is issued, Respondent shall implement policies and procedures to:

1. Enable persons (including, but not limited to, its Leaders, employees, Members, and agents) to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and

2. Discipline Leaders, employees, and agents for failure to comply fully with this Order.

E. For a period of five (5) years from the date this Order is issued, Respondent shall:

1. Conduct a presentation at (i) each National Conference of NATS and (ii) at least one meeting of the Board of Directors every twelve (12) months, that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws; and

2. Provide an antitrust compliance guide to Chapters to use at each annual meeting of such Chapters that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

A. No later than (i) ninety (90) days after the date this Order is issued, (ii) one hundred eighty (180) days after the date this Order is issued; and

B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of Respondent;

B. Acquisition, merger, or consolidation of Respondent; or

C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject

to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and

B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on October 1, 2034.

By the Commission.

APPENDIX A

CERTIFICATION

_____
Name of Chapter

As a condition of being affiliated with the National Association of Teachers of Singing, Inc. ("NATS"), the chapter named above (the "Chapter") makes the following representations to NATS:

1. NO RESTRICTIONS ON STUDENT OR JOB SOLICITATIONS: As of the date this Certification is executed, the Chapter does not maintain in its Organization Documents or website any type of rule, interpretation, ethical ruling, guideline or recommendation which would restrict, restrain, impede, declare unethical or unprofessional, declare as unfair competition, or interfere with or advise against a member of the Chapter from soliciting teaching work. Examples of the type of provisions that restrict such solicitation include any of the following:

- Restricting a member from proselytizing pupils of another teacher by inducement, innuendo, insinuations, or other acts.

- Restricting a member from accepting as a student anyone who has not satisfied financial obligations to another member.

2. NO RESTRICTIONS ON ADVERTISING PRICES OR TERMS OF TEACHING SERVICES: As of the date this Certification is executed, the Chapter does not maintain in its Organization Documents or website any type of rule, interpretation, ethical ruling, guideline or recommendation which would restrict, restrain, impede, declare unethical or unprofessional, or interfere with or advise against a member of the Chapter from advertising prices or other terms of teaching

services. Examples of the type of provisions that restrict advertising include any of the following:

- Restricting a member from advertising free scholarships or free tuition.

3. NO RESTRICTIONS ON COMPETING ON PRICE-RELATED TERMS: As of the date this Certification is executed, the Chapter does not maintain in its Organization Documents or website any type of rule, interpretation, ethical ruling, guideline or recommendation which would restrict, restrain, impede, declare unethical or unprofessional, or interfere with or advise against a member of the Chapter from competing on price-related terms. Examples of the type of provisions that restrict competing on price-related terms include any of the following:

- Restricting a member from offering free scholarships or free tuition.

On behalf of the Chapter named above, the undersigned officer certifies that all of the foregoing representations are accurate as of the date listed below:

Officer's Signature _____

Officer's Name _____

Officer's Title _____

Date: _____

APPENDIX B

(Letterhead of NATS)

Dear Member:

As you may know, the Federal Trade Commission conducted an investigation concerning the provision in NATS's Code of Ethics that stated:

Members will not, either by inducements, innuendoes, or other acts, proselytize students of other teachers.

The Federal Trade Commission alleges that this provision in the Code of Ethics violates the Federal Trade Commission Act because it unnecessarily restricts members of NATS from competing for students, thereby depriving students of the benefits of competition among teachers of singing.

To end the investigation expeditiously and to avoid disruption to its core functions, NATS voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement and a Decision and Order by the Federal Trade Commission. As a result, NATS is in the process of revising its Code of Ethics and will implement an antitrust compliance program.

In general, the Federal Trade Commission has prohibited NATS from maintaining bylaws, code of ethics, operational policies, or membership requirements that restrict members from soliciting students or other teaching work, including restricting members from offering services directly to students who may be receiving similar services from other teachers of singing.

Some chapters that are affiliated with NATS have codes of ethics or similar documents that contain provisions that restrict its members from: (a) soliciting students or other teaching work, (b) advertising prices or other terms of teaching services, or (c) competing on price-related terms. The Federal Trade Commission has prohibited NATS from accepting or maintaining as a chapter any association that has such a code of ethics or similar document that contains these prohibited restrictions.

In order to maintain its affiliation with NATS, each chapter must review its constitution and bylaws, code of ethics, operational policies, and membership requirements to determine if they contain any of these prohibited restrictions on members. Examples of these prohibited restrictions would include:

- Restricting a member from proselytizing pupils of another teacher by inducement, innuendo, insinuations, or other acts.

- Restricting a member from accepting as a student anyone who has not satisfied financial obligations to another member.

- Restricting a member from advertising or offering free scholarships or free tuition.

Chapters that are affiliated with NATS and that have any of these prohibited restrictions in their constitution and bylaws, codes of ethics, operational policies, membership requirements, or elsewhere will have the opportunity to remove them. If a chapter does not certify to NATS that it does not have such restrictions prior to the deadline set forth in the Decision and Order, NATS will have to remove it as a chapter until such time as the chapter complies with the Decision and Order.

The Decision and Order does not prohibit NATS or its affiliates from adopting and enforcing Codes of Ethics or similar documents that govern the conduct of members with respect to representations that NATS reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

A copy of the Decision and Order is enclosed. It is also available on the Federal Trade Commission website at www.FTC.gov, and through the NATS web site.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from the National Association of Teachers of Singing, Inc. (hereinafter "NATS"). The Commission's complaint ("Complaint") alleges that NATS, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by adopting and maintaining a provision in its Code of Ethics that restrains solicitation of teaching work.

Under the terms of the proposed Consent Agreement, NATS is required to cease and desist from restricting solicitation among its members, and is required to disaffiliate any Chapter that adopts or maintains provisions in its code of ethics or similar documents that restrain solicitation, advertising, or price-related competition.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order ("the Proposed Order").

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by MTNA that the law has been

violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

NATS is a non-profit professional association of more than 7,300 singing teachers. Many of MTNA's members provide music-teaching services for a fee. Some also are employed at schools, universities and music studios as music teachers. NATS membership provides pecuniary benefits to its members.

NATS has affiliated state and local chapters, which are grouped into 14 regions. Members of Chapters also are members of NATS.

NATS maintains a Code of Ethics applicable to the commercial activities of its members, and requires its members to read and pledge adherence to all the provisions of the Code of Ethics. The NATS Bylaws require that Chapters shall abide by Association Bylaws, policies and guidelines, and will establish their own Bylaws and operating procedures consistent with the NATS Bylaws and with review and consent of the NATS Board of Directors.

The NATS Code of Ethics has three sections. One of those sections is titled "Ethical Standards Relating to Colleagues." That Section of the Code of Ethics includes a provision that states, "Members will not, either by inducements, innuendos, or other accts, proselytize students of other teachers."

Some NATS Chapters have the same Code of Ethics that NATS has. Some Chapters have codes of ethics that contain other restrictions on solicitation, restrictions on price competition, restrictions on advertising free tuition, or restrictions on accepting pupils who have not fulfilled a financial obligation to another member until those obligations are satisfied.

B. The Anticompetitive Conduct

The Complaint alleges that NATS violated Section 5 of the Federal Trade Commission Act by restraining competition among singing teachers through adoption and enforcement of the non-solicitation provision of its Code of Ethics. This is in effect an agreement among competitors not to compete. NATS requires members to agree to abide by the non-solicitation provision. NATS adopted a complaint and enforcement procedure for the Code of Ethics that can result in termination of membership. When NATS members have complained that other members violated the non-solicitation provision of the Code of Ethics, NATS has investigated complaints, and even where no formal action is taken, the NATS Ethics Committee, Executive Director, President, and Regions sometimes contact a teacher to secure compliance with the non-solicitation provision of the Code of Ethics, or mediate between parties in order to resolve complaints.

The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of NATS has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among music teachers.

II. The Proposed Order

The Proposed Order has the following substantive provisions.

Paragraph I contains definitions for terms used in the Order.

Paragraph II requires NATS to cease and desist from restraining or declaring unethical the solicitation of teaching work. It also requires NATS to cease and desist from maintaining a relationship with any NATS Chapter that NATS learns or learns that, or obtains information that would lead a reasonable person to conclude that, engages in conduct that restrains solicitation, advertising, or price-related competition by its members.

The Proposed Order does not prohibit NATS from adopting and enforcing reasonable principles (i) to prevent false or deceptive representations, or (ii) to govern the conduct of judges during singing competitions sponsored or held by NATS or its

Chapters, or maintaining a relationship with a Chapter that adopts and enforces such principles. The Proposed Order does not prohibit restrictions on judges' solicitation during competitions because NATS could have a plausible efficiency rationale: ensuring fair competitions. The Proposed Order's exemption is limited to restrictions on judges' behavior during competitions; prohibitions on judges' pre- or post-competition solicitation would violate the Proposed Order.

Paragraph III requires NATS to remove from its organization documents and website any statement inconsistent with the Proposed Order, including the Code of Ethics restriction on solicitation. NATS also must publicize to its members, new members, Chapters, new Chapters, leaders, employees, and the public the changes NATS must make to the Code of Ethics, and a statement describing the Consent Agreement.

Paragraph III also requires NATS to notify each of its Chapters that, as a condition of remaining a NATS Chapter, each Chapter must execute and return a Certification to NATS that the Chapter does not have restrictions on solicitation, advertising, or price-related competition. NATS must terminate any Chapter that does not provide an executed Certification within one hundred and twenty days of when NATS gave notice to the Chapter. Thereafter, if NATS learns that a Chapter has engaged in restraining or declaring unethical the solicitation, advertising, or price-related competition, the Proposed Order requires NATS to terminate the Chapter for one year unless the Chapter informs NATS that the Chapter has eliminated and will not reengage in such practices.

Paragraph IV requires NATS to design, maintain, and operate an antitrust compliance program. NATS must appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, NATS must provide guidance to its staff, employees, members, leaders, and Chapters concerning the antitrust laws and NATS' obligations under the Proposed Order. NATS also must implement policies and procedures to enable persons to ask questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its

leaders, employees and agents for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed Order requires certain standard compliance reporting, cooperation, and access.

The Proposed Order will expire in 20 years

* * *

Complaint

IN THE MATTER OF

NATIONAL ASSOCIATION OF RESIDENTIAL PROPERTY MANAGERS, INC.

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

Docket No. C-4490; File No. 141 0031
Complaint, October 1, 2014 – Decision, October 1, 2014

This consent order addresses National Association of Residential Property Managers, Inc.'s ("NARPM") adopting and maintaining provisions in its Code of Ethics that restrain competition among its members and others. The complaint alleges that NARPM has violated Section 5 of the Federal Trade Commission Act by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) soliciting the customers of competing property managers, and (2) making statements that are not false or deceptive about competing property managers. The consent order requires NARPM to cease and desist from restraining its members from soliciting property management work, or from making statements about competitors' products, services, or business or commercial practices that are not false or deceptive.

Participants

For the *Commission*: *Armando Irizarry.*

For the *Respondent*: *Adam M. Carroll* and *John F. Faber, Jr., Wolcott Rivers Gates.*

COMPLAINT

The Federal Trade Commission ("Commission"), 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, having reason to believe that the National Association of Residential Property Managers, Inc., ("Respondent" or "NARPM"), a corporation, has violated and is violating the provisions of 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 this Complaint, stating its charges as follows:

RESPONDENT

1. Respondent National Association of Residential Property Managers, Inc. is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Tennessee, with its office and principal place of business located at 638 Independence Parkway, Suite 100, Chesapeake, VA 23320.

2. Respondent is a professional association of real estate agents, brokers, managers and their employees, with over 4,000 members. Many of Respondent's members are in the business of managing single-family and multi-family residential properties, condominiums, townhouses, and short-term rentals. Some members also manage commercial and industrial properties and provide management of homeowners associations. Except to the extent that competition has been restrained as alleged herein, many of Respondent's members have been and are now in competition among themselves and with other property managers.

JURISDICTION

3. Respondent conducts business for the pecuniary benefit of its members and is therefore a "corporation" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

4. The acts and practices of Respondent, including the acts and practices alleged herein, are in or affecting "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

NATURE OF THE CASE

5. Respondent maintains a Code of Ethics and Standards of Professionalism ("Code of Ethics") applicable to the commercial activities of its members. Respondent's members agree to abide by the Code of Ethics as a condition of membership.

6. Respondent has acted as a combination of its members, and in agreement with at least some of those members, to restrain competition by restricting through its Code of Ethics the ability of its members to advertise and to solicit the clients of their

competitors. Specifically, Respondent's Code of Ethics contains a provision titled "Relations With Other Property Managers" that states:

- "NARPM Professional Members shall refrain from criticizing other property managers or their business practices."

- "The Property Manager shall not knowingly solicit competitor's clients."

7. Respondent established a process for receiving complaints about and resolving alleged violations of the Code of Ethics. Respondent may sanction members found to violate the Code of Ethics. Sanctions may include a letter of reprimand, probation or suspension for a specified term, or expulsion from NARPM.

VIOLATION CHARGED

8. The purpose, effects, tendency, or capacity of the combination, agreement, acts and practices alleged in Paragraphs 6 and 7 has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among property managers, by restricting truthful and non-deceptive comparative advertising, and by depriving consumers and others of the benefits of free and open competition among property managers.

9. The combination, agreement, acts and practices alleged in Paragraphs 6 and 7 constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested herein.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of October, 2014, issues its Complaint against Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission, ("Commission"), having initiated an investigation of certain acts and practices of National Association of Residential Property Managers, Inc. ("Respondent" or "NARPM") and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order ("Order"):

1. Respondent National Association of Residential Property Managers, Inc., is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Tennessee, with its office and principal place of business located at 638 Independence Parkway, Suite 100, Chesapeake, Virginia 23320.

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.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" or "NARPM" means National Association of Residential Property Managers, Inc., its directors, boards, officers, employees, agents, representatives, committees, foundations, divisions, successors, and assigns.

B. "Antitrust Compliance Officer" means a person appointed under Paragraph IV.A. of this Order.

C. "Antitrust Counsel" means a lawyer admitted to practice law in a Federal court or in the highest court of any State or Territory of the United States.

D. "Antitrust Laws" means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et.seq.*, the Sherman Act, 15 U.S.C. § 1 *et.seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*

E. "Code of Ethics" means a statement setting forth the principles, values, standards, or rules of behavior that guide the conduct of an organization and its members.

F. "FTC Settlement Statement" means the statement attached to this Order as Appendix A.

G. "Member" means a member of NARPM, including any professional, associate, support specialist, international, junior, student, academic, or affiliate member.

H. "Organization Documents" means any document relating to the governance, management, or direction of the relevant organization, including, but not limited to, bylaws, rules, regulations, Codes of Ethics, policy statements, interpretations, commentaries, training materials, or guidelines.

I. "Regulating" means (1) adopting, maintaining, recommending, or encouraging that Members follow any rule, regulation, interpretation, ethical ruling, policy, commentary, or guideline; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in or in connection with Respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against:

A. Solicitation of property management work, through any means, by any Member; and

B. Restraining Members from making statements about competitors' products, services, or business or commercial practices;

Provided, however, that nothing in this Paragraph II. shall prohibit Respondent from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its Members with respect to representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

IT IS FURTHER ORDERED that:

A. No later than thirty (30) days from the date this Order is issued, Respondent shall:

1. Post and maintain for five (5) years on the Code of Ethics page of NARPM's website, together with a link from Respondent's home or menu page that is entitled "Antitrust Compliance," the following items:

   a. An announcement that states "NARPM agreed to change its Code of Ethics and will not adopt, encourage its members to follow, or enforce any Code of Ethics provision relating to solicitation of property management work that does not comply with the FTC Consent Order;"

   b. The FTC Settlement Statement; and

   c. A link to the Federal Trade Commission's website that contains the press release issued by the Commission in this matter.

2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its board of directors, officers, employees, and Members.

B. No later than sixty (60) days from the date this Order is issued Respondent shall:

1. Remove from NARPM's Organization Documents and NARPM's website any statement that does not comply with Paragraph II. of this Order; and

2. Publish on NARPM's website any revisions of NARPM's Organization Documents.

C. Respondent shall publish:

1. In the font that is customarily used for feature articles:

   a. Any revisions of NARPM's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement in the next available edition of the "Residential Resource" publication; and

   b. The FTC Settlement Statement, on or as close as possible to the first and second anniversary dates of the first publication of the FTC Settlement Statement, in the "Residential Resource" publication, or any successor publication.

2. No later than thirty (30) days from the date this Order is issued and continuing for a period of three (3) years, a statement in all ethics courses designed or offered by NARPM, or in any other education materials offered by NARPM, that currently discuss or explain Article 9 or Standard of Professionalism 9-2 of the NARPM Code of Ethics, or give examples related to these provisions, that restrictions on solicitation or advertising no longer apply.

D. For a period of five (5) years after this Order is issued, distribute electronically or by other means, a copy of the FTC Settlement Statement to each:

1. New Member no later than thirty (30) days after the date of commencement of the membership; and

2. Member who receives a membership renewal notice, at the time the Member receives such notice.

E. Respondent shall maintain and make available to Commission staff for inspection and copying upon reasonable notice records adequate to describe in detail any:

1. Action against any Member taken in connection with the activities covered by Paragraph II. of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and

2. Complaint received from any person relating to Respondent's compliance with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws:

A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint and retain an Antitrust Compliance Officer for the duration of this Order to supervise Respondent's antitrust compliance program.

B. For a period of three (3) years from the date this Order is issued, the Antitrust Compliance Officer shall be the President Elect of NARPM, after which a new Antitrust Compliance Officer may be appointed who shall be Antitrust Counsel, a member of the Board of Directors, or an employee of Respondent.

C. For a period of five (5) years from the date this Order is issued, Respondent shall provide in-person annual training to its board of directors, officers, and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct.

D. No later than sixty (60) days after the date this Order is issued, Respondent shall implement policies and procedures to:

1. Enable persons (including, but not limited to, its board of directors, officers, employees, Members, and agents) to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and

2. Discipline its board of directors, officers, employees, Members, and agents for failure to comply fully with this Order.

E. For a period of five (5) years from the date this Order is issued, Respondent shall conduct a presentation at (1) each of NARPM's annual convention and regional conferences, and (2) each code of ethics training session, that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

A. No later than (i) ninety (90) days after the date this Order is issued, (ii) one hundred eighty (180) days after the date this Order is issued; and

B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of Respondent;

B. Acquisition, merger, or consolidation of Respondent; or

C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and

B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on October 1, 2034.

By the Commission.

APPENDIX A

(Letterhead of NARPM)

Dear Member:

As you may know, the Federal Trade Commission conducted an investigation concerning the provisions in NARPM's Code of Ethics and Standards of Professionalism ("Code of Ethics") that stated:

NARPM Professional Members shall refrain from criticizing other property managers or their business practices.

The Property Manager shall not knowingly solicit competitor's clients.

The Federal Trade Commission alleges that these provisions in the Code of Ethics violate the Federal Trade Commission Act because they unnecessarily restrict members of NARPM from competing for clients, thereby depriving clients of the benefits of competition among property managers.

To end the investigation expeditiously and to avoid disruption to its core functions, NARPM voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement and a Decision and Order by the Federal Trade Commission. As a result, NARPM is in the process of revising its Code of Ethics, ethics training, and will implement an antitrust compliance program.

In general, the Federal Trade Commission has prohibited NARPM from maintaining bylaws, code of ethics, operational policies, or membership requirements that restrict members from advertising for or soliciting property management work.

You must disregard any instruction you received in any NARPM ethics training regarding the above provisions. Those provisions are no longer valid or part of the Code of Ethics.

The Decision and Order does not prohibit NARPM from adopting and enforcing Codes of Ethics or similar documents that govern the conduct of members with respect to representations that NARPM reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

A copy of the Decision and Order is enclosed. It is also available on the Federal Trade Commission website at www.FTC.gov, and through the NARPM web site.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from the National Association of Residential Property Managers, Inc. (hereinafter "NARPM"). The Commission's complaint ("Complaint") alleges that NARPM, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. NARPM restrained competition by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) soliciting the customers of competing property managers, and (2) making statements about competing property managers that are neither false nor deceptive.

Analysis to Aid Public Comment

Under the terms of the proposed Consent Agreement, NARPM is required to cease and desist from restricting its members from soliciting customers or from making statements about competitors' products, services, or business or commercial practices that are not false or deceptive.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order ("the Proposed Order").

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by NARPM that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

NARPM is a non-profit professional corporation of real estate agents, brokers, managers and their employees, with over 4,000 members. NARPM's members are in the business of managing single-family and multi-family residential properties, condominiums, townhouses, and short-term rentals. Some members also manage commercial and industrial properties and homeowners associations.

B. The Anticompetitive Conduct

NARPM maintains a Code of Ethics applicable to the commercial activities of its members. NARPM's members agree to abide by the Code of Ethics as a condition of membership. NARPM maintains the following provisions in its Code of Ethics:

- "The Property Manager shall not knowingly solicit competitor's clients."

- "NARPM Professional Members shall refrain from criticizing other property managers or their business practices."

NARPM also established a process for receiving complaints about and resolving alleged violations of the Code of Ethics. NARPM may sanction members found to violate the Code of Ethics. Sanctions may include a letter of reprimand, probation or suspension for a specified term, or expulsion from NARPM.

The Complaint alleges that NARPM has violated Section 5 of the Federal Trade Commission Act by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) soliciting the customers of competing property managers, and (2) making statements that are not false or deceptive about competing property managers. The Complaint alleges that the purpose, effects, tendency, or capacity of the combination, agreement, acts and practices of NARPM has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among property managers, and by depriving consumers and others of the benefits of free and open competition among property managers.

II. The Proposed Order

The Proposed Order has the following substantive provisions. Paragraph II requires NARPM to cease and desist from restraining its members from soliciting property management work, or from making statements about competitors' products, services, or business or commercial practices that are not false or deceptive. The Proposed Order does not prohibit NARPM from adopting and enforcing reasonable restraints with respect to representations that

NARPM reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

Paragraph III of the Proposed Order requires NARPM to remove from its website and organization documents any statement that does not comply with the Proposed Order, and to publish on the website any revision to the organization documents. NARPM must publish an announcement that it has changed its Code of Ethics, and a statement describing the Consent Agreement ("the Settlement Statement"). NARPM must publish the aforementioned documents in NARPM's news magazine. NARPM must distribute the Settlement Statement to NARPM's board of directors, officers, employees, and members. NARPM must publish in all ethics courses designed or offered by NARPM that discuss the provisions at issue a statement that restrictions on solicitation or advertising no longer apply. Paragraph III also requires NARPM to provide all new members and all members who receive a membership renewal notice with a copy of the Settlement Statement.

Paragraph IV of the Proposed Order requires NARPM to design, maintain, and operate an antitrust compliance program. NARPM will have to appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, NARPM will have to provide in-person annual training to its board of directors, officers, and employees, and conduct a presentation at its annual convention, regional conferences, and each code of ethics training session, that summarizes NARPM's obligations under the Proposed Order and provides context-appropriate guidance on compliance with the antitrust laws. NARPM must also implement policies and procedures to enable persons to ask questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its board of directors, officers, employees, members, and agents for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed Order impose certain standard reporting and compliance requirements on NARPM.

The Proposed Order will expire in 20 years.

Complaint

IN THE MATTER OF

GRACO INC.;
ILLINOIS TOOL WORKS INC.;
AND
ITW FINISHING LLC

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

Docket No. 9350; File No. 111 0169
Complaint, December 15, 2011 – Decision, October 6, 2014

This consent order addresses the $650 million acquisition by Graco, Inc. of certain assets of Illinois Tool Works Inc. and ITW Finishing LLC ("ITW"). The complaint alleges that Graco's acquisition of ITW would substantially reduce competition in various markets for industrial liquid finishing equipment in North America. The consent order requires Graco to divest ITW's liquid finishing business assets, including the Binks, DeVilbiss, Ransburg, and BGK brands.

Participants

For the *Commission*: *Anna Chehtova, Amanda Hamilton, Marc Schneider, Brian Telpner,* and *Cathlin Tully.*

For the *Respondents*: *John Graubert, Covington & Burling LLP, Joseph Humke, Lindquist & Vennum, Richard Parker, O'Melveny & Myers LLP,* and *Richard A. Duncan, Faegre Baker Daniels LLP; Logan Breed* and *J. Robert Robertson, Hogan Lovells US LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the Act, the Federal Trade Commission, having reason to believe that Respondents Graco Inc. ("Graco"), Illinois Tool Works Inc., and ITW Finishing LLC ("ITW") having entered into an agreement pursuant to which Graco will acquire the assets of ITW, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and which if consummated may substantially lessen competition in violation

of Section 7 of the Clayton Act, 15 U.S.C. § 18 and Section 5 of the FTC 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 pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. Graco's proposed acquisition of ITW, its largest and most significant competitor, threatens to harm competition for certain industrial liquid finishing equipment in North America and lead to higher prices for North American distributors and end users already struggling in today's economic environment. Finishing is the application by end-user customers of coatings, such as paint or varnish, to all kinds of metal, plastic, or wood products that they manufacture. Describing the deal, Graco's president told his Board of Directors that the ITW finishing companies were

2. Graco and ITW are the two dominant manufacturers of liquid finishing equipment for industrial use in North America. The acquisition would combine Graco's with its leading competitor and eliminate the close competition ITW now poses to Graco's liquid finishing business. As described in the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"), the loss of this close direct competition is likely in and of itself to lead to anticompetitive effects. After the acquisition, Graco will no longer need to effectively discount on sales to distributors to compete with ITW and will have less incentive to develop new and better products. Because competition for sales to distributors will be lessened, end use industrial manufacturers may pay higher prices for industrial liquid finishing equipment.

3. Post-acquisition, Graco will control well over of the sales of all liquid finishing equipment for industrial use in North America. According to the parties' internal documents, Graco

and ITW are the dominant suppliers of certain industrial liquid finishing equipment in North America. Exel is a distant third.

4. Under the relevant case law and the Merger Guidelines, the extraordinarily high post-acquisition concentration levels render the acquisition presumptively unlawful in relevant markets within the product categories of pumps, spray guns, and proportioners for industrial use, in which Graco and ITW compete for the sale of industrial liquid finishing equipment to distributors (value-added resellers) for resale.

5. Evidence from the parties, distributors (value-added resellers), and other industry participants confirms this strong presumption of illegality. Because Exel and other niche manufacturers lack Graco's and ITW's installed base, brand acceptance, and access to quality North American distribution which can furnish some users with service and replacement parts, no existing competitors can or would constrain Graco post-acquisition from imposing price increases on industrial liquid finishing equipment. As one industrial end user commented to ITW,

6. Effective expansion or entry into the manufacture and sale in each industrial liquid finishing equipment market in North America is unlikely in response to an anticompetitive price increase, due to significant barriers to entry. In a recent presentation prepared for its Board of Directors, Graco identified

Repositioning or expansion by existing smaller competitors is unlikely without access to capable local distributors to sell and service finishing equipment for industrial end users. Indeed, Graco believes

Respondents have advanced no credible, cognizable efficiencies to justify the acquisition, especially given the

extremely high post-acquisition concentration and the loss of close competition between Graco and ITW. Indeed, Graco's stated plan is to operate the two liquid finishing equipment businesses as separate standalone operations, only now under the common control of a single firm.

II.

RESPONDENTS

7. Graco Inc. is a for-profit corporation, existing and doing business under and by virtue of the laws of the state of Minnesota, with its office and principal place of business located at 88 11th Avenue Northeast, Minneapolis, Minnesota 55413. Graco manufactures and sells liquid finishing equipment throughout North America and the world.

8. Illinois Tool Works Inc. is a for-profit 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 3600 West Lake Avenue, Glenview, Illinois 60026. Illinois Tool Works wholly owns ITW Finishing LLC.

9. ITW Finishing LLC is a for-profit limited liability company, 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 3600 West Lake Avenue, Glenview, Illinois 60026. ITW manufactures and sells liquid finishing equipment throughout North America and the world.

III.

JURISDICTION

10. Respondents, and each of their relevant operating subsidiaries and parent entities are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

11. The acquisition constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

IV.

THE ACQUISITION

12. Pursuant to an Asset Purchase Agreement dated April 14, 2011, Graco proposes to acquire certain assets and equity interests from Illinois Tool Works and ITW for $650 million. The transaction would create an entity with annual sales exceeding $1 billion. Respondents Graco and ITW have combined North American liquid finishing equipment sales exceeding

V.

INDUSTRY STRUCTURE AND ANTICOMPETITIVE EFFECTS

13. Industrial manufacturers, the end users of the products at issue, use liquid finishing equipment to apply paint and other coatings to all kinds of finished goods, including automobiles, office furniture, and home appliances. Almost every surface requires a finish, whether for aesthetic value, surface protection, or other features. These characteristics are often the very things that make a customer choose one product over another. Applying a consistent finish is a critical part of the manufacturing process, because any disruption in the finishing process could impede the entire manufacturing process. Manufacturers require reliable, proven finishing equipment and local service, whenever a problem arises, day or night.

14. Graco and ITW manufacture and sell liquid finishing equipment for use in industrial settings. This equipment includes pumps, applicators (spray guns), plural component equipment (proportioners), and related equipment used in industrial paint systems. The equipment is durable, with a significant follow-on parts and service business associated with each system or component sale. Pumps, spray guns, proportioners, and the spare parts associated with these components account for the vast majority of the North American industrial liquid finishing equipment sales of both firms. Respondents sell these products throughout North America.

15. Liquid finishing equipment manufacturers, including Graco and ITW, predominantly sell their products to independent, highly-specialized distributors, who purchase the vast majority of liquid finishing equipment for resale. Distributors provide a total liquid finishing solution—a value-added bundle of goods and services to meet each end user's needs, which can include system design, engineering, installation, product training, equipment customization, maintenance, and repair. The initial sale of equipment typically results in additional business for the distributor in selling spare and replacement parts and accessories. Aftermarket sales often comprise the majority of a distributor's business. The aftermarket business most typically involves Graco and ITW parts because they have the largest installed bases of equipment.

16. Access to quality distributors appears to be the most cost-effective way to channel the local pull-through demand for the industrial liquid finishing equipment that is the subject of this complaint. As previously stated, all industrial liquid finishing equipment manufacturers sell predominantly through distributors. Graco itself sells all of its industrial liquid finishing equipment to distributors. ITW sells the vast majority of its industrial liquid finishing equipment to distributors.

17. Graco and ITW compete directly with each other on price and product innovation. Graco and ITW compete on price by (among other things) offering reduced prices to their distributors (and, through them to industrial end users) in the form of volume discounts, payment of commissions to distributors for "switching" an end user, and other promotions on the sale of their equipment. Graco and ITW also compete on innovation, often developing new products to match close offerings of the other firm.

18. Graco and ITW are the largest suppliers of pumps, spray guns, and proportioners, and are close or the closest competitors in each category of products that are the subject of this complaint. When Graco and ITW win a competitive sale, they displace each other's products more often than anyone else's. To grow share in a mature industry, a manufacturer must displace competitive product.

[redacted]

19. Post-acquisition, distributors and industrial manufacturers will have no recourse to curb the loss of this competition [redacted]

20. Other firms will not grow or expand to replace the loss of this competition, especially for installed base sales. Without a network of well-financed, capable distributors who can quickly furnish service and replacement parts to end users, firms cannot expect to penetrate these markets significantly. Fringe competitors lack the installed base to attract significant local distribution. Moreover, without a large installed base, new entrants will be unable to find adequate distribution. After the acquisition, most of the top North American distributors would not switch from Graco to carry or promote fringe competitors or new entrants. Distributors depend heavily on Graco and ITW for their business, fear retaliation from Graco if they carry other brands, and believe that their end users would be disinclined to embrace unfamiliar brands lacking long-term marketplace reliability and manufacturer credibility. The acquisition will exacerbate the already substantial barriers to entry presented by the limited pool of quality distributors with a substantial percentage of installed base sales opportunities, generally unavailable to less-established brands of industrial liquid finishing equipment.

21. Graco's large installed base in end user plants makes it extremely difficult for competitors to expand their market presence. Only ITW has managed to retain significant and growing market presence, often at Graco's expense.

22. [redacted] Post-acquisition, Graco's distributors will not risk their Graco volume discounts, promotional programs, and their Graco component and aftermarket sales by promoting other manufacturers' products. Graco will be able to realize even greater percentage price increases over cost increases than they do today.

23. Graco and ITW have the largest installed base of equipment sold to end users and the largest share of distributor sales and distributor loyalty. Graco and ITW have an advantage over other industrial liquid finishing equipment manufacturers when [redacted] to attract and maintain distributors to push end user sales.

24. The transaction would eliminate both price and non-price competition between Graco and ITW for distributors and end users and enhance the merged entity's market power.

VI.

RELEVANT PRODUCT MARKETS

25. From this evidence of anticompetitive effects, it can be inferred that certain of the products discussed below satisfy the hypothetical monopolist test used to identify relevant markets. Respondents' documents track their sales by the following categories of equipment.

26. The relevant product markets that would be affected by the transaction are no broader than the manufacture and sale of:

a. liquid finishing pumps for industrial use,

b. liquid finishing applicators (spray guns) for industrial use,

c. liquid finishing plural component equipment (proportioners) for industrial use,

d. circulation pumps for paint systems used in automotive assembly plants, and

e. industrial liquid finishing equipment for resale.

A.

Liquid Finishing Pumps for Industrial Use

27. Industrial liquid finishing pumps are specialized equipment used to transfer, distribute, or circulate paints and finishing liquids at a regulated pressure, flow rate, and temperature. A liquid finishing system requires one or more pumps, depending on the scale of the finishing operation. Liquid finishing pumps encompass a variety of technologies (e.g., piston, centrifugal, double diaphragm, and rotary lobe), powered by different means (i.e., electric, hydraulic, and pneumatic), and operating at different pressures and flow rates. Brand reputation, a loyal installed base of end users, and the importance of quality distribution that can quickly service and/or replace those pumps are the key competitive dynamics for all industrial liquid finishing pumps.

B.

Liquid Finishing Spray Guns for Industrial Use

28. Industrial liquid finishing spray guns are specialized equipment used to apply paint and other liquid coatings to a surface. Spray guns encompass a range of designs, such as airless guns, air-assisted airless guns, and manual electrostatic guns, and several relevant product markets may exist within the overall spray gun market. Although end users' demands are varied and specific, and a gun appropriate for one use will not always substitute for a spray gun used in a different process, brand reputation, a loyal installed base of end users, and the importance of quality distribution that can quickly service and/or replace those applicators are the key common competitive dynamics for all industrial liquid finishing spray guns.

C.

Liquid Finishing Proportioners for Industrial Use

29. Plural-component equipment (proportioners) mix paint with catalysts and other liquids in ratios before application to a product. Proportioners can handle multiple colors and catalysts and offer some flexibility in configuration. Some proportioners can make rapid, multiple color changes, with real-time information and touch screen displays. Brand reputation, a loyal installed base of end users, and the importance of quality distribution that can quickly service and/or replace those proportioners are the key competitive dynamics for all industrial liquid finishing proportioners.

D.

Circulation Pumps for Paint Systems in Automotive Assembly Plants

30. Paint circulation pumps used in automotive paint circulation systems are specialized equipment designed to circulate automotive paint and other liquid finishes to various points along an assembly line. Auto manufacturers are highly sensitive to finish quality and production costs. Automakers and automotive suppliers consider electric piston circulation pumps superior to other pump technologies in reliability and efficiency. Automakers generally preapprove liquid finishing equipment manufacturers' pumps for use in automotive assembly plants; this approval can take two years or longer.

E.

Industrial Liquid Finishing Equipment for Resale

31. Manufacturers of liquid finishing equipment for industrial use rely predominantly on independent distributors to purchase equipment for resale with a variety of value-added services and equipment that end users demand. End users require immediate turnaround on service, sales, engineering, and support. Manufacturers best supply these services, especially to their installed base, throughout North America using local distribution.

Industrial liquid finishing equipment manufacturers compete to provide the broadest set of products at the lowest delivered price, with prompt equipment delivery and service to resellers.

VII.

GEOGRAPHIC MARKET

32. A relevant geographic market in which to analyze the effects of the proposed acquisition is North America because of the high entry hurdles and entry barriers presented by the parties' large installed bases and the end use customers' need for immediate service and/or repair or replacement of liquid finishing equipment. Distributors are largely bound to source liquid finishing equipment in North America in order to be able to provide the service and support their end users require. Only industrial liquid finishing equipment manufacturers with a large installed base and sales staff in North America can profitably support this network of distribution. The importance of the installed base and local distribution means that overseas manufacturers with limited sales in North America lack the economic incentive or ability to expand their North American sales.

VIII.

PRESUMPTIVE ILLEGALITY OF THE ACQUISITION

33. Because no countervailing benefits exist, the acquisition will eliminate both price and non-price competition between Graco and ITW and increase the merged entity's market power, making it illegal.

34. The acquisition's effect on concentration renders it presumptively illegal. Graco and ITW are the two most significant competitors providing pumps, spray guns, and proportioners for industrial use in North America. Other manufacturers are fringe competitors with small North American sales and lack the ability to reposition or expand in a manner sufficient to ameliorate the anticompetitive effects of the transaction.

35. Graco and ITW are the only providers currently supplying circulation pumps for use in automotive paint circulation systems, making this acquisition a de facto merger to monopoly for new sales in this market.

36. Graco and ITW are the only providers effectively able to compete for the most capable distributors because of their broad liquid finishing equipment lines, large installed bases, and strong reputations for quality with end users. Other competitors with small North American sales, for the reasons previously stated, lack the economic incentive or ability to reposition or expand in a manner sufficient to ameliorate the reduced price competition resulting from the transaction.

37. Each relevant product market is already highly concentrated, and the proposed acquisition would further increase concentration to presumptively anticompetitive levels under the relevant case law and the Merger Guidelines.

IX.

ENTRY AND REPOSITIONING BARRIERS AND LACK OF EFFICIENCIES

38. Substantial and effective entry, repositioning, or fringe firm growth sufficient to deter or counteract the anticompetitive effects of the proposed acquisition is unlikely. This is because of the high entry hurdles and barriers that need to be overcome, which include, but are not limited to, the substantial time and expense to develop and market a sufficiently extensive product line to satisfy diverse end users' needs, establish marketplace credibility, build an installed base of end users, and develop an adequate distribution network.

39. The most significant entry hurdles and barriers are reputation, installed base, and, connected to this, finding adequate distribution that can supply prompt service and/or repair or replace the equipment of the installed base. These factors present significant obstacles to expansion or repositioning by existing fringe competitors, as well as de novo entry.

40. [redacted] The difficult entry hurdles and barriers to entry

have enabled Graco to raise prices annually and to realize increased profits. ITW is the most significant constraint on Graco's ability to raise prices even further, a constraint that will be eliminated by this transaction.

41. Extraordinary efficiencies specific to the transaction are necessary to justify the acquisition in light of high concentration and high potential to harm competition. Graco has no significant plans to integrate the ITW business or products with Graco. Any manufacturing synergies are unlikely for at least five years.

X.

VIOLATIONS

COUNT I – ILLEGAL AGREEMENT

42. The allegations of Paragraphs 1 through 41 are incorporated by reference as though fully set forth.

43. The acquisition agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION

44. The allegations of Paragraphs 1 through 41 are incorporated by reference as though fully set forth.

45. The acquisition, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15.U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the fifteenth day of May 2012, at 10:00 a.m. is hereby fixed as the time, and Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place when and where an evidentiary hearing will be had before an Administrative

Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the answer is filed by the Respondents. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C.

20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the answer is filed by the Respondents). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answer, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition challenged in this proceeding violates Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant markets, with the ability to offer such products and services as Graco and ITW were offering and planning to offer prior to the acquisition.

2. A prohibition against any transaction between Graco and ITW that combines their businesses in the relevant markets, except as may be approved by the Commission.

3. A requirement that, for a period of time, Graco and ITW provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.

4. A requirement to file periodic compliance reports with the Commission.

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to ensure the creation of one or more viable, competitive independent entities to compete in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this fifteenth day of December 2011.

By the Commission.

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having heretofore issued its administrative Complaint charging Respondents Graco Inc. ("Graco"), Illinois Tool Works Inc., and ITW Finishing LLC ("ITW"), hereinafter referred to as Respondents, 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, and Respondents having been served with a copy of the Complaint, together with a notice of contemplated relief, and the Respondents having answered the Complaint denying said charges; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and the executed Consent Agreement, now in further conformity with

the procedure described in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets ("Hold Separate"):

1. Respondent Graco Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 88-11th Avenue Northeast, Minneapolis, Minnesota 55413.

2. Respondent Illinois Tool Works Inc. is a corporation organized, 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 3600 West Lake Avenue, Glenview, Illinois 60026.

3. Respondent ITW Finishing LLC is a limited liability company organized, 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 3600 West Lake Avenue, Glenview, Illinois 60026. ITW Finishing LLC is indirectly wholly-owned by Illinois Tool Works Inc.

4. 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, as used in this Hold Separate, the following definitions, and all other definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), shall apply:

A. "Acquisition" means the proposed acquisition described in the Asset Purchase Agreement by and among Graco Inc., Graco Holdings Inc., Graco Minnesota Inc., Illinois Tool Works Inc., and ITW

Finishing LLC, dated April 14, 2011 (the "Asset Purchase Agreement").

B. "Acquisition Date" means the date the Acquisition is consummated.

C. "Commission-approved Acquirer" means any Person that receives the prior approval of the Commission to acquire the Liquid Finishing Business Assets pursuant to the Decision and Order.

D. "Confidential Business Information" means competitively sensitive, proprietary and all other business information of any kind, except for any information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents, or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

E. "Decision and Order" means (i) the proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and (ii) the final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.

F. "Divestiture Date" means the date on which Respondent Graco (or the Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to divest, license, assign, grant, transfer, deliver and otherwise convey the Liquid Finishing Business Assets completely and as required by Paragraph II. (or Paragraph V.) of Decision and Order.

G. "Gema Powder Finishing Business" means the worldwide business of developing, assembling,

manufacturing, distributing, selling, or servicing powder finishing systems and products conducted prior to the Acquisition by Respondent ITW, including all business activities relating to the development, manufacture, and sale of products under the brand name Gema. "Gema Powder Finishing Business" does not include the Liquid Finishing Business.

H. "Hold Separate" means this Order to Hold Separate and Maintain Assets.

I. "Hold Separate Business" means the (i) Liquid Finishing Business Assets and (ii) Liquid Finishing Business.

J. "Hold Separate Business Employees" means the Liquid Finishing Business Employees, the Hold Separate Gema Employees, and the Hold Separate Gema Shared Employees.

K. "Hold Separate Gema Employees" means employees located in the United Kingdom, Germany, France, Italy, Australia, Japan, and Mexico in facilities shared with the Liquid Finishing Business or Liquid Finishing Business Assets whose job responsibilities relate exclusively to Gema powder finishing products.

L. "Hold Separate Gema Shared Employees" means employees located in the United Kingdom, Germany, France, Italy, Australia, Japan, and Mexico in facilities shared with the Liquid Finishing Business or Liquid Finishing Business Assets whose job responsibilities relate to both the liquid finishing and powder finishing businesses.

M. "Hold Separate Period" means the time period during which the Hold Separate is in effect, which shall begin on the date this Hold Separate becomes a final and effective order, which shall occur on or prior to the Acquisition Date, and terminate pursuant to Paragraph V. of this Hold Separate.

N. "Hold Separate Manager(s)" means the Person(s) appointed pursuant to Paragraph II.C.2. of this Hold Separate.

O. "Hold Separate Trustee" means the Person appointed pursuant to Paragraph II.C.l. of this Hold Separate.

P. "Liquid Finishing Business" means the worldwide business of developing, assembling, manufacturing, distributing, selling, or servicing liquid finishing systems and products conducted prior to the Acquisition by Respondent ITW, including all business activities relating to the development, manufacture, and sale of products under the brand names Binks, DeVilbiss, Ransburg, and BGK. "Liquid Finishing Business" does not include the Gema Powder Finishing Business.

Q. "Liquid Finishing Business Assets" means all rights, title, and interest in and to all property and assets, tangible and intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to the Liquid Finishing Business.

R. "Liquid Finishing Business Employees" means any full-time, part-time, or contract employee(s) of the Liquid Finishing Business, including the Hold Separate Gema Shared Employees, immediately prior to the Acquisition.

S. "Orders" means the Decision and Order and this Hold Separate.

T. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.

U. "Prospective Acquirer" means a Person that Graco (or a Divestiture Trustee appointed under the Decision and Order) intends to submit as a Commission-approved Acquirer to the Commission for its prior approval pursuant to the Decision and Order.

II.

IT IS FURTHER ORDERED that:

A. During the Hold Separate Period, Respondent Graco shall:

1. Hold the Hold Separate Business separate, apart, and independent as required by this Hold Separate and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business.

2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, the Hold Separate Trustee, or the Hold Separate Managers, except to the extent that Respondent Graco must exercise direction and control over the Hold Separate Business as is necessary to assure compliance with this Hold Separate, the Consent Agreement, the Decision and Order, and all applicable laws. Nothing herein shall limit taking such action as may be required to ensure compliance with financial reporting requirements, with all applicable laws, regulations, and other legal requirements, or with policies and standards concerning health, safety, and environmental aspects of the Hold Separate Business or with the integrity of the Hold Separate Business financial controls.

3. Take such actions as are necessary to maintain and assure the continued viability, marketability, and competitiveness of the Hold Separate Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, and shall not sell, transfer, encumber, or otherwise impair the Hold Separate Business (except as required by the Decision and Order).

B. From the time Respondents execute the Consent Agreement until the Acquisition Date, Respondent ITW shall take such actions as are necessary to maintain and assure the continued maintenance of the full economic viability, marketability, and competitiveness of the Hold Separate Business, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

C. Respondent Graco shall hold the Hold Separate Business separate, apart, and independent of Respondent Graco on the following terms and conditions:

1. At any time after the Respondents sign the Consent Agreement, the Commission may appoint a Hold Separate Trustee to monitor the operations of the Hold Separate Business and to ensure that the Respondents comply with their obligations as required by this Hold Separate and the Decision and Order. The Hold Separate Trustee shall serve as Hold Separate Trustee pursuant to the agreement executed by the Hold Separate Trustee and Respondent Graco ("Hold Separate Trustee Agreement").

   a. The Commission shall select the Hold Separate Trustee, subject to the consent of Respondent Graco, which consent shall not be unreasonably withheld. If Respondent Graco has not opposed, in writing, including the reasons for opposing, the selection of the proposed Hold Separate Trustee within ten (l0) days after notice by the staff of the Commission to Respondent Graco of the identity of the proposed Hold Separate Trustee, Respondent Graco shall be deemed to have consented to the selection of the proposed Hold Separate Trustee.

b. The Hold Separate Trustee shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Hold Separate Managers; maintaining the independence of the Hold Separate Business; and monitoring Respondents' compliance with their respective obligations pursuant to the Orders, including, without limitation, maintaining the viability, marketability, and competitiveness of the Hold Separate Business pending divestiture.

c. No later than one (1) day after the appointment of the Hold Separate Trustee, Respondent Graco shall enter into an agreement ("Hold Separate Trustee Agreement") that, subject to the prior approval of the Commission, transfers to and confers upon the Hold Separate Trustee all rights, powers, and authority necessary to permit the Hold Separate Trustee to perform his or her duties and responsibilities pursuant to this Hold Separate, in a manner consistent with the purposes of the Orders and in consultation with Commission staff, and shall require that the Hold Separate Trustee shall act in a fiduciary capacity for the benefit of the Commission.

d. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents, and facilities of the Hold Separate Business, and to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. Respondents shall develop such financial or other information as the Hold Separate Trustee

may reasonably request and shall cooperate with the Hold Separate Trustee.

e. Respondents shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondents' compliance with this Hold Separate, the Consent Agreement, or the Decision and Order, or otherwise to perform his or her duties and responsibilities consistent with the terms of this Hold Separate.

f. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent Graco, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.

g. The Commission may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Trustee's duties.

h. Respondents may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however,* such agreement shall not restrict the Hold Separate Trustee from providing any information to the Commission.

i. Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate terminates, the Hold Separate Trustee

shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate and Respondents' compliance with their obligations under the Hold Separate and the Decision and Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Hold Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections, or any other regularly prepared financial statements.

j. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this Hold Separate, subject to the consent of Respondent Graco, which consent shall not be unreasonably withheld. If Respondent Graco has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within ten (l0) days after notice by the staff of the Commission to Respondent Graco of the identity of any substitute Hold Separate Trustee, Respondent Graco shall be deemed to have consented to the selection of the proposed substitute Hold Separate Trustee. Respondent Graco and the substitute Hold Separate Trustee shall execute a Hold Separate Trustee Agreement, subject to the approval of the Commission, consistent with this paragraph.

k. The Hold Separate Trustee shall serve until the day after the Divestiture Date; *provided, however,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

2. No later than five (5) days after the Acquisition Date, Respondent Graco shall appoint one or more Hold Separate Managers (collectively the "Hold Separate Managers"), subject to the approval of the Hold Separate Trustee in consultation with Commission staff, to manage and maintain the Hold Separate Business in the regular and ordinary course of business and in accordance with past practice.

   a. The Hold Separate Managers shall be responsible for the operation of the Hold Separate Business and shall report directly and exclusively to the Hold Separate Trustee, and shall manage the Hold Separate Business independently of the management of Respondent Graco. The Hold Separate Managers shall not be involved, in any way, in the operations of the other businesses of Respondent Graco during the term of this Hold Separate.

   b. No later than three (3) days after appointment of the Hold Separate Manager(s), Respondent Graco shall enter into a management agreement with each such manager that, subject to the prior approval of the Hold Separate Trustee, in consultation with the Commission staff, transfers all rights, powers, and authority necessary to permit each such Hold Separate Manager to perform his or her duties and responsibilities pursuant to this Hold Separate, in a manner consistent with the purposes of the Orders.

   c. Respondents shall provide the Hold Separate Managers with reasonable financial incentives to undertake this position. Such incentives shall include employee benefits, including regularly scheduled raises, bonuses, vesting of retirement benefits (as permitted by law) on the same basis as provided for under the Asset

Purchase Agreement for other employees hired by Respondent Graco, and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Hold Separate Business's viability, marketability, and competitiveness until the end of the Hold Separate Period, and as may otherwise be necessary to achieve the purposes of this Hold Separate.

d. The Hold Separate Managers shall make no material changes in the ongoing operations of the Hold Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.

e. The Hold Separate Managers shall have the authority, with the approval of the Hold Separate Trustee, to remove Hold Separate Business Employees and replace them with others of similar experience or skills. If any Person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Hold Separate Managers, in consultation with the Hold Separate Trustee, may request Respondent Graco to, and Respondent Graco shall, appoint a substitute Person, which Person the respective manager shall have the right to approve.

f. In addition to Hold Separate Business Employees, the Hold Separate Managers may, with the approval of the Hold Separate Trustee and at the cost and expense of Respondent Graco, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to assist the respective manager in managing the Hold Separate Business and in carrying out the manager's duties and responsibilities. Nothing contained herein shall preclude a Hold Separate Manager from contacting or communicating

directly with the staff of the Commission, either at the request of the staff of the Commission or in the discretion of the manager.

g. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove any Hold Separate Manager for cause. Within three (3) days after such removal, Respondent Graco shall appoint a replacement manager, subject to the approval of the Hold Separate Trustee in consultation with Commission staff, on the same terms and conditions as provided in this paragraph.

3. The Hold Separate Trustee and the Hold Separate Managers shall serve, without bond or other security, at the cost and expense of Respondent Graco, on reasonable and customary terms commensurate with the person's experience and responsibilities.

4. Respondent Graco shall indemnify the Hold Separate Trustee and Hold Separate Managers and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Hold Separate Managers' duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Hold Separate Trustee or the Hold Separate Managers.

5. The Hold Separate Business shall be staffed with sufficient employees (including any full-time, part-time, or contract employee of the Hold Separate Business) to maintain the viability and competitiveness of the Hold Separate Business. To

the extent that such employees leave or have left the Hold Separate Business prior to the Divestiture Date, the Hold Separate Managers, with the approval of the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.

6. In connection with support services or products not included within the Hold Separate Business, Respondent Graco shall continue to provide, or offer to provide, the same support services to the Hold Separate Business as customarily have been or were being provided to such businesses by ITW prior to the Acquisition Date. For any services or products that Respondents may provide to the Hold Separate Business, Respondents may charge no more than the same price they charge others for the same services or products (or a commercially reasonable rate if ITW had not previously charged for such services). Respondents' personnel providing such services or products must retain and maintain all Confidential Business Information of or pertaining to the Hold Separate Business on a confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses, other than the Hold Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Hold Separate Business.

   a. Respondent Graco shall offer to the Hold Separate Business, directly or through Respondent ITW, any services and products that Respondent ITW provided, in the ordinary course of business directly or through third

party contracts to the business constituting the Hold Separate Business at any time since December 31, 2011, or such services that Respondent ITW is obligated to provide under Schedule 1.2 of the Asset Purchase Agreement. Respondent ITW shall treat the Hold Separate Business as a Graco Subsidiary, as that term is defined in the Asset Purchase Agreement. Subject to the foregoing, the services and products that Respondent Graco shall offer the Hold Separate Business shall include, but shall not be limited to, the following:

i. human resources and administrative services, including but not limited to payroll processing, labor relations support, retirement administration, and procurement and administration of employee benefits, including health benefits;

ii. federal and state regulatory compliance and policy development services;

iii. environmental health and safety services, which are used to develop corporate policies and insure compliance with federal and state regulations and corporate policies;

iv. financial accounting services;

v. preparation of tax returns;

vi. audit services;

vii. information technology support services;

viii. processing of accounts payable and accounts receivable;

ix. technical support;

x. procurement of supplies;

xi. maintenance and repair of facilities;

xii. procurement of goods and services utilized in the ordinary course of business by the Hold Separate Business;

xiii. legal services; and

xiv. cash management services in the ordinary course of business, including cash sweeps, consistent with the cash management services provided by Respondent ITW prior to the Acquisition Date.

b. The Hold Separate Business shall have, at the option of the Hold Separate Managers with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties (including Respondent ITW) unaffiliated with Respondent Graco.

7. Respondent Graco shall provide the Hold Separate Business with sufficient financial and other resources:

a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Hold Separate Business as it is currently operated (including efforts to generate new business) consistent with the practices of the Hold Separate Business in place prior to the Acquisition;

b. to perform all maintenance to, and replacements of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice and current plans;

c. to carry on during the Hold Separate Period such capital projects, physical plant improvements, and business plans as are already underway for which all necessary

regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation or expansion projects; and

d. to maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however,* that, consistent with the purposes of the Decision and Order and in consultation with the Hold Separate Trustee: (i) the Hold Separate Managers may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost; and (ii) to the extent that the Hold Separate Business generates financial funds in excess of financial resource needs, Respondent Graco shall have availability to such excess funds consistent with practices in place for the Hold Separate Business prior to the Acquisition.

8. Respondent Graco shall cause the following individuals that have access to Confidential Business Information of or pertaining to the Hold Separate Business to submit to the Hold Separate Trustee, or Commission staff as appropriate, a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate: (i) the Hold Separate Trustee, (ii) the Hold Separate Managers, (iii) each of Respondent Graco's employees not subject to the Hold Separate, (iv) the Hold Separate Gema Employees, (v) the Hold Separate Gema Shared Employees, and (vi) such additional Persons that the Hold Separate Trustee, in consultation with Commission staff, may identify.

These individuals must retain and maintain all Confidential Business Information of, or pertaining to, the Hold Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such Persons shall be prohibited from disclosing, providing, discussing; exchanging, circulating, or otherwise furnishing any such information to or with any other Person whose employment involves any of Respondents' businesses or activities other than the Hold Separate Business.

9. Except for the Hold Separate Managers, Hold Separate Business Employees, and support services employees involved in providing services to the Hold Separate Business pursuant to this Hold Separate, and except to the extent provided in this Hold Separate, Respondent Graco shall not permit any other of its employees, officers, or directors to be involved in the operations of the Hold Separate Business.

10. Respondents' employees (other than the Liquid Finishing Business Employees, the Hold Separate Gema Shared Employees, and Graco employees involved in providing support services to the Hold Separate Business pursuant to Paragraph II.C.6.) shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Hold Separate Business except:

    a. as required by law; and

    b. to the extent that necessary information is exchanged:

        i. in the course of consummating the Acquisition in compliance with the terms of the Asset Purchase Agreement;

        ii. as necessary to effect the divestiture of the Hold Separate Business, including in

connection with the marketing of the divested assets pursuant to the Consent Agreement, in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;

iii. in complying with this Hold Separate or the Consent Agreement;

iv. in overseeing compliance with policies and standards concerning the safety, health, and environmental aspects of the operations of the Hold Separate Business and the integrity of the financial controls of the Hold Separate Business;

v. in defending legal claims, investigations, or enforcement actions threatened or brought against or related to the Hold Separate Business;

vi. to lenders and auditors; or

vii. in obtaining legal advice.

Nor shall the Hold Separate Managers or any Hold Separate Business Employees receive or have access to, or use or continue to use, any Confidential Business Information about Respondents and relating to Respondents' businesses, except such information as is necessary to maintain and operate the Hold Separate Business.

In addition to the foregoing, Respondent Graco may receive aggregate financial and operational information relating to the Hold Separate Business to the extent necessary to allow Respondent Graco to comply with the requirements and obligations of the laws of the United States and other countries, to prepare consolidated financial reports, tax

returns, reports required by securities laws, payroll and benefits information, and personnel reports, and to comply with this Hold Separate. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

11. Subject to all other provisions in this Hold Separate, the:

    a. Hold Separate Gema Employees (i) may receive or have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Gema Powder Finishing Business; (ii) shall not seek, receive, have access to, or disclose any Confidential Business Information pertaining to the Liquid Finishing Business; and (iii) shall provide the signed confidentiality statement required by Paragraph II.C.8. of this Hold Separate.

    b. Hold Separate Gema Shared Employees (i) may receive or have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Gema Powder Finishing Business and to the Liquid Finishing Business; (ii) shall not disclose, provide, discuss, exchange, circulate, or otherwise furnish any such information pertaining to the Liquid Finishing Business to or with any other Person whose employment involves any of Respondent Graco's competing liquid finishing businesses; and (iii) shall provide the signed confidentiality statement required by Paragraph II.C.8. of this Hold Separate.

12. Respondent Graco and the Hold Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business

Information of the Hold Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate.

13. No later than five (5) days after the Acquisition Date, Respondent Graco shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate.

14. No later than five (5) days after the date this Hold Separate becomes final, Respondent Graco shall circulate to persons who are employed in Respondent Graco's businesses that compete with the Hold Separate Business, and shall circulate on the Acquisition Date to employees of the Hold Separate Business, a notice of this Hold Separate, in a form approved by the Hold Separate Trustee in consultation with Commission staff.

D. Until the Divestiture Date, Respondent Graco shall provide each Hold Separate Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Liquid Finishing Business and the Liquid Finishing Business Assets pending divestiture. Such incentives shall include employee benefits, including regularly scheduled raises, bonuses, vesting of retirement benefits (as permitted by law) on the same basis as provided for under the Asset Purchase Agreement for other employees hired by Respondent Graco, and additional incentives as may be necessary to assure the continuation and prevent any diminution of the viability, marketability, and competitiveness of the Liquid Finishing Business Assets until the Divestiture Date, and as may otherwise

be necessary to achieve the purposes of this Hold Separate.

E. From the date the Respondents execute the Consent Agreement until this Hold Separate terminates, Respondent Graco shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Hold Separate Employee for a position of employment with Respondent Graco. A Prospective Acquirer or the Commission-approved Acquirer shall have the option of offering employment to any Hold Separate Employee. Respondent Graco shall not interfere with the employment by a Prospective Acquirer or the Commission-approved Acquirer of such employee; shall not offer any incentive to such employee to decline employment with a Prospective Acquirer or the Commission-Acquirer or to accept other employment with the Respondent Graco; and shall remove any impediments that may deter such employee from accepting employment with a Prospective Acquirer or the Commission-approved Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employee to be employed by a Prospective Acquirer or the Commission-approved Acquirer.

F. Respondent Graco shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Hold Separate Employee who has accepted an offer of employment with a Prospective Acquirer or the Commission-approved Acquirer to terminate his or her employment relationship with such Person; *provided, however,* Respondent Graco may:

1. advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Hold Separate Business Employees; and

2. hire Hold Separate Business Employees who apply for employment with Respondent Graco, so long as such individuals were not solicited by the Respondent Graco in violation of this paragraph; *provided further,* that this sub-Paragraph shall not prohibit Respondent Graco from making offers of employment to or employing any Hold Separate Business Employees if a Prospective Acquirer or the Commission-approved Acquirer has notified Respondent Graco in writing that a Prospective Acquirer or the Commission-approved Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by a Prospective Acquirer or the Commission-approved Acquirer.

G. The purpose of this Hold Separate is to: (1) preserve the assets and businesses within the Hold Separate Business as viable, competitive, and ongoing businesses independent of Respondent Graco until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between the Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) maintain the full economic viability, marketability, and competitiveness of the Hold Separate Business, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets or businesses within the Hold Separate Business except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that Respondent Graco shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of Respondent Graco;

B. Any proposed acquisition, merger, or consolidation of Respondent Graco; or

C. Any other change in Respondent Graco, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IV.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to the relevant Respondent, relating to compliance with this Hold Separate, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during business office hours of the relevant Respondent(s) and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the relevant Respondent(s) related to compliance with the Consent Agreement and/or the Orders, which copying services shall be provided by such Respondent(s) at the request of the authorized representative(s) of the Commission and at the expense of such Respondent(s); and

B. Without restraint or interference from such Respondent(s), to interview officers, directors, or employees of such Respondent(s), who may have counsel present.

V.

IT IS FURTHER ORDERED that this Hold Separate shall terminate at the earlier of:

A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement

pursuant to the provisions of Commission Rule 3.25(f), 16 C.F.R. § 3.25(f); or

B. The day after the Divestiture Date of the Hold Separate Assets required to be divested pursuant to the Decision and Order.

By the Commission.

Statement of the Federal Trade Commission

On December 15, 2011, the Commission issued an administrative complaint challenging Graco Inc.'s ("Graco") proposed acquisition of the industrial finishing equipment businesses of ITW Finishing LLC and Illinois Tool Works Inc. (collectively "ITW"). The Commission also authorized its staff to file a separate complaint seeking a temporary restraining order and preliminary injunction in federal district court. That federal court proceeding is pending in the United States District Court for the District of Minnesota.

The matter has now been withdrawn from administrative adjudication, and the Commission has voted unanimously to issue an Order to Hold Separate and Maintain Assets ("Hold Separate") to Respondents Graco and ITW, pending consideration of a proposed Agreement Containing Consent Orders ("Consent Agreement") that has been entered into by and among the Respondents and Complaint Counsel supporting the administrative complaint. This will allow Graco to complete the challenged acquisition, subject to and in compliance with the requirements of the Hold Separate issued today.

The Hold Separate applies to all ITW liquid finishing businesses and assets worldwide that Graco is acquiring in the acquisition (collectively, the "Liquid Finishing Business Assets"), including business activities related to the development,

manufacture, and sale of products under the Binks, DeVilbiss, Ransburg, and BGK brand names.

The purpose of the Hold Separate is to allow the Commission staff sufficient time fully to review and consider the appropriate scope of divestiture and other relief needed to remedy the anticompetitive effects of Graco's acquisition of the Liquid Finishing Business Assets as alleged in the administrative complaint. During the hold separate period, Graco and ITW have committed to cooperate fully and in good faith with staff's review.

The Commission is not voting to accept or reject the proposed Consent Agreement for public comment at this time. After staff completes its review and submits to the Commission any additional recommendations regarding the proposed Consent Agreement, the Commission may take such action as it deems appropriate, including accepting the Consent Agreement, either as proposed or with modifications, for public comment.

The Commission is able to accept the Hold Separate under conditions that will allow the parties to complete their planned acquisition because both sides appear to be moving closer to a solution that will benefit consumers.

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission ("Commission"), having heretofore issued its administrative Complaint charging Respondents Graco Inc. ("Graco"), Illinois Tool Works Inc., and ITW Finishing LLC ("ITW"), hereinafter referred to as the Respondents, 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, and the Respondents having been served with a copy of the Complaint, together with a notice of contemplated relief, and the Respondents having answered the Complaint denying said charges; and

The Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by the Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by the Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and the executed Consent Agreement, and thereupon issued its Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, and having modified the Decision and Order in certain respects, now in further conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Graco Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Minnesota, with its office and principal place of business located at 88-11th Avenue Northeast, Minneapolis, Minnesota 55413.

2. Respondent Illinois Tool Works Inc. is a corporation organized, 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 3600 West Lake Avenue, Glenview, Illinois 60026.

3. Respondent ITW Finishing LLC is a limited liability company organized, 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 3600 West Lake Avenue, Glenview, Illinois 60026. ITW Finishing LLC is indirectly wholly owned by Illinois Tool Works Inc.

4. 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 HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

A. "Graco" means Graco Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, groups and affiliates in each case controlled by Graco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition Date, Graco includes the Liquid Finishing Business Assets. After the Divestiture Date, Graco excludes the Liquid Finishing Business Assets and any subsidiaries that are divested in connection with the divestiture of the Liquid Finishing Business Assets.

B. "ITW" means Illinois Tool Works Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, groups and affiliates in each case controlled by ITW (including, but not limited to, Respondent ITW Finishing LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. "3M" means 3M Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 3M Center, St. Paul, Minnesota 55144-1000. The term "3M" includes 3M Innovative Properties Company.

E. "3M Agreements" means the 3M Settlement Agreement and the 3M Supply and License Agreement. The 3M Agreements are attached as Appendix 1, Confidential Exhibit 1, to this Order.

F. "3M Settlement Agreement" means the Settlement Agreement, dated October 23, 2008, by and among 3M Company, 3M Innovative Properties Company, Illinois Tool Works Inc. and ITW Finishing LLC.

G. "3M Supply and License Agreement" means the Supply and License Agreement, dated October 23, 2008, by and among 3M Company, 3M Innovative Properties Company, Illinois Tool Works Inc. and ITW Finishing LLC.

H. "3M-ITW Settlement-Related Agreements" means all agreements and releases by and between Graco and ITW related to the settlement between 3M and ITW of the lawsuit filed by 3M against ITW on March 8, 2013, in the United States District Court for the District of Minnesota, *3M Company and 3M Innovative Properties Company v. Illinois Tool Works, Inc. and ITW Finishing L.L.C.*, Case No. 0:13-CV-00553 ("3M-ITW Settlement"), pursuant to which Respondents have agreed, among other things, to transfer and convey the 3M Agreements and the DeKups IP and Tooling to, and for use in connection with, the Liquid Finishing Business. The 3M-ITW Settlement-Related Agreements are attached as Appendix 1, Confidential Exhibit 2, to this Order.

I. "Acquisition" means the acquisition described in the Asset Purchase Agreement, by and among Graco Inc., Graco Holdings Inc., Graco Minnesota Inc., Illinois

Tool Works Inc., and ITW Finishing LLC, dated April 14, 2011 (the "Asset Purchase Agreement"), including the First Amendment to the agreement, dated April 2, 2012.

J. "Acquisition Date" means April 2, 2012, the date the Acquisition was consummated.

K. "Business Records" means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer's hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals and other information; credit records and information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional and marketing materials, including website content; sales materials; research and development data, files, and reports; technical information; data bases; studies; drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; educational materials; tax returns; financial and accounting records; and other documents, information, and files of any kind.

L. "Commission-approved Acquirer" means any Person that receives the prior approval of the Commission to acquire the Liquid Finishing Business Assets pursuant to Paragraph II. (or Paragraph V.) of this Order.

M. "Confidential Business Information" means competitively sensitive, proprietary and all other business information of any kind, except for any information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents, or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

N. "DeKups Products" means all "Supplied Products" within the meaning of the 3M Supply and License Agreement as identified and described on Exhibit A to the 3M Supply and License Agreement, which is attached as part of Appendix 1, Confidential Exhibit 1, to this Order.

O. "DeKups IP and Tooling" means the DeKups Intellectual Property identified and described on Appendix 1, Exhibit 3, to this Order, and all tooling, molds, dies, and other equipment relating to the DeKups Products to which ITW has or had any rights or interests (including reversionary) pursuant to the 3M Agreements or otherwise. The DeKups IP and Tooling are included in the Liquid Finishing Business Intellectual Property and are required to be divested to the Commission-approved Acquirer pursuant to this Order.

P. "DeVilbiss Powder Finishing Intellectual Property" means all Intellectual Property that is necessary for making, having made, using, offering for sale, selling, importing or exporting DeVilbiss Powder Finishing Products, which are specifically identified and described on Appendix 2, Exhibit 1, to this Order. The DeVilbiss Powder Finishing Intellectual Property is included in the LFB Powder Finishing Intellectual Property and is required to be divested to the

Commission-approved Acquirer pursuant to this Order.

Q. "DeVilbiss Powder Finishing Products" means the powder finishing products and systems manufactured, sold or serviced under the DeVilbiss® trademarks or brand names prior to the Acquisition by Respondent ITW, and are specifically identified and described on Appendix 2, Exhibit 1, to this Order.

R. "Direct Cost" means an amount not to exceed the cost of labor (inclusive of benefits), material, travel, and other expenditures to the extent such costs are directly incurred to provide the relevant assistance, support, or service. In the case of Respondent's hourly employees who provide labor, the cost of labor shall not exceed the hourly wage rate, together with the prorated cost of benefits, for any such employees. In the case of Respondent's salaried employees who provide labor, the cost of labor shall not exceed the prorated base salary, together with the prorated cost of benefits, for any such employees.

S. "Divested Ransburg Powder Finishing Intellectual Property" means the Ransburg Powder Finishing Intellectual Property including, but not limited to (but specifically excluding the Retained Ransburg Powder Finishing Intellectual Property), the Intellectual Property identified and described on Appendix 3, Exhibit 2, to this Order. The Divested Ransburg Powder Finishing Intellectual Property is included in the LFB Powder Finishing Intellectual Property and is required to be divested by Graco to the Commission-approved Acquirer pursuant to this Order.

T. "Divestiture Agreement(s)" means any agreement(s) that receive the prior approval of the Commission between Respondent Graco (or between a Divestiture Trustee appointed pursuant to Paragraph V. of this Order) and a Commission-approved Acquirer to purchase the Liquid Finishing Business Assets (including any related agreements, including but not

limited to, a Graco License, an LFB License-Back, and any Transitional Services agreement), and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.

U. "Divestiture Date" means the date on which Respondent Graco (or the Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to divest, license, assign, grant, transfer, deliver, and otherwise convey the Liquid Finishing Business Assets completely and as required by Paragraph II. (or Paragraph V.) of this Order.

V. "Gema Powder Finishing Business" means the worldwide business of developing, assembling, manufacturing, distributing, selling, or servicing Gema Powder Finishing Products conducted prior to the Acquisition by Respondent ITW, and as it has been operated by Respondent Graco since the Acquisition, including all business activities relating thereto, but only if and to the extent that such operations and activities are consistent with Graco's obligations pursuant to this Order and the Hold Separate. For the avoidance of doubt, the Gema Powder Finishing Business does not include the Liquid Finishing Business or the LFB Powder Finishing Business. For the further avoidance of doubt, the Gema Powder Finishing Business was acquired by Respondent Graco in the Acquisition and is not required to be divested pursuant to this Order.

W. "Gema Powder Finishing Products" means the powder finishing products and systems manufactured, sold, or serviced prior to the Acquisition by Respondent ITW, including, but not limited to, powder finishing products and systems manufactured, sold, or serviced under the Gema® trademark or brand name and any improvements or additions thereto specifically directed to developing, assembling, manufacturing, distributing, selling, or servicing powder finishing systems and products; *provided, however,* that the

Gema Powder Finishing Products do not include the Liquid Finishing Products or the LFB Powder Finishing Products.

X. "Graco License" means: (i) a worldwide, fully paid-up, royalty-free, perpetual, irrevocable, transferrable license by Respondent Graco to the Commission-approved Acquirer under the Graco Retained Intellectual Property, and (ii) such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary to enable the Commission-approved Acquirer to utilize the licensed rights. The purpose of the Graco License is to assure the continued and unimpeded research, development, manufacture, use, import, export, distribution, offer to sell, and sale of the Liquid Finishing Products and the LFB Powder Finishing Products. The Graco License for the Category 1 - Graco Retained Intellectual Property shall be sub-licensable, and on an exclusive basis (except as to Respondent Graco and except as to Graco's right to have products made on its behalf by another under the Graco Retained Intellectual Property), and shall convey the right to the Commission-approved Acquirer to enforce all rights in the Category 1 - Graco Retained Intellectual Property. The Graco License for the Category 2- Graco Retained Intellectual Property shall include the Commission-approved Acquirer's right to have products made on its behalf by another, and shall be on such further terms and conditions as receive the prior approval of the Commission. The Commission-approved Acquirer shall not have the right to assign or transfer the Graco License without Graco's prior written consent, which consent shall not be unreasonably withheld, except (i) if such assignment or transfer occurs in connection with a merger or the sale or other disposition of all or substantially all of the assets or stock of the Liquid Finishing Business and/or the LFB Powder Finishing Business, and (ii) the assignee agrees in writing to be bound by all of the Commission-approved Acquirer's obligations under the Graco License.

Y. "Graco Retained Intellectual Property" means (i) Category 1: the Retained Ransburg Powder Finishing Intellectual Property, which is specifically identified and described on Appendix 3, Exhibit 3 to this Order, and (ii) Category 2: Intellectual Property included as an asset of the Gema Powder Finishing Business for which a license to the Commission-approved Acquirer is necessary to assure the continued and unimpeded operations of the Liquid Finishing Business and the LFB Powder Finishing Business after the Divestiture Date. The Graco Retained Intellectual Property that must be licensed to the Commission-approved Acquirer pursuant to a Graco License is specifically identified and described on Appendix 4 to this Order. Respondent Graco shall maintain the Category 1 - Graco Retained Intellectual Property in force, which includes paying maintenance fees for issued patents, diligently prosecuting any pending patent applications, and maintaining the confidentiality of trade secrets; *provided, however,* that Respondent Graco may be relieved of the duty to maintain any portion of the Category 1 - Graco Retained Intellectual Property in force by transferring the ownership of such portion of the Graco Retained Intellectual Property to the Commission-approved Acquirer.

Z. "Hold Separate" means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.

AA. "Hold Separate Business" means the (i) Liquid Finishing Business Assets, (ii) Liquid Finishing Business, and (iii) LFB Powder Finishing Business.

BB. "Intellectual Property" means all intellectual property and all associated rights thereto, including all of the following in any jurisdiction throughout the world: (i) all brand names, commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, trade dress, logos, slogans, service marks, internet domain names, internet website content (together with all translations, adaptions,

derivations, and combinations thereof), including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (ii) all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, divisionals, revisions, extensions, and reexaminations thereof, and all inventions and discoveries (whether patentable or unpatentable and whether or not reduced to practice), and all improvements thereto, and all rights to obtain and file for patents and registrations thereof; (iii) all copyrightable works, all registered and unregistered copyrights in both published works and unpublished works, and all applications, registrations, and renewals in connection therewith; (iv) all mask works and all applications, registrations, and renewals in connection therewith; (v) all know-how, trade secrets, and confidential or proprietary information (including ideas, research and development, formulas, compositions, manufacturing and production processes and techniques, tooling, molds, dies, equipment, engineering, technical data and information, blue prints, designs, drawings, specifications, protocols, quality control information, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, and all other data, technology, and plans); (vi) all computer software (including source code, executable code, data, databases, and related documentation); (vii) all advertising and promotional materials; (viii) all other proprietary rights; (ix) all copies and tangible embodiments thereof (in whatever form or medium); and (x) all rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.

CC. "LFB License-Back" means: (i) a fully paid-up, royalty-free, perpetual, irrevocable, transferable license by the Commission-approved Acquirer to Respondent Graco under the Licensed-Back Powder Finishing Intellectual Property, and (ii) such tangible

embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary to enable Respondent Graco to utilize the licensed rights. The LFB License-Back shall be on such further terms and conditions as receive the prior approval of the Commission; *provided, however,* that the LFB License-Back shall be limited to the following field/application: powder finishing.

DD. "LFB Powder Finishing Business" means the worldwide business of developing, assembling, manufacturing, distributing, selling, or servicing the LFB Powder Finishing Products conducted prior to the Acquisition by Respondent ITW, and as it has been and is required to be maintained since the Acquisition pursuant to the requirements of the Hold Separate, including all business activities relating thereto.

EE. "LFB Powder Finishing Intellectual Property" means all DeVilbiss Powder Finishing Intellectual Property and all Divested Ransburg Powder Finishing Intellectual Property owned or licensed (as licensor or licensee) by Respondent Graco (after the Acquisition) in which Graco has a proprietary interest, and all associated rights thereto, that were acquired by Graco in the Acquisition or that have been assigned, transferred, conveyed to, acquired, or owned by Graco after the Acquisition, and that are required to be divested by Graco to the Commission-approved Acquirer pursuant to this Order.

FF. "LFB Powder Finishing Products" means the DeVilbiss Powder Finishing Products and the Ransburg Powder Finishing Products, which are identified and described on Appendix 2, Exhibits 1 and 2, respectively, to this Order.

GG. "Licensed-Back Powder Finishing Intellectual Property" means the Divested Ransburg Powder Finishing Intellectual Property, which is specifically identified and described on Appendix 5 to this Order, and which Graco is permitted to license back from the

Commission-approved Acquirer consistent with the divestiture requirements of Paragraph II.A of this Order pursuant to an LFB License-Back.

HH. "Liquid Finishing Business" means the worldwide business of developing, assembling, manufacturing, distributing, selling, or servicing Liquid Finishing Products conducted prior to the Acquisition by Respondent ITW, and as it has been and is required to be maintained since the Acquisition pursuant to the requirements of the Hold Separate, including all business activities relating thereto.

II. "Liquid Finishing Business Assets" means all of Graco's rights, title, and interest in and to all property and assets, tangible and intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to the Liquid Finishing Business or to the LFB Powder Finishing Business that were acquired by Graco in the Acquisition (except as otherwise provided in this Order) or that have been assigned, transferred, conveyed to, or acquired or owned by Graco after the Acquisition pursuant to the 3M-ITW Settlement-Related Agreements or otherwise, and as they have been and are required to be maintained pursuant to the requirements of the Hold Separate, including but not limited to:

1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the Liquid Finishing Business or of the LFB Powder Finishing Business since the date of the announcement of the Acquisition, and not replaced, if such property was used in connection with the operation of the Liquid Finishing Business

or of the LFB Powder Finishing Business prior to the Acquisition;

3. All inventories, wherever located, including all finished product, work in process, raw materials, spare parts, and all other materials and supplies to be used or consumed in the production of finished products;

4. All (a) trade accounts receivable and other rights to payment from customers of Respondents and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable by Respondents and the full benefit of all security for such accounts or notes, and (c) any claim, remedy, or other right related to any of the foregoing;

5. All agreements and contracts (including, but not limited to, the 3M Agreements and other agreements and contracts with customers, distributors, suppliers, vendors, sales representatives, agents, licensees, and licensors), purchase orders, sales orders, leases, mortgages, notes, bonds, and other binding commitments, whether written or oral, and all rights thereunder and related thereto;

6. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof;

7. All intangible rights and property, including all Liquid Finishing Business Intellectual Property and all LFB Powder Finishing Business Intellectual Property, and all going-concern value, goodwill, telephone, telecopy, and e-mail addresses and listings;

8. All Business Records; *provided, however*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the Liquid Finishing Business Assets to be divested and to Respondent Graco's retained assets or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Liquid Finishing Business Assets to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, the relevant party shall provide the Commission-approved Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes;

9. All insurance benefits, including rights and proceeds;

10. All rights under warranties and guarantees, express or implied; and

11. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

Provided, however, that the Liquid Finishing Business Assets need not include any part of such assets that the Commission-approved Acquirer determines it does not need, or that the Commission otherwise determines need not be divested, if the Commission approves the divestiture without such assets, and

Provided further that the Liquid Finishing Business Assets shall not include the following (and Respondent Graco is not required to divest any of the following to

the Commission-approved Acquirer pursuant to this Order):

a. The Graco Retained Intellectual Property (except insofar as the Liquid Finishing Business Assets shall include a Graco License to the Graco Retained Intellectual Property as provided in Paragraph II.D. of this Order);

b. Properties, tangible and intangible, used in or relating to the businesses engaged in by Respondent Graco (other than the Liquid Finishing Business and the LFB Powder Finishing Business), including but not limited to the worldwide business of developing, assembling, manufacturing, distributing, selling, or servicing liquid finishing systems and products in which Respondent Graco was engaged prior to the Acquisition and in which Respondent Graco has continued to be engaged since the Acquisition; and

c. Assets and properties, tangible and intangible, relating to the Gema Powder Finishing Products and/or the Gema Powder Finishing Business, except for any Intellectual Property specifically identified on Appendix 6 or Appendix 3, Exhibit 2, to this Order.

JJ. "Liquid Finishing Business Employees" means any full-time, part-time, or contract employees of the Liquid Finishing Business or the LFB Powder Finishing Business who were employed at any time immediately prior to the Acquisition through the Divestiture Date.

KK. "Liquid Finishing Business Intellectual Property" means all Intellectual Property owned or licensed (as licensor or licensee) by Respondent Graco (after the Acquisition) in which Graco has a proprietary interest, and all associated rights thereto, that were acquired by Graco in the Acquisition or that have been assigned,

transferred, conveyed to, acquired, or owned by Graco after the Acquisition, or by Respondents pursuant to the 3M-ITW Settlement-Related Agreements or otherwise (including, but not limited to, the DeKups IP and Tooling), and that relate to the Liquid Finishing Products and/or the Liquid Finishing Business, all of which is required to be divested by Graco to the Commission-approved Acquirer pursuant to this Order. The Liquid Finishing Business Intellectual Property includes, but is not limited to, the Intellectual Property identified and described on Appendix 1, Exhibit 3, and Appendix 6.

LL. "Liquid Finishing Products" means the liquid finishing products and systems manufactured, sold, or serviced prior to the Acquisition by Respondent ITW, including, but not limited to, liquid finishing products and systems manufactured, sold, or serviced under the Binks®, DeVilbiss®, Ransburg®, and BGK Finishing Systems trademarks or brand names, and any improvements or additions thereto specifically directed to developing, assembling, manufacturing, distributing, selling, or servicing liquid finishing systems and products.

MM. "Person" means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture, other entity, or a governmental body.

NN. "Prospective Acquirer" means a Person that Respondent Graco (or a Divestiture Trustee) intends to submit as a Commission-approved Acquirer to the Commission for its prior approval pursuant to Paragraph II. (or Paragraph V.) of this Order.

OO. "Ransburg Powder Finishing Intellectual Property" means all Intellectual Property that is necessary for making, having made, using, offering for sale, selling, importing, or exporting Ransburg Powder Finishing Products, including, but not limited to, the Intellectual

Property specifically identified and described on Appendix 3, Exhibit 1, to this Order.

PP. "Ransburg Powder Finishing Products" means the powder finishing products and systems manufactured, sold, or serviced under the Ransburg® trademarks or brand names prior to the Acquisition by Respondent ITW, which are specifically identified and described on Appendix 2, Exhibit 2, to this Order.

QQ. "Respondents" means Graco and ITW, individually and collectively.

RR. "Retained Ransburg Powder Finishing Intellectual Property" means the Ransburg Powder Finishing Intellectual Property specifically identified and described on Appendix 3, Exhibit 3, to this Order. The Retained Ransburg Powder Finishing Intellectual Property is not required to be divested by Graco to the Commission-approved Acquirer pursuant to Paragraph II.A. of this Order; *provided, however,* that Graco is required to enter into a Graco License conveying rights in the Graco Retained Intellectual Property, including, but not limited to, the Retained Ransburg Powder Finishing Intellectual Property, to the Commission-approved Acquirer in accordance with the requirements of Paragraph II.D. of this Order.

SS. "Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased (including, but not limited to, all tangible personal property included in the DeKups IP and Tooling), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

TT. "Transitional Services" means any transitional assistance, support, or services necessary to enable the Commission-approved Acquirer to continue the development, manufacturing, distribution, sales, and services related to operation of the Liquid Finishing Business Assets, including, but not limited to, the provision of administrative services, consultation and advice, technical assistance, and training.

II.

IT IS FURTHER ORDERED that:

A. Respondent Graco shall divest the Liquid Finishing Business Assets, absolutely and in good faith, at no minimum price, as an on-going business, no later than 180 days after the date this Order becomes final, to a Commission-approved Acquirer, and only in a manner (and pursuant to a Divestiture Agreement with the Commission-approved Acquirer) that receives the prior approval of the Commission; *provided, however,* that nothing in this Order shall prevent Respondent Graco from entering into an LFB License-Back, subject to the prior approval of the Commission, with the Commission-approved Acquirer.

B. No later than the Divestiture Date, Respondent Graco shall secure all consents, assignments, waivers, licenses, certificates, registrations, permits, and other authorizations from all Persons that are necessary for the divestiture and operation of the Liquid Finishing Business Assets to the Commission-approved Acquirer; *provided, however,* that Respondent Graco may satisfy this requirement by certifying that the Commission-approved Acquirer has executed appropriate agreements directly with each of the relevant Persons.

C. In the event Respondent Graco is unable to obtain any consent(s), assignment(s), waiver(s), license(s), certificate(s), registration(s), permit(s), or other authorizations necessary for the divestiture and/or

operation of the Liquid Finishing Business Assets from any Person, Respondent Graco shall:

1. Provide such assistance as the Commission-approved Acquirer may reasonably request in its efforts to obtain a comparable license, certificate, registration, permit, or other authorization; and/or

2. With the acceptance of the Commission-approved Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.

D. No later than the Divestiture Date, Respondent Graco shall grant a Graco License under the Graco Retained Intellectual Property to the Commission-approved Acquirer in connection with the Liquid Finishing Business Assets as divested pursuant to this Order, and only in a manner (and pursuant to a Divestiture Agreement with the Commission-approved Acquirer) that receives the prior approval of the Commission. Respondent Graco is not required to make any representations or warranties with respect to the ownership, existence, or maintenance of the Category 2 – Graco Retained Intellectual Property in the Divestiture Agreement.

E. Respondent Graco:

1. shall not join, file, prosecute, or maintain any suit, in law or equity, or take any administrative action, either directly or indirectly through a third party (including assignees, transferees, or licensees), against the Commission-approved Acquirer or any of its customers or affiliates (including integrators, distributors, licensees, manufacturers, and suppliers), assigns or successors in interest, under or with regard to any Intellectual Property acquired by Respondent Graco in the Acquisition or developed or otherwise obtained by the Hold Separate Business during the Hold Separate Period, and owned or licensed by Respondent Graco

relating to the Gema Powder Finishing Business or to the Liquid Finishing Business Assets as of the Divestiture Date, if such suit or action would, or would have the potential to, interfere with the Commission-approved Acquirer's freedom to practice in the research, development, manufacture, use, import, export, distribution, offer to sell, or sale of any Liquid Finishing Products or LFB Powder Finishing Products; and

2. shall not (i) assert, directly or indirectly through a third party, any Intellectual Property rights acquired by Respondent Graco in the Acquisition against the Commission-approved Acquirer or any of its customers or affiliates, or assigns or successors in interest, if such assertion would, or would have the potential to, interfere with the Commission-approved Acquirer's freedom to practice in the research, development, manufacture, use, import, export, distribution, offer to sell, or sale of any Liquid Finishing Products or LFB Powder Finishing Products; or (ii) seek to challenge or invalidate any rights under the Liquid Finishing Business Intellectual Property or the LFB Powder Finishing Intellectual Property in a civil action or administrative proceeding, to the extent that the Commission-approved Acquirer or any of its customers or affiliates, or assigns or successors in interest, exercise the rights divested by, expressly granted by, or that are required to be granted by Graco pursuant to the requirements of this Order;

provided, however, that the scope of the prohibitions in sub-Paragraphs II.E.1 and II.E.2 of this Order shall be limited for the DeVilbiss Powder Finishing Products to South America and for the Ransburg Powder Finishing Products to transportation and related supply chain markets; and

3. shall include a covenant not to sue or take any other action effecting the foregoing prohibitions in

sub-Paragraphs II.E.1 and II.E.2 of this Order in any Divestiture Agreement related to the Liquid Finishing Business Assets;

provided, however, that Respondent Graco may, subject to the prior approval of the Commission, receive a covenant not to sue from the Commission-approved Acquirer not to assert against the Gema Powder Finishing Business any Intellectual Property that is divested by Respondent Graco to the Commission-approved Acquirer pursuant to this Order; and

provided further that any such covenant not to sue the Gema Powder Finishing Business received by Respondent Graco from the Commission-approved Acquirer shall be limited to the following field/application: powder finishing.

F. At the request of the Commission-approved Acquirer, pursuant to an agreement that receives the prior approval of the Commission, Respondent Graco shall, for a period not to exceed twelve (12) months from the Divestiture Date, or as otherwise approved by the Commission, provide Transitional Services to the Commission-approved Acquirer:

1. Sufficient to enable the Commission-approved Acquirer to operate the divested assets and business in substantially the same manner as they were operated prior to the Acquisition; and

2. At substantially the same level and quality as such services were provided by Respondents in connection with the operation of the divested assets and business prior to the Acquisition.

Provided, however, that Respondent Graco shall not (i) require the Commission-approved Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, (ii) terminate its obligation to provide Transitional

Services because of a material breach by the Commission-approved Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, except if Respondent Graco is unable to provide such services due to such material breach, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which a Commission-approved Acquirer would be entitled to receive in the event of Respondent Graco's breach of any agreement to provide Transitional Services.

G. Respondent ITW shall provide the Commission-approved Acquirer, at the request of the Commission-approved Acquirer, the transition and support services Respondent ITW has agreed to provide to Respondent Graco in the Asset Purchase Agreement on the terms and subject to the conditions contemplated by the Asset Purchase Agreement.

H. Respondent Graco shall provide the Commission-approved Acquirer with the opportunity to identify, recruit, and employ any Liquid Finishing Business Employee in conformance with the following:

1. No later than ten (10) days after a request from a Prospective Acquirer, or staff of the Commission, Respondents shall provide the Prospective Acquirer with the following information for each Liquid Finishing Business Employee, as and to the extent permitted by law:

   a. name, job title or position, date of hire, and effective service date;

   b. a specific description of the employee's responsibilities;

   c. the base salary or current wages;

   d. the most recent bonus paid, aggregate annual compensation for Respondent ITW's last fiscal

year, and current target or guaranteed bonus, if any;

e. employment status (i.e., active or on leave or disability; full-time or part-time);

f. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and

g. at the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant Liquid Finishing Business Employee.

2. No later than thirty (30) days before the Divestiture Date, after a request from a Prospective Acquirer, Respondent Graco shall provide the Prospective Acquirer with an opportunity (i) to meet, personally and outside the presence or hearing of any employee or agent of any Respondent, with any Liquid Finishing Business Employee for the purpose of discussing potential employment, (ii) to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws, and (iii) to make offers of employment to any Liquid Finishing Business Employee.

3. Respondent Graco shall (i) not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Liquid Finishing Business Employee, (ii) not offer any incentive to any Liquid Finishing Business Employee to decline employment with the Prospective Acquirer, (iii) not make any counteroffer to any Liquid Finishing Business Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondent Graco to terminate the employment of any

employee or prevent Respondent Graco from continuing the employment of any employee; (iv) remove any impediments within the control of Respondent Graco that may deter any Liquid Finishing Business Employee from accepting employment with the Prospective Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent Graco that would affect the ability of such employee to be employed by the Prospective Acquirer, and (v) not otherwise interfere with the recruitment of any Liquid Finishing Business Employee by the Prospective Acquirer.

I. Until the Divestiture Date, Respondent Graco shall provide each Liquid Finishing Business Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Liquid Finishing Business Assets pending divestiture. Such incentives shall include employee benefits, including regularly scheduled raises, bonuses, vesting of current and accrued retirement benefits (as permitted by law), on the same basis as provided under the Asset Purchase Agreement to other employees hired by Respondent Graco in the Acquisition, and such additional incentives as may be necessary to assure the continuation and to prevent any diminution of the viability, marketability, and competitiveness of the Liquid Finishing Business Assets until the Divestiture Date, and as may otherwise be necessary to achieve the purposes of this Order and the Hold Separate.

J. For a period of two (2) years after the Divestiture Date, Respondent Graco shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Liquid Finishing Business Employee who has accepted an offer of employment with the Commission-approved Acquirer, or who is employed by the Commission-approved Acquirer, to terminate his or

her employment relationship with the Commission-approved Acquirer; *provided, however*, Respondent Graco may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Liquid Finishing Business Employees; and

2. Hire Liquid Finishing Business Employees who apply for employment with Respondent Graco, so long as such individuals were not solicited by Respondent Graco in violation of this paragraph; *provided further*, that this sub-Paragraph shall not prohibit Respondent Graco from making offers of employment to or employing any Liquid Finishing Business Employees if the Commission-approved Acquirer has notified Respondent Graco in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by the Commission-approved Acquirer.

K. No later than the Divestiture Date, Respondents shall assign, transfer, convey, and divest all rights, title and interest in and to the 3M Agreements, the DeKups Products, and the DeKups IP and Tooling (including upon termination of the 3M Agreements) to the Liquid Finishing Business and/or the Commission-approved Acquirer pursuant to the 3M-ITW Settlement-Related Agreements or otherwise; *provided, however,* that in the event Respondent ITW obtains ownership, possession, or control of any rights, title or interest in or to the 3M Agreements, the DeKups Products, and/or the DeKups IP and Tooling after the Divestiture Date, then Respondent ITW shall immediately transfer, convey, and deliver all such rights, title, and interest, absolutely and in good faith, to the Liquid Finishing Business and/or the Commission-approved Acquirer.

L. The purpose of the divestiture of the Liquid Finishing Business Assets is to ensure the continuation of the Liquid Finishing Business Assets as an ongoing, viable business operating in the same relevant markets in which such assets were competing at the time of the announcement of the Acquisition by Respondents, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. Respondents shall (i) keep confidential and not disclose (including with respect to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Business Information pertaining to the Liquid Finishing Business, the LFB Powder Finishing Business, and the Liquid Finishing Business Assets; *provided, however*, that the Respondents may disclose or use such Confidential Business Information:

1. In the course of performing their obligations as permitted under this Order or the Hold Separate, including as necessary to effect the marketing and divestiture of the Liquid Finishing Business Assets pursuant to Paragraph II. of this Order and the provision of Transitional Services; *provided further*, that Respondents' employees who provide support services under the Hold Separate or Transitional Services under the Divestiture Agreement(s), or who staff the Hold Separate Business, shall be deemed to be performing obligations under this Order or the Hold Separate.

2. In the course of performing their obligations under the Divestiture Agreement(s);

3. To enforce the terms of the Divestiture Agreement(s) or to prosecute or defend against any dispute or legal proceeding;

4. To comply with financial reporting requirements, obtain legal advice, defend legal claims, enforce actions threatened or brought against the Liquid Finishing Business, the LFB Powder Finishing Business, or the Liquid Finishing Business Assets, or as required by applicable law, regulations, and other legal requirements (including in connection with tax returns, reports required by securities laws and payroll, benefits, or personnel reports or information) or in overseeing compliance with policies and standards concerning health, safety, and environmental aspects of the operation of the Liquid Finishing Business and the LFB Powder Finishing Business and the integrity of the Liquid Finishing Business and LFB Powder Finishing Business financial controls;

5. To Respondent Graco's lenders, auditors, attorneys, and financial advisors; and

6. As otherwise permitted by the Commission staff, this Order, the Hold Separate, or the Divestiture Agreement(s).

B. If the disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under Paragraph III.A. of this Order, then Respondents shall limit such information (i) only to those employees or other Persons who require such information for the purposes permitted under Paragraph III.A., (ii) only to the extent such information is required, and (iii) only after such employees or other Persons have signed an agreement in writing to maintain the confidentiality of such information.

C. Respondents shall enforce the terms of this Paragraph III. as to their employees and any other Person and

take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of their employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

IV.

IT IS FURTHER ORDERED that:

A. The Divestiture Agreement(s) shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of the Commission-approved Acquirer or to reduce any obligations of the Respondents under such agreements.

B. The Divestiture Agreement(s) shall be incorporated by reference into this Order and made a part hereof.

C. Respondent Graco shall comply with all provisions of the Divestiture Agreement(s), and any breach by Respondent Graco of any term of such agreement shall constitute a violation of this Order. If any term of a Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent Graco cannot fully comply with both terms, the Order Term shall determine Respondent Graco's obligations under this Order. Any failure by Respondent Graco to comply with any term of a Divestiture Agreement shall constitute a failure to comply with this Order.

D. Respondent Graco shall not modify or amend any of the terms of the Divestiture Agreement(s) without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any paragraph, section, or other

provision of the Divestiture Agreement, any modification of the Divestiture Agreement without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

V.

IT IS FURTHER ORDERED that:

A. If Respondent Graco has not divested the Liquid Finishing Business Assets and otherwise fully complied with its obligations as required by Paragraphs II.A.-I., of this Order, the Commission may appoint a trustee ("Divestiture Trustee") to divest the Liquid Finishing Business Assets, grant a Graco License, and/or perform Respondent Graco's other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate entered in this matter.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Graco shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets and grant the relevant license in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Graco, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Graco has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Graco of the identity of any proposed Divestiture Trustee, Respondent Graco shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent Graco shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by this Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent Graco shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest, assign, grant, license, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be divested, assigned, granted, licensed, transferred, delivered, or otherwise conveyed.

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture and/or other obligations required by this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the

twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or compliance with other obligations, or believes that the divestiture or compliance with other obligations can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested, assigned, granted, licensed, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent Graco shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Graco shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Graco shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Graco's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to a Commission-approved Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity,

and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Graco from among those approved by the Commission; *provided further, however*, that Respondent Graco shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Graco, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Graco, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Graco, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent Graco shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the

preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

8. The Divestiture Trustee shall report in writing to Respondent Graco and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.

G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and V of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order, and the Hold Separate. Respondent Graco shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order and with the Hold Separate, including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondents shall include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and, as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent Graco completed such divestiture and the date the divestiture was accomplished.

B. One (1) year after the date this Order becomes final, Respondents, and annually thereafter for the next five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may request, Respondent Graco shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order and any Divestiture Agreement.

VII.

IT IS FURTHER ORDERED that Respondent Graco shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of Respondent Graco;

B. Any proposed acquisition, merger, or consolidation of Respondent Graco; or

C. Any other change in Respondent Graco, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, upon written request and five (5) days' notice to the relevant Respondent, with respect to any matter contained in this Order, the relevant Respondent shall permit any duly authorized representative of the Commission:

A. Access, during business office hours of the relevant Respondent(s) and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the relevant Respondent(s) related to compliance with the Consent Agreement and/or the Orders, which copying services shall be provided by such Respondent(s) at the request of the authorized representative(s) of the Commission and at the expense of such Respondent(s); and

B. Without restraint or interference from such Respondent(s), to interview officers, directors, or employees of such Respondent(s), who may have counsel present.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on October 6, 2024.

By the Commission, Commissioner Ohlhausen abstaining, and Commissioner Wright and Commissioner McSweeny not participating.

ATTACHMENTS
[Confidential Exhibits Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX 1: DeKups Products and 3M Agreements
CONFIDENTIAL Exhibit 1: The 3M Agreements
CONFIDENTIAL Exhibit 2: 3M-ITW Settlement-Related Agreements
Exhibit 3: DeKups Intellectual Property Transferred Pursuant to 3M-ITW Settlement-Related Agreements

APPENDIX 2: LFB Powder Finishing Products
Exhibit 1: DeVilbiss Powder Finishing Products
Exhibit 2: Ransburg Powder Finishing Products

APPENDIX 3: Ransburg Powder Finishing Intellectual Property
Exhibit 1: Ransburg Powder Finishing Intellectual Property
Exhibit 2: Divested Ransburg Powder Finishing Intellectual Property
Exhibit 3: Retained Ransburg Powder Finishing Intellectual Property

APPENDIX 4: Graco Retained Intellectual Property

APPENDIX 5: Licensed-Back Powder Finishing Intellectual Property

APPENDIX 6: Liquid Finishing Business Intellectual Property
Exhibit 1: Patents and Patent Applications
CONFIDENTIAL Exhibits 2 and 2A: Unpublished and Unfiled Patent Applications
CONFIDENTIAL Exhibit 3: Abandoned or Expired Patents
Exhibit 4: Trademarks
Exhibit 5: Inactive Trademarks

Appendix 1

APPENDIX 1: DEKUPS PRODUCTS AND 3M AGREEMENTS

Confidential Exhibit 1: The 3M Agreements

3M Settlement Agreement

3M Supply and License Agreement

Confidential Exhibit 2: 3M-ITW Settlement-Related Agreements

Mutual Release, dated as of June 6, 2013, by and among Illinois Tool Works Inc., Graco Inc., Gema USA Inc., Graco Minnesota Inc. and Finishing Brands Holdings Inc.

Assignment and Assumption Agreement and Bill of Sale, dated as of June 6, 2013, by and between Finishing Brands Holdings Inc. and Illinois Tool Works

Agreement, dated as of June 6, 2013, by and between Illinois Tool Works Inc. and Finishing Brands Holdings Inc. in respect of the assignment of the DeKups trademark

Exhibit 3: DeKups Intellectual Property Transferred Pursuant to 3M-ITW Settlement-Related Agreements

APPENDIX 1

Confidential Exhibit 1: The 3M Agreements

3M Settlement Agreement

APPENDIX 1

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3M Supply and License Agreement

APPENDIX 1

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Agreement, dated as of June 6, 2013, by and between Illinois Tool Works Inc. and Finishing Brands Holdings Inc. in respect of the assignment of the DeKups trademark

APPENDIX 1 – EXHIBIT 3:

DeKups Intellectual Property Transferred Pursuant to 3M-ITW Settlement-Related Agreements

"DeKups IP and Tooling" means the DeKups Intellectual Property identified and described below, and all tooling, molds, dies, and other equipment relating to the DeKups Products to which ITW has or had any rights or interests (including reversionary) pursuant to the 3M Agreements or otherwise.

Trademark	Country	Registration No.
DEKUPS	Brazil	830167692
DEKUPS	Canada	TMA763579
DEKUPS	China (People's Republic)	7165451
DEKUPS	European Community	7554785
DEKUPS	India	1774271
DEKUPS	Mexico	1093903
DEKUPS	Russian Federation	400208
DEKUPS	United States	3079784

Decision and Order

Appendix 2

APPENDIX 2:
LFB POWDER FINISHING PRODUCTS

Exhibit 1: DeVilbiss Powder Finishing Products

Exhibit 2: Ransburg Powder Finishing Products

APPENDIX 2 - EXHIBIT 1

DEVILBISS POWDER FINISHING PRODUCTS

Part Number	Description
	ELECTROSTATIC POWDER METALLIC EQUIPMENT
BFX-1000	CASCADIUM 1 STAGE
	ELECTROSTATIC POWDER METALLIC EQUIPMENT
BFX-1000 ESP	CASCADIUM 1 STAGE
	ELECTROSTATIC POWDER METALLIC EQUIPMENT
BFX-1001	CASCADIUM 1 STAGE
	ELECTROSTATIC POWDER METALLIC EQUIPMENT
BFX-1002	CASCADIUM 2 STAGES
	ELECTROSTATIC POWDER METALLIC EQUIPMENT
BFX-1003	CASCADIUM 1 STAGE
	ELECTROSTATIC POWDER EQUIPMENT CASCADIUM
BFX-1005	AUTOMATIC
	ELECTROSTATIC POWDER EQUIPMENT CASCADIUM 1
BFX-980	STAGE
	ELECTROSTATIC POWDER EQUIPMENT CASCADIUM 1
BFX-980 ESP	STAGE
	ELECTROSTATIC POWDER EQUIPMENT CASCADIUM 2
BFX-982	STAGES
	ELECTROSTATIC POWDER EQUIPMENT CASCADIUM 2
BFX-982 ESP	STAGES
	ELECTROSTATIC POWDER METALLIC EQUIPMENT
BFX-983	CASCADIUM 1 STAGE
	ELECTROSTATIC POWDER EQUIPMENT POWDERPOP
BFX-983 ESP	WITHOUT TANK
	ELECTROSTATIC POWDER METALLIC EQUIPMENT
BFX-984	CASCADIUM 2 STAGES
	ELECTROSTATIC POWDER METALLIC EQUIPMENT
BFX-984 ESP	CASCADIUM 2 STAGES
	ELECTROSTATIC POWDER EQUIPMENT CASCADIUM
BFX-985	AUTOMATIC
BFC-0084-K10	ASSEMBLY SET W/ RING KIT
BFC-0167	SUPPORT
BFC-0169	MANIFOLD
BFC-0173	MANIFOLD

Part Number	Description
BFC-0175	SCREW
BFC-0177	2-STAGE MANIFOLD
BFC-0527	ADAPTER
BFC-0528	ADAPTER
BFC-0542	MANIFOLD
BFC-0545	HOSE
BFC-0546	HOSE
BFC-0547	HOSE
BFC-0548	MANIFOLD 2 EST WITH RESTR
BFC-0561	FLUIDIZATION HOSE
BFC-0562	POWDER HOSE CONTROL N° 2
BFC-0563	DOSING HOSE
BFC-0753	NEEDLE VALVE
BFC-0754	NEEDLE VALVE
BFC-0755	VALVE
BFP-0035	STEM
BFP-0158	POWDER HOSE
BFP-0183	ADAPTER
BFP-0188	FLAPPER
BFP-0198	POWDER TUBE
BFP-0199	POWDER HOSE
BFP-0223	ADAPTER
BFP-0224	NIPPLE
BFP-0236	TRIGGER
BFP-0237	ADAPTER
BFP-0254	ADAPTER
BFP-0255	COVER
BFP-0266	TRIGGER
BFP-0281	DEFLECTOR
BFP-0289	ADAPTER
BFP-0290	ELBOW
BFP-0310	DEFLECTOR PUSHER
BFP-0312	COVER
BFP-0333	POWDER TUBE
BFP-0345	COVER
BFP-0347	DEFLECTOR PUSHER
BFP-0350	COVER ELLIPTICAL FAN
BFP-0415	BACK COVER
BFP-0416	BACK COVER

Part Number	Description
BFP-0546	HARNESS
BFP-0554	HOSE CONTROL
BFP-0555	ELECTRODE
BFP-0556	FAN HOSE
BFP-0558	ELECTRODE
BFP-0559	ELECTRODE
BFP-0560	POWDER TUBE
BFP-0563	GUN BODY
BFP-0564	GUN BODY
BFP-0567	CONNECTOR
BFP-0568	ELECTRIC CABLE
BFP-0569	ELECTRIC CABLE
BFP-0580	CONTROL CABLE
BFP-0581	CONTROL CABLE
BFP-0582	ELECTRIC CABLE
BFP-0583	ELECTRIC CABLE
BFP-0584	ELECTRODE ASSEMBLY
BFP-0585	DEFLECTOR
BFP-0587	SUPPORT
BFP-0588	DEFLECTOR
BFP-0589	POWDER TUBE
BFP-0591	POWDER TUBE ASSEMBLY
BFP-0593	COMMAND SET 1 STAGE
BFP-0594	COMMAND SET 1 STAGE
BFP-0596	HIGH VOLTAGE CABLE
BFP-0597	CONTROL CABLE
BFP-0598	SUPPORT
BFP-0600	DEFLECTOR ASSEMBLY
BFP-0601	DEFLECTOR ASSEMBLY
BFP-0603	ELLIPTICAL FAN ASSEMBLY
BFP-0709	GUIDE
BFP-0734	HOSE ASSEMBLY PRESS
BFP-0735	HOSE ASSEMBLY
BFP-0742	SUPPORT HOSE
BFP-0743	HOSE ASSEMBLY
BFP-0744	HOSE ASSEMBLY
BFP-0745	DEFLECTOR
BFP-0746	DEFLECTOR
BFP-0747	DEFLECTOR

Part Number	Description
BFP-0748	DEFLECTOR
BFP-0749	METALLIC POWDER DIFFUSER
BFP-0750	NOZZLE METALLIC POWDER
BFP-0751	NOZZLE METALLIC POWDER
BFP-0761	BARREL POWDER GUN 1 STAGE
BFP-0762	BARREL POWDER GUN 2 STAGES
BFP-0763	BARREL CASCADIUM METALLIC GUN
BFP-0765	BARREL CASCADIUM GUN 1 STAGE
BFP-0766	BARREL CASCADIUM GUN 2 STAGES
BFP-0768	BARREL CASCADIUM GUN 2 STAGES
BFP-0770	EXTENSION CASCADIUM GUN
BFP-0771	DEFLECTOR
BFP-0772	DEFLECTOR
BFP-0775	BODY ASSEMBLY
BFP-0776	GUN BODY
BFP-0777	BARREL CASCADIUM GUN 1 AND 2 STAGES
BFP-0778	BARREL CASCADIUM METALLIC GUN
BFP-0779	BARREL POWDER POP GUN
BFP-0780	EXTENSION CASCADIUM GUN
BFP-0783	BARREL CASCADIUM METALLIC GUN
BFP-0815	METALLIC POWDER GUN
BFP-0816	POWDER GUN CASCADIUM 2 STAGES
BFP-0817	METALLIC POWDER GUN CASCADIUM
BFP-0818	METALLIC POWDER GUN CASCADIUM
BFP-0819	METALLIC POWDER GUN POWDERPOP
BFP-0821	POWDER GUN 1 STAGE
BFP-0822	POWDER GUN 2 STAGES
BFP-0823	METALLIC POWDER GUN CASCADIUM
BFP-0824	METALLIC POWDER GUN CASCADIUM
BFP-0825	POWDER GUN CASCADIUM 1 STAGE
BFP-0826	POWDER GUN CASCADIUM 2 STAGES
BFP-0827	POWDER GUN CASCADIUM 1 STAGE
BFP-0828	POWDER GUN CASCADIUM 2 STAGES
BFP-0833	AUTOMATIC POWDER GUN
BFP-0834	POWDER GUN CASCADIUM 1 STAGE
BFP-0835	POWDER GUN CASCADIUM 2 STAGES
BFP-0837	POWDER GUN CASCADIUM 1 STAGE
BFP-0838	POWDER GUN CASCADIUM 2 STAGES

Part Number	Description
BFP-0839	POWDER GUN POWDERPOP
BFP-0840	ELECTRIC CABLE POWDER 1 STAGE
BFP-0842	ELECTRIC CABLE POWDER 2 STAGE
BFP-0845	ELECTRIC CABLE CASCADIUM 1 STAGE
BFP-0846	ELECTRIC CABLE CASCADIUM 2 STAGE
BFP-0847	ELECTRIC CABLE CASCADIUM 1 STAGE
BFP-0848	ELECTRIC CABLE CASCADIUM 2 STAGES
BFP-0861	ELECTRIC CABLE CASCADIUM 1 STAGE
BFP-0862	ELECTRIC CABLE CASCADIUM 2 STAGES
BFP-0865	ELETRIC CABLE CASCADIUM 1 AND 2 STAGES
BFP-0867	ELECTRIC CABLE CASCADIUM 1 STAGE
BFP-0869	ELECTRIC CABLE POWDER
BFT-0048	FLEXIBLE TUBE
BFT-0099	ADAPTER
BFT-0149	TRIM COVER
BFT-0162	ADPATER VENTURI
BFT-0163	RING PUMP POWDER
BFT-0164	VENTURI TUBE
BFT-0181	RING PUMP POWDER
BFT-0415	ADPATER VENTURI
BFT-0416	INJECTOR ASSEMBLY
BFT-0417	SET OF ADAPTER
BFT-0517	CHECK VALVE
BFT-0523	CHECK VALVE
BFT-0530	DOSING VALVE ASSEMBLY
BFT-0540	SUCTION TUBE
BFT-0550	ADJUST VALVE
BFT-0551	INJECTOR ASSEMBLY
BFT-0804	POWDER TANK
BFT-0840	POWDER TANK
BFT-0845	POWDER PUMP
BFT-0846	POWDER PUMP
BFT-0848	POWDER PUMP
BFT-0849	POWDER PUMP
BGA-0151	CONNECTOR
BGA-0411	BARREL HARNESS
BGA-0412	INPUT CABLE HARNESS
BGA-0417	MODULE 2
BGA-0418	MODULE 3

Part Number	Description
BGA-0419	MODULE 4
BGA-0420	DIGITAL MICROAMPMETER
BGA-0421	HARNESS CABLE
BGA-0422	TAKEN WITH WORMTAIL
BGA-0423	SOLENOID VALVE
BGA-0424	HARNESS MICROAMP
BGA-0425	HARNESS KEY COAT/RECOAT
BGA-0426	POTENTIOMETER
BGA-0427	HARNESS FOR MOD 1
BGA-0428	MODULE 4
BGA-0513	TRANSFORMER 220V
BGA-0527	HARNESS
BGA-0537	POTENTIOMETER
BGA-0547	POTENTIOMETER
BGA-0553	MODULE 3
BGA-0566	MODULE 2
BGA-0568	MODULE 4
BGA-0570	DIGITAL MICROAMPMETER
BGA-0571	MODULE 2 CASCADIUM
BGA-0572	HARNESS
BGA-0573	HARNESS
BGA-0574	CONNECTOR
BGA-0575	CONNECTOR
BGA-0576	POTENTIOMETER
BGA-0580	MODULE 3 220V
BGA-0581	MODULE 3 220V
BGA-0585	HARNESS
BGA-0586	HARNESS
BGA-0587	HARNESS
BGA-0590	MODULE 3 220V
BGA-0591	MODULE 3 220V
BGA-0592	MODULE 2 CASCADIUM
BGA-0593	MODULE 3 BFX-980
BGA-0594	MODULE 3 BFX-982
BGA-0595	HARNESS
BGA-0598	HARNESS
BGA-0599	HARNESS
BGA-0603	MODULE 3
BGA-0604	MODULE 4

Part Number	Description
BGA-0605	MOTHER BOARD
BGA-0801	POWER SUPPLY PNEUMAT 2 STAGES
BGE-0112	HANDLE
BSH-0100	ADAPTER
BSS-000495	RESTRICTOR
BSS-006103	SWITCH
BSS-006324-K5	FUSE KIT 5 PCS
BSS-006326-K5	FUSE KIT
BSS-009802	POWER CABLE REF 302551
BSS-011200	MODULE 1 CASCADIUM
BSS-011201	MODULE 1 CASCADIUM
BSS-240106	ELASTIC RING RENO RS 4
BSS-240122	ELASTIC RING RENO 504060
BSS-416060	CHECK VALVE
BSS-490100	SOLENOID VALVE
BSS-490101	SOLENOID VALVE
BSS-490102	SOLENOID VALVE
BSS-601013	"O" RING
BSS-601014-K5	"O" RING KIT
BSS-601015	"O" RING
BSS-602004-K5	"O" RING KIT
BSS-602009-K5	"O" RING KIT
BSS-602013-K5	"O" RING
BSS-602014	"O" RING
BSS-602018-K5	"O" RING KIT
BSS-602021	"O" RING
CFC-0001-1	FILTER CARTRIDGE
CFC-1000	POWDER PAINT BOOTH DISASSEMBLED
CFC-1200-01-00-CM	FAN MOTOR ASSEMBLY
CFC-1200-01-15-B-A	FILTER FRAME
CPC-0501	VALVE
CPC-0509	VALVE
CPC-0510	CARTRIDGE FILTER SET W/ RING
CPC-1312-32-B	VENTURI
EHP-0483	CABLE AT REF LSME 0141
H-1766	COUPLING 1/4"NPSx1/8"NPT

Part Number	Description
K-8086	REPLACEMENT KIT
K-8087	REPLACEMENT KIT
K-8092	REPLACEMENT KIT
K-8093	REPLACEMENT KIT
K-8094	REPLACEMENT KIT
K-8095	REPLACEMENT KIT
K-8096	REPLACEMENT KIT
K-8098	FLUIDIZATION SCREEN REPALCEMENT KIT
K-8099	FLUIDIZATION SCREEN REPALCEMENT KIT
K-8100	REPLACEMENT KIT
K-8101	REPLACEMENT KIT
K-8102	REPLACEMENT KIT
K-8103	REPLACEMENT KIT
K-8104	REPLACEMENT KIT
K-8105	REPLACEMENT KIT
K-8107	REPLACEMENT KIT
BFP-0345	COVER
K-8109	REPLACEMENT KIT
K-8112	DEFLECTOR REPLACEMENT KIT
K-8114	REPLACEMENT KIT
K-8115	DEFLECTOR REPLACEMENT KIT
K-8116	TRIGGER REPLACEMENT KIT
K-8117	REPLACEMENT KIT
K-8118	REPLACEMENT KIT
K-8119	HOSE KIT OF BFX-1000

APPENDIX 2 - EXHIBIT 2

RANSBURG POWDER FINISHING PRODUCTS AND SYSTEMS

RPA-1 Applicator Top Assembly

All items below are part of RPA1 Top Assembly (A11200-XXXXXX):

A11789-XX Standalone/Control Pak Assembly (MicroPak)
A11791-XX Low Voltage Cable
A11498-XX Low Voltage Cable
76772-00 Adjustable Spanner wrench

Recommended Spare Parts for RPA-1:

RANSBURG RPA-1 APPLICATOR	
RECOMMENDED SPARE PARTS	
Part #	**Description**
	Application Using Open Bore Nozzle
A11196-01	Upper Powder Tube, Dense Phase Feed
A11196-03	Upper Powder Tube, Venturi Feed
A12052-00	Open Bore Nozzle
A11138-00	Conductive Seal
A11199-01	Elbow
	Application Using #2 Electrode Holder
A11196-01	Upper Powder Tube
A11199-01	Elbow
A11295-00	Electrode Holder Assembly

RPA-2 Applicator Top Assembly

All items below are part of RPA-2 Top Assembly (A12950-XXXXXXXX):

A11789-XX Standalone/Control Pak Assembly (MicroPak)
A12239-XX Low Voltage Cable (quick connect)
A12241-XX Low Voltage Cable Extension (discreet)
A12443-XX Low Voltage Cable Extension (quick connect)
A11680-XX Ground Cable Assembly

Special Tools: A13001-00 Tool; 76772-00 Adjustable Spanner wrench

Recommended Spare Parts for RPA-2:

RANSBURG RPA-2 POWDER APPLICATOR	
RECOMMENDED SPARE PARTS	
Part #	**Description**
	Open Bore Nozzle Application
A12052-00	Open Bore Nozzle
A11138-00	Conductive Seal
7554-126	O-ring
A11163-00	O-ring
A11149-00	O-ring
	Electrode Holder/Shape Air Application Option
A11195-XX	Electrode Holder Assembly
A11138-00	Conductive Seal
A11163-00	O-ring
A11150-00	O-ring
A11149-00	O-ring
A11148-00	O-ring
A11147-00	O-ring
A11304-00	Wear Bar
A11290-01	Electrode Holder (use with A11304-00 Wear Bar)
A11302-01	Electrode Holder with non-replaceable Wear Bar
	Counter Electrode Application
78365-00	Resistor (5 gig ohm)
A12643-00	Screw (M3 x 10 Fit Hd. SS)
A12862-00	Charging Ring, Secondary
A10123-00	Plug, Contact
75831-00	Spring
	No Counter Electrode Application
A12894-00	Charging Ring Blank

RANSBURG RPA-2 POWDER APPLICATOR	
RECOMMENDED SPARE PARTS	
Part #	**Description**
A13029-00	Screw (M3 x 10 Fit Hd, Nylon)
	Gun Body Assembly
A12949-00	Gun Body Assy./ Counter Electrode Application
A12949-01	Gun Body Assy./ Non Counter Electrode Application
	Parts Common To All Applicators
7554-08	O-ring
7554-09	O-ring
7554-12	O-ring
79001-09	O-ring
A11131-00	O-ring
A11130-00	O-ring
A11124-00	O-ring (for Top Plug)
A11122-00	O-ring (for Rear Plug)
A11174-00	Top Plug
A11173-00	Rear Plug
A12953-00	Cover
A12954-00	Screw, Nylon (for A12953-00 Cover)
A11129-00	Fitting, 8mm Tube
A11338-00	Screw (M8 x 25 SHCS Fiberglass) (for Rear Plate)
A11196-00	Upper Powder Tube (Dense Phase Application)
A11199-01	Top Elbow (Dense Phase or Venturi Application)
A11196-03	Upper Powder Tube (Venturi Application)
A11171-00	Lower Powder Tube
A11680-XX	Ground Cable Assembly
A12239-XX	Low Voltage Cable
A12241-XX	Low Voltage Cable Extension

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Appendix 3

APPENDIX 3:
RANSBURG POWDER FINISHING
INTELLECTUAL PROPERTY

Exhibit 1: Ransburg Powder Finishing Intellectual Property

Exhibit 2: Divested Ransburg Powder Finishing Intellectual Property

Exhibit 3: Retained Ransburg Powder Finishing Intellectual Property

APPENDIX 3 - EXHIBIT 1:
RANSBURG POWDER FINISHING INTELLECTUAL PROPERTY

"Ransburg Powder Finishing Intellectual Property" means all Intellectual Property that is necessary for making, having made, using, offering for sale, selling, importing, or exporting Ransburg Powder Finishing Products, including, but not limited to, the Intellectual Property specifically identified and described on Appendix 3, Exhibit 1, to this Order:

1. U.S. Patent No. 5,632,448, entitled "Rotary Powder Applicator," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

2. U.S. Patent No. 7,478,763, entitled "Spray Coating Device for Spraying Coating Material, in Particular Coating Powder," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

3. U.S. Patent No. 7,918,409, entitled "Multiple Charging Electrode," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

4. U. S. Patent No. 8,371,517, entitled "Powder Gun Deflector," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

5. U. S. Patent No. 6,793,150, entitled "Bell Cup Post," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

6. U. S. Patent No. 6,889,921, entitled "Bell Cup Skirt," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

7. U. S. Patent No. 6,144,570, entitled "Control System for a HVDC Power Supply," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

8. U. S. Patent No. 6,562,137, entitled "Power Supply Control System," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

9. U. S. Patent No. 6,423,142, entitled "Power Supply Control System," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

10. U. S. Patent No. 5,978,244, entitled "Programmable Logic Control System for a HVDC Power Supply," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

11. U. S. Patent No. 5,853,126, entitled "Quick Disconnect for Powder Coating Apparatus," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

12. RPA-1 Service Manual

13. RPA-2 Service Manual

14. RPAA-02A Service Manual

15. Drawing package for RPA-1, RPA-2 and RPAA-02A

16. Drawing package for RPAA-01

17. Service Manual for Powder Bell

18. Service Manual for MicroPak

19. Drawing set for Powder Bell

20. Drawing set for MicroPak

APPENDIX 3 - EXHIBIT 2:
DIVESTED RANSBURG POWDER FINISHING INTELLECTUAL PROPERTY

"Divested Ransburg Powder Finishing Intellectual Property" means the Ransburg Powder Finishing Intellectual Property including, but not limited to (but specifically excluding the Retained Ransburg Powder Finishing Intellectual Property), the Intellectual Property identified and described on Appendix 3, Exhibit 2, to this Order:

1. U.S. Patent No. 5,632,448, entitled "Rotary Powder Applicator," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

2. U.S. Patent No. 7,918,409, entitled "Multiple Charging Electrode," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

3. U. S. Patent No. 8,371,517, entitled "Powder Gun Deflector," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

4. U. S. Patent No. 6,793,150, entitled "Bell Cup Post," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

5. U. S. Patent No. 6,889,921, entitled "Bell Cup Skirt," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

6. U. S. Patent No. 6,144,570, entitled "Control System for a HVDC Power Supply," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

7. U. S. Patent No. 6,562,137, entitled "Power Supply Control System," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

8. U. S. Patent No. 6,423,142, entitled "Power Supply Control System," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

9. U. S. Patent No. 5,978,244, entitled "Programmable Logic Control System for a HVDC Power Supply," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

10. U. S. Patent No. 5,853,126, entitled "Quick Disconnect for Powder Coating Apparatus," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

11. RPA-1 Service Manual

12. RPA-2 Service Manual

13. RPAA-02A Service Manual

14. Drawing package for RPA-1, RPA-2 and RPAA-02A

15. Service Manual for Powder Bell

16. Service Manual for MicroPak

17. Drawing set for Powder Bell

18. Drawing set for MicroPak

Inclusion by the FTC of Intellectual Property on this Exhibit 2 of Appendix 3 shall not be construed as a representation that any such Intellectual Property is active or otherwise enforceable. Such information is provided solely for the purpose of this Order.

APPENDIX 3 - EXHIBIT 3:
RETAINED RANSBURG POWDER FINISHING INTELLECTUAL PROPERTY

"Retained Ransburg Powder Finishing Intellectual Property" means the Ransburg Powder Finishing Intellectual Property specifically identified and described on Appendix 3, Exhibit 3, to this Order. The Retained Ransburg Powder Finishing Intellectual Property is not required to be divested by Graco to the Commission-approved Acquirer pursuant to Paragraph II.A. of this Order; *provided, however,* that Graco is required to enter into a Graco License conveying rights in the Graco Retained Intellectual Property, including, but not limited to, the Retained Ransburg Powder Finishing Intellectual Property, to the Commission-approved Acquirer in accordance with the requirements of Paragraph II.D. of this Order:

1. U.S. Patent No. 7,478,763, entitled "Spray Coating Device for Spraying Coating Material, in Particular Coating Powder," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

2. Drawing package for RPAA-01

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Appendix 4

APPENDIX 4:

GRACO RETAINED INTELLECTUAL PROPERTY

"Graco Retained Intellectual Property" means (i) Category 1: the Retained Ransburg Powder Finishing Intellectual Property, which is specifically identified and described on Appendix 3, Exhibit 3 to this Order, and (ii) Category 2: Intellectual Property included as an asset of the Gema Powder Finishing Business for which a license to the Commission-approved Acquirer is necessary to assure the continued and unimpeded operations of the Liquid Finishing Business and the LFB Powder Finishing Business after the Divestiture Date.

The Graco Retained Intellectual Property that must be licensed to the Commission-approved Acquirer pursuant to a Graco License is specifically identified and described on this Appendix 4 to this Order, as further specified below.

CATEGORY 1:

1. U.S. Patent No. 7,478,763, entitled "Spray Coating Device for Spraying Coating Material, in Particular Coating Powder," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

2. Drawing package for RPAA-01.

CATEGORY 2:

1. U.S. Patent No. 6,557,789, entitled "Manual Spray Coating Gun," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

2. U.S. Patent No. 6,562,138, entitled "Electrode Holder for a Powder Spray Gun," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

3. U.S. Patent No. 6,712,291, entitled "Spray Coating Apparatus," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

4. U.S. Patent No. 6,935,583, entitled "Coating-Powder Spray Gun," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

5. U.S. Patent No. 5,686,149, entitled "Spray Device and Method for Powder Coating Material," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

6. U.S. Patent No. 5,735,958, entitled "Electrostatic Coating System," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

7. U.S. Patent Application Publication No. 2003/0197078, entitled "Spray Coating Device," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

Appendix 5

APPENDIX 5:

LICENSED-BACK POWDER FINISHING INTELLECTUAL PROPERTY

"Licensed-Back Powder Finishing Intellectual Property" means the Divested Ransburg Powder Finishing Intellectual Property, which is specifically identified and described on Appendix 5 to this Order, and which Graco is permitted to license back from the Commission-approved Acquirer consistent with the divestiture requirements of Paragraph II.A of this Order pursuant to an LFB License-Back:

1. U.S. Patent No. 7,918,409, entitled "Multiple Charging Electrode," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

2. U. S. Patent No. 8,371,517, entitled "Powder Gun Deflector," as well as any and all continuations, divisionals, continuations-in-part, reissues, reexaminations, and foreign counterparts thereof.

Appendix 6

APPENDIX 6
LIQUID FINISHING BUSINESS INTELLECTUAL PROPERTY

"Liquid Finishing Business Intellectual Property" means all Intellectual Property owned or licensed (as licensor or licensee) by Respondent Graco (after the Acquisition) in which Graco has a proprietary interest, and all associated rights thereto, that were acquired by Graco in the Acquisition or that have been assigned, transferred, conveyed to, acquired, or owned by Graco after the Acquisition, or by Respondents pursuant to the 3M-ITW Settlement-Related Agreements or otherwise (including, but not limited to, the DeKups IP and Tooling), and that relate to the Liquid Finishing Products and/or the Liquid Finishing Business, all of which is required to be divested by Graco to the Commission-approved Acquirer pursuant to this Order. The Liquid Finishing Business Intellectual Property includes, but is not limited to, the Intellectual Property identified and described on Appendix 1, Exhibit 3, and this Appendix 6, in the following Exhibits to this Order:

Exhibit 1: Patents and Patent Applications

Confidential Exhibits 2 and 2A: Unpublished and Unfiled Patent Applications

Confidential Exhibit 3: Abandoned or Expired Patents

Exhibit 4: Trademarks

Exhibit 5: Inactive Trademarks

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Appendix 6
Exhibit 1
As of May 14, 2014

Case Number	Country	Status	Application or Patent Number	Filing or Issue Date	Application Title
ITW-00706	WO	Nationaliz	9100167	05-Feb-1991	INDEXING AIR CAP
ITW-00709	EP	Nationaliz	526525	22-Feb-1995	MINIATURE ELECTRONIC PRESSURE GAUGE
ITW-00709	WO	Nationaliz	9100652	24-Apr-1991	MINIATURE ELECTRONIC PRESSURE GAUGE
ITW-00744	EP	Nationaliz	0572236	14-Jan-1998	ERGONOMIC HAND HELD PAINT SPRAY GUN
ITW-00744	EP	Nationaliz	0572237	06-Mar-1996	SPRAY GUN WITH DUAL MODE TRIGGER
ITW-00748	EP	Nationaliz	0600397	02-Apr-1997	NONINCENDIVE ROTARY ATOMIZER
ITW-00752	WO	Nationaliz	GB9300057	12-Jan-1993	AIR VALVE AND FEEDBACK AIR PRESSURE SENSING SYSTEMS
ITW-00765	EP	Nationaliz	0678334	06-Mar-2002	DISPOSABLE LINE & METHOD OF ATTACHING PAINT RESERVOIR TO THE REAR-END OF THE ERGONOMIC GUN
ITW-00765	US	Granted	5582350	10-Dec-1996	HAND HELD PAINT SPRAY GUN WITH TOP MOUNTED PAINT CUP
ITW-00769	US	Granted	5662278	02-Sep-1997	METHOD FOR TREATING NONCONDUCTIVE ROTARY ATOMIZER
ITW-00769	US	Granted	5622563	22-Apr-1997	NONINCENDIVE ROTARY ATOMIZER
ITW-00769	US	Granted	5633306	27-May-1997	NONINCENDIVE ROTARY ATOMIZER
ITW-00771	EP	Nationaliz	0670448	01-Jul-1998	ROTARY FLUID COUPLING
ITW-00772	US	Granted	5632448	27-May-1997	ROTARY POWDER APPLICATOR
ITW-00775	DE	Granted	69416085.7	20-Jan-1999	IMPROVED SPRAY NOZZLE
ITW-00775	EP	Nationaliz	0654305	20-Jan-1999	IMPROVED SPRAY NOZZLE
ITW-00775	FR	Granted	0654305	20-Jan-1999	An IMPROVED SPRAY NOZZLE
ITW-00775	GB	Granted	2283927	21-Jan-1998	IMPROVED SPRAY NOZZLE
ITW-00775	IT	Granted	0654305	20-Jan-1999	IMPROVED SPRAY NOZZLE
ITW-00775	JP	Granted	3908285	26-Jan-2007	IMPROVED SPRAY NOZZLE
ITW-00775	US	Granted	5540385	30-Jul-1996	SPRAY NOZZLE FOR HIGH VOLUME LOW PRESSURE AIR per USPTO website; ITW -[AN] IMPROVED SPRAY NOZZLE
ITW-00778	EP	Nationaliz	0673683	15-Oct-1997	HOSE MANAGEMENT SYSTEM
ITW-00779	US	Granted	5803367	08-Sep-1998	LIGHTWEIGHT SPRAY GUN
ITW-00786	US	Granted	5607108	04-Mar-1997	IMPROVED NOZZLE AND AIRCAP FOR SPRAY GUNS
ITW-00787	EP	Nationaliz	0718042	05-Feb-2003	2-COMPONENT ADHESIVE GUN
ITW-00787	US	Granted	5639027	17-Jun-1997	TWO COMPONENT EXTERNAL MIX SPRAY GUN [per website, ITW had 2-COMPONENT ADHESIVE GUN]
ITW-00788	EP	Nationaliz	0720869	09-Apr-2003	SPRAY GUN WITH FLUID VALVE
ITW-00788	MX	Granted	202911	29-Jun-2001	SPRAY GUN WITH FLUID VALVE
ITW-00788	US	Granted	5836517	17-Nov-1998	SPRAY GUN WITH FLUID VALVE
ITW-00789	JP	Granted	3786989	31-Mar-2006	VOLTAGE BLOCK ELECTROSTATIC COATING SYSTEM
ITW-00789	US	Granted	5632816	27-May-1997	VOLTAGE BLOCK
ITW-00789	US	Granted	5746831	05-May-1998	VOLTAGE BLOCK
ITW-00789	US	Granted	5787928	04-Aug-1998	VALVE STRUCTURE
ITW-00789	US	Granted	5944045	31-Aug-1999	SOLVENT CIRCUIT
ITW-00791	ES	Granted	135264	01-Mar-1996	SPRAY GUN HEAD DESIGN

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ITW-00792	US	Granted	5632817	27-May-1997	DUAL COMPONENTS MIXING SYSTEM FOR COATING
ITW-00799	MX	Granted	208324	12-Jun-2002	SPRAY BOOTH WITH VOC ABATEMENT SYSTEM
ITW-00799	US	Granted	5968235	19-Oct-1999	METHOD FOR VOC ABATEMENT
ITW-00839	CA	Granted	2219842	05-Jun-2001	DISPOSABLE PAINT CONTAINER LINER AND METHOD
ITW-00839	EP	Nationaliz	0847809	19-Mar-2003	CONTAINER LINER AND METHOD
ITW-00839	FR	Granted	0847809	19-Mar-2003	CONTAINER LINER AND METHOD
ITW-00839	GB	Granted	0847809	19-Mar-2003	CONTAINER LINER AND METHOD
ITW-00839	MX	Granted	205008	30-Oct-2001	DISPOSABLE PAINT LINER
ITW-00839	US	Granted	5816501	06-Oct-1998	DISPOSABLE PAINT CONTAINER LINER AND METHOD
ITW-00846	EP	Nationaliz	0847807	25-Sep-2002	REMOTE POWER GENERATION FOR ELECTROSTATIC PRODUCTS USING AIR AS THE PRIMARY ENERGY SOURCE. (AVIATOR)
ITW-00846	MX	Granted	204090	05-Sep-2001	REMOTE POWER GENERATION FOR ELECTROSTATIC PRODUCTS USING AIR AS THE PRIMARY ENERGY SOURCE. (AVIATOR)
ITW-00856	AT	Granted	0841097	10-Apr-2002	SPRAY COATING DEVICE
ITW-00856	CH	Granted	0841097	10-Apr-2002	SPRAY COATING DEVICE
ITW-00856	DE	Granted	59706952.2	10-Apr-2002	SPRAY COATING DEVICE
ITW-00856	EP	Nationaliz	0841097	10-Apr-2002	SPRAY COATING DEVICE
ITW-00856	JP	Granted	3872188	27-Oct-2006	SPRAY COATING DEVICE
ITW-00856	NL	Granted	0841097	10-Apr-2002	SPRAY COATING DEVICE
ITW-00858	EP	Nationaliz	0850694	05-Mar-2003	SPRAY COATING DEVICE
ITW-00863	DE	Granted	69821182.0	21-Jan-2004	POWER SUPPLY CONTROL SYSTEM
ITW-00863	EP	Nationaliz	0910159	21-Jan-2004	POWER SUPPLY CONTROL SYSTEM
ITW-00863	GB	Granted	0910159	21-Jan-2004	POWER SUPPLY CONTROL SYSTEM
ITW-00863	IT	Granted	0910159	21-Jan-2004	POWER SUPPLY CONTROL SYSTEM
ITW-00863	JP	Granted	4260936	20-Feb-2009	MICROPAK POWER SUPPLY
ITW-00863	US	Granted	6423142	23-Jul-2002	POWER SUPPLY CONTROL SYSTEM
ITW-00863	US	Granted	6562137	13-May-2003	POWER SUPPLY CONTROL SYSTEM
ITW-00863	US	Granted	5978244	02-Nov-1999	PROGRAMMABLE LOGIC CONTROL SYSTEM FOR A HVDC POWER SUPPLY
ITW-00864	US	Granted	5957395	28-Sep-1999	SAFE CHARGING
ITW-00867	MX	Granted	213566	07-Apr-2003	SAFE ELECTROSTATIC CHARGING SYSTEM USING CONDUCTIVE BELLS
ITW-00867	US	Granted	6042030	28-Mar-2000	SAFE CHARGING WITH NON-INSULATIVE ATOMIZER
ITW-00869	CA	Granted	2283974	06-Aug-2003	CONSTANT IONIZING CURRENT
ITW-00869	US	Granted	6144570	07-Nov-2000	CONTROL SYSTEM FOR A HVDC POWER SUPPLY
ITW-00875	CA	Granted	2270325	30-Dec-2003	COATING SYSTEM FLUID SUPPLY CYLINDER WITH IMPROVED FLUSHABILITY
ITW-00875	JP	Granted	3091186	21-Jul-2000	FLUID SUPPLY CYLINDER FOR COATING DEVICE HAVING IMPROVED WASHING ABILITY
ITW-00875	MX	Granted	213364	20-Mar-2003	APPARATUS TO IMPROVE THE FLUSHABILITY OF PAINT FROM A PAINT CYLINDER

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ITW-00875	US	Granted	6196478	06-Mar-2001	COATING SYSTEM FLUID SUPPLY CYLINDER WITH IMPROVED FLUSHABILITY
ITW-00876	CA	Granted	2267423	27-May-2003	RESISTANCE MEASURING METER WITH VOLTAGE MULTIPLIER
ITW-00876	DE	Granted	69930173.4	06-Mar-2006	RESISTANCE MEASURING METER WITH VOLTAGE MULTIPLIER
ITW-00876	EP	Nationaliz	0952449	06-Mar-2006	RESISTANCE MEASURING METER WITH VOLTAGE MULTIPLIER
ITW-00876	ES	Granted	0952449	06-Mar-2006	RESISTANCE MEASURING METER WITH VOLTAGE MULTIPLIER
ITW-00876	FR	Granted	0952449	06-Mar-2006	RESISTANCE MEASURING METER WITH VOLTAGE MULTIPLIER
ITW-00876	GB	Granted	0952449	06-Mar-2006	RESISTANCE MEASURING METER WITH VOLTAGE MULTIPLIER
ITW-00876	JP	Granted	4505075	30-Apr-2010	RESISTANCE MEASURING METER WITH VOLTAGE AMPLIFIER CIRCUIT
ITW-00876	MX	Granted	214933	25-Jun-2003	TRI-MULTI METER PAINT ELECTROSTATIC TESTER
ITW-00876	US	Granted	6078182	20-Jun-2000	RESISTANCE MEASURING METER WITH VOLTAGE MULTIPLIER
ITW-00879	MX	Granted	235031	17-Mar-2006	POWERING MULTIPLE GUNS WITH INDEPENDENT VOLTAGE ADJUSTMENT
ITW-00879	US	Granted	6154355	28-Nov-2000	APPARATUS AND METHOD FOR INDEPENDENTLY CONTROLLING MULTIPLE MATERIAL APPLICATORS
ITW-00880	US	Granted	6230993	15-May-2001	METHOD OF CHARGING USING NONINCENDIVE ROTARTY ATOMIZERS
ITW-00880	US	Granted	6076751	20-Jun-2000	METHOD OF CHARGING USING NONINCENDIVE ROTARTY ATOMIZERS
ITW-00889	EP	Nationaliz	1020231	30-Jun-2004	SPRAY GUN HEAD FOR SPRAY APPLICATION
ITW-00889	MX	Granted	217895	03-Dec-2003	SPRAY GUN HEAD FOR SPRAY APPLICATION
ITW-00889	US	Granted	6230986	15-May-2001	SPRAY HEAD FOR PAINT AND SIMILAR SUBSTANCES
ITW-00893	DE	Granted	19914040	15-Apr-2004	ATOMIZER PISTOL ROBOT ADAPTER
ITW-00894	MX	Granted	227930	19-May-2005	MULTI-FEED SPRAY GUN (FINISH LINE GUN "ALL-IN-ONE GUN")
ITW-00894	NZ	Granted	506815	09-Oct-2001	Multi-feed paint spray gun with upper passageway for receiving paint under gravity and lower passageway for receiving paint under suction or pressure
ITW-00894	US	Granted	6189809	20-Feb-2001	MULTI-FEED SPRAY GUN
ITW-00898	EP	Nationaliz	1106261	06-Feb-2008	VOLTAGE BLOCK IMPROVEMENT
ITW-00898	US	Granted	6202696	20-Mar-2001	VOLTAGE BLOCK IMPROVEMENT
ITW-00899	CA	Granted	2316516	02-Nov-2004	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	CN	Granted	104404	05-Mar-2003	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	DE	Granted	60026096.8	22-Feb-2006	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	EP	Nationaliz	1084760	22-Feb-2006	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	ES	Granted	1084760	22-Feb-2006	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	FR	Granted	1084760	22-Feb-2006	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	GB	Granted	1084760	22-Feb-2006	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	IT	Granted	1084760	22-Feb-2006	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	KR	Granted	10-0709619	19-Apr-2007	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	MX	Granted	222528	09-Sep-2004	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION
ITW-00899	US	Granted	6179223	30-Jan-2001	SPRAY NOZZLE FLUID REGULATOR AND RESTRICTOR COMBINATION

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ITW-00933	US	Granted	5415531	16-May-1995	PISTON PUMP FOR FLUENT MATERIALS
ITW-00934	US	Granted	5599177	04-Feb-1997	PRECISION METERED MULTIPLE FLUID PUMPING SYSTEM
ITW-00938	US	Granted	5655778	12-Aug-1997	BELLOWS SELF-THREADING SEAL
ITW-00963	DE	Granted	60020031.0	11-May-2005	SURGE SUPRESSION APPARATUS
ITW-00963	EP	Nationaliz	1079170	11-May-2005	SURGE SUPPRESSION APPARATUS
ITW-00963	ES	Granted	1079170	11-May-2005	SURGE SUPRESSION APPARATUS
ITW-00963	FR	Granted	1079170	11-May-2005	SURGE SUPRESSION APPARATUS
ITW-00963	GB	Granted	1079170	11-May-2005	SURGE SUPRESSION APPARATUS
ITW-00963	IT	Granted	1079170	11-May-2005	SURGE SUPRESSION APPARATUS
ITW-00963	JP	Granted	4723062	15-Apr-2011	SURGE SUPRESSION DEVICE
ITW-00963	MX	Granted	227354	19-Apr-2005	SURGE ELIMINATOR
ITW-00963	SE	Granted	1079170	11-May-2005	SURGE SUPRESSION APPARATUS
ITW-00963	US	Granted	6491065	10-Dec-2002	SURGE SUPRESSION APPARATUS
ITW-00964	DE	Granted	60008176.1	11-Feb-2004	Surge suppression apparatus incorporating a pressure regulation assembly
ITW-00964	EP	Nationaliz	1079169	11-Feb-2004	SURGE ELIMINATOR
ITW-00964	ES	Granted	1079169	11-Feb-2004	Surge suppression apparatus incorporating a pressure regulation assembly
ITW-00964	FR	Granted	1079169	11-Feb-2004	Surge suppression apparatus incorporating a pressure regulation assembly
ITW-00964	GB	Granted	1079169	11-Feb-2004	Surge suppression apparatus incorporating a pressure regulation assembly
ITW-00964	IT	Granted	1079169	11-Feb-2004	Surge suppression apparatus incorporating a pressure regulation assembly
ITW-00964	SE	Granted	1079169	11-Feb-2004	Surge suppression apparatus incorporating a pressure regulation assembly
ITW-00966	US	Granted	6276616	21-Aug-2001	FLUID NEEDLE LOADING ASSEMBLY FOR AIRLESS SPRAY PAINT GUN
ITW-00967	BE	Granted	1134026	12-Dec-2007	ELECTROSTATIC COATING SYSTEM AND DUAL LIP BELL CUP THEREFOR
ITW-00967	CA	Granted	2340273	24-Oct-2006	ELECTROSTATIC COATING SYSTEM AND DUAL LIP BELL CUP THEREFOR
ITW-00967	CN	Granted	01109622.5	05-May-2004	ELECTROSTATIC COATING SYSTEM AND BELL SHAPED CUP WITH DUAL FLANGES
ITW-00967	DE	Granted	60131795.5	12-Dec-2007	ELECTROSTATIC COATING SYSTEM AND DUAL LIP BELL CUP THEREFOR
ITW-00967	EP	Nationaliz	1134026	12-Dec-2007	DUAL LIP BELL CUP
ITW-00967	ES	Granted	1134026	12-Dec-2007	ELECTROSTATIC COATING SYSTEM AND DUAL LIP BELL CUP THEREFOR
ITW-00967	FR	Granted	1134026	12-Dec-2007	ELECTROSTATIC COATING SYSTEM AND DUAL LIP BELL CUP THEREFOR
ITW-00967	GB	Granted	1134026	12-Dec-2007	ELECTROSTATIC COATING SYSTEM AND DUAL LIP BELL CUP THEREFOR
ITW-00967	IT	Granted	1134026	12-Dec-2007	ELECTROSTATIC COATING SYSTEM AND DUAL LIP BELL CUP THEREFOR
ITW-00967	KR	Granted	0404245	22-Oct-2003	ELECTROSTATIC COATING SYSTEM AND DUBBLE- LIP BELL CUP THEREFOR
ITW-00967	MX	Granted	229476	26-Jul-2005	DUAL LIP BELL CUP
ITW-00967	PT	Granted	1134026	12-Dec-2007	ELECTROSTATIC COATING SYSTEM AND DUAL LIP BELL CUP THEREFOR
ITW-00967	TW	Granted	156628	21-May-2002	DUAL LIP BELL CUP
ITW-00967	US	Granted	6322011	27-Nov-2001	ELECTROSTATIC COATING SYSTEM AND DUAL LIP BELL CUP THEREFOR
ITW-00969	CA	Granted	2349387	04-Oct-2005	SPRAY GUN NOZZLE ASSEMBLY AIR CAP

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ITW-00969	US	Granted	6293476	25-Sep-2001	SPRAY GUN NOZZLE ASSEMBLY AIR CAP
ITW-00972	CN	Granted	176925	20-Oct-2004	TWO-WAY USE SELECTIVE ELECTROSTATIC PAINTING MACHINE AND METHOD THEREOF
ITW-00972	EP	Nationaliz	1129784	17-Dec-2003	ELECTROSTATIC SPRAY USABLE IN TWO DIFFERENT MODES AND METHOD THEREOF
ITW-00972	KR	Granted	10-0738570	05-Jul-2007	ELECTROSTATIC COATING USED AS TWO TYPE AND METHOD [per website, ITW had ELECTROSTATIC SPRAY USABLE IN TWO DIFFERENT MODES AND METHOD THEREOF]
ITW-00972	TW	Granted	162069	16-Dec-2002	ELECTROSTATIC SPRAY USABLE IN TWO DIFFERENT MODES AND METHOD THEREOF
ITW-00973	CA	Granted	2340861	17-May-2005	AEROSOL SPRAY GUN [AIR SPRAY GUN]
ITW-00973	DE	Granted	60119810.7	24-May-2006	AEROSOL SPRAY GUN [AIR SPRAY GUN]
ITW-00973	EP	Nationaliz	1134028	24-May-2006	AIR SPRAY GUN
ITW-00973	ES	Granted	1134028	24-May-2006	AEROSOL SPRAY GUN [AIR SPRAY GUN]
ITW-00973	FR	Granted	1134028	24-May-2006	AEROSOL SPRAY GUN [AIR SPRAY GUN]
ITW-00973	GB	Granted	1134028	24-May-2006	AEROSOL SPRAY GUN [AIR SPRAY GUN]
ITW-00973	IT	Granted	1134028	24-May-2006	AEROSOL SPRAY GUN [AIR SPRAY GUN]
ITW-00973	US	Granted	6402058	11-Jun-2002	AEROSOL SPRAY GUN [AIR SPRAY GUN]
ITW-00978	US	Granted	6969057	29-Nov-2005	METHOD AND APPARATUS FOR ADJUSTING AND POSITIONING AIR CAPS
ITW-00981	CA	Granted	2367257	14-Mar-2006	A SPRAYING METHOD AND A SPRAY SYSTEM FOR COATING LIQUIDS
ITW-00981	DE	Granted	50213932.3	21-Oct-2009	METHOD AND APPARATUS FOR SPRAYING A COATING LIQUID
ITW-00981	EP	Nationaliz	1222966	21-Oct-2009	METHOD AND APPARATUS FOR SPRAYING A COATING LIQUID
ITW-00981	US	Granted	6915963	12-Jul-2005	SPRAYING METHOD AND A SPRAY SYSTEM FOR COATING LIQUIDS
ITW-00982	CA	Granted	2367254	17-Apr-2007	A SPRAYING METHOD AND A SPRAY SYSTEM FOR COATING LIQUIDS
ITW-00982	DE	Granted	50213910.2	14-Oct-2009	METHOD AND APPARATUS FOR SPRAYING A COATING LIQUID
ITW-00982	EP	Nationaliz	1222967	14-Oct-2009	METHOD AND APPARATUS FOR SPRAYING A COATING LIQUID
ITW-00982	US	Granted	6857581	22-Feb-2005	SPRAYING METHOD AND A SPRAY SYSTEM FOR COATING LIQUIDS
ITW-00986	CA	Granted	2379465	07-Nov-2006	AIR ASSISTED SPRAY SYSTEM WITH AN IMPROVED AIR CAP
ITW-00986	US	Granted	6669112	30-Dec-2003	AIR ASSISTED SPRAY SYSTEM WITH AN IMPROVED AIR CAP
ITW-00989	CA	Granted	2390569	17-May-2005	HIGH VOLTAGE CABLE
ITW-00989	EP	Published	02012316.2	04-Jun-2002	HIGH VOLTAGE CALBE
ITW-00989	MX	Granted	231929	08-Nov-2005	SHIELDED HIGH VOLTAGE SUPER FLEX CABLE
ITW-00991	US	Granted	6802463	12-Oct-2004	SPRAY-COATING SYSTEM
ITW-00994	DE	Granted	50211822.9	05-Mar-2008	Valve needle, used in particular in spraying of coating liquids
ITW-00994	EP	Nationaliz	1306593	05-Mar-2008	VALVE NEEDLE USED IN PARTICULAR IN SPRAYING OF COATING LIQUIDS
ITW-00994	ES	Granted	1306593	05-Mar-2008	Valve needle, used in particular in spraying of coating liquids
ITW-00994	FR	Granted	1306593	05-Mar-2008	Valve needle, used in particular in spraying of coating liquids
ITW-00994	GB	Granted	1306593	05-Mar-2008	Valve needle, used in particular in spraying of coating liquids
ITW-00994	IT	Granted	1306593	05-Mar-2008	Valve needle, used in particular in spraying of coating liquids
ITW-00994	JP	Granted	4213437	07-Nov-2008	VALVE NEEDLE

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ITW-00994	US	Granted	6817549	16-Nov-2004	VALVE NEEDLE, IN PARTICULAR FOR A SPRAYCOATING LIQUID
ITW-10317	GB	Granted	2008766	26-Apr-1991	PRESSURIZED PAINT CUP
ITW-12554	CA	Granted	2454874	10-Nov-2009	ONE-PIECE FLUID NOZZLE
ITW-12554	EP	Nationaliz	1452237	10-May-2006	ONE-PIECE FLUID NOZZLE
ITW-12554	KR	Granted	101093146	06-Dec-2011	ONE-PIECE FLUID NOZZLE FOR REDUCING FLUID DRAINAGE INTO INTERNAL PASSAGEWAYS AND COMPONENTS OF SPRAY DEVICE DURING DISASSEMBLY
ITW-12554	MX	Granted	248032	13-Aug-2007	ONE-PIECE FLUID NOZZLE
ITW-12554	US	Granted	6935577	30-Aug-2005	ONE-PIECE FLUID NOZZLE
ITW-12554	US	Published	11/077273	09-Mar-2005	ONE-PIECE FLUID NOZZLE
ITW-12554	US	Granted	7497387	03-Mar-2009	ONE-PIECE FLUID NOZZLE
ITW-12557	CA	Granted	2455054	02-Aug-2011	REPEATABLE MOUNTING UNIT FOR AUTOMATIC SPRAY DEVICE
ITW-12557	KR	Granted	101093571	07-Dec-2011	REPEATABLE MOUNTING UNIT FOR MOUNTING AUTOMATIC SPRAY DEVICE IN DESIRED SPRAY POSITION
ITW-12557	MX	Granted	264940	05-Mar-2009	REPEATABLE MOUNTING FOR AUTOMATIC SPRAY GUN
ITW-12557	US	Published	12/137369	11-Jun-2008	REPEATABLE MOUNTING FOR AUTOMATIC SPRAY GUN
ITW-13074	AU	Granted	759589	31-Jul-2003	A SPRAY GUN
ITW-13074	BE	Granted	1234617	25-Mar-2009	A SPRAY GUN
ITW-13074	CN	Granted	02105334.0	11-Oct-2006	A SPRAY GUN
ITW-13074	DK	Granted	1234617	25-Mar-2009	A SPRAY GUN
ITW-13074	EP	Nationaliz	1234617	25-Mar-2009	A SPRAY GUN
ITW-13074	EP	Published	09000516.6	09-Jan-2002	A SPRAY GUN
ITW-13074	FI	Granted	1234617	25-Mar-2009	A SPRAY GUN
ITW-13074	GB	Granted	2372465	14-Jul-2004	SPRAY GUN WITH AN ANNULAR SEALING MEMBER FOR DIVIDING INPUT AIR INTO ATOMISING AND SHAPING AIR FLOWS
ITW-13074	GB	Granted	1234617	25-Mar-2009	A SPRAY GUN
ITW-13074	JP	Granted	4865765	18-Nov-2011	A SPRAY GUN
ITW-13074	NL	Granted	1234617	25-Mar-2009	A SPRAY GUN
ITW-13074	PT	Granted	1234617	25-Mar-2009	A SPRAY GUN
ITW-13074	TR	Granted	1234617	25-Mar-2009	A SPRAY GUN
ITW-13074	US	Granted	6749132	15-Jun-2004	A SPRAY GUN
ITW-13430	EP	Nationaliz	1306816	18-Oct-2006	REPLACEABLE MODULAR FLUID REGULATOR WITH FLUID BY-PASS
ITW-13430	JP	Granted	4856118	04-Nov-2011	MODULAR FLUID PRESSURE REGULATOR WITH BYPASS
ITW-13430	US	Granted	6874534	05-Apr-2005	REPLACEABLE MODULAR FLUID REGULATOR WITH FLUID BY-PASS
ITW-13461	CA	Granted	2409332	12-Feb-2008	METHOD AND APPARATUS FOR REDUCING COATING BUILDUP ON FEED TUBES
ITW-13461	DE	Granted	60224152.9	19-Dec-2007	METHOD AND APPARATUS FOR REDUCING COATING BUILDUP ON THE PAINT FEED TUBE OF A ROTARY ATOMIZER
ITW-13461	EP	Nationaliz	1308214	19-Dec-2007	METHOD AND APPARATUS FOR REDUCING COATING BUILDUP ON PAINT FEED TUBE OF A ROTARY ATOMIZER

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ITW-13461	FR	Granted	1308214	19-Dec-2007	METHOD AND APPARATUS FOR REDUCING COATING BUILDUP ON THE PAINT FEED TUBE OF A ROTARY ATOMIZER
ITW-13461	GB	Granted	1308214	19-Dec-2007	METHOD AND APPARATUS FOR REDUCING COATING BUILDUP ON THE PAINT FEED TUBE OF A ROTARY ATOMIZER
ITW-13461	US	Granted	6896211	24-May-2005	METHOD AND APPARATUS FOR REDUCING COATING BUILDUP ON FEED TUBES
ITW-13468	US	Granted	6726772	27-Apr-2004	METHOD AND APPARATUS FOR SECURING ARTICLES TO BE COATED TO A CONVEYOR
ITW-13557	JP	Granted	4598377	01-Oct-2010	METERING AND DISPENSING DEVICE FOR PLURAL COMPOSITIONS
ITW-13557	MX	Granted	243441	23-Jan-2007	MULTIPLE COMPONENT METERING AND DISPENSING SYSTEM
ITW-13557	US	Granted	6821096	23-Nov-2004	MULTIPLE COMPONENT METERING AND DISPENSING SYSTEM
ITW-13557	US	Granted	7559438	14-Jul-2009	MULTIPLE COMPONENT METERING AND DISPENSING SYSTEM
ITW-13641	CA	Granted	2442014	20-Sep-2011	TWO COMPONENT SPRAY GUN WITH SOLVENT FLUSH/BLEND
ITW-13641	EP	Nationaliz	1402957	03-Dec-2008	TWO COMPONENT SPRAY GUN WITH SOLVENT FLUSH/BLEND
ITW-13641	US	Granted	7918369	05-Apr-2011	TWO COMPONENT SPRAY GUN WITH SOLVENT FLUSH/BLEND
ITW-13641	US	Granted	7954673	07-Jun-2011	TWO COMPONENT SPRAY GUN WITH SOLVENT FLUSH/BLEND
ITW-13707	KR	Granted	10-1014373	07-Feb-2011	BELL CUP SKIRT FOR EFFECTIVELY DISTRIBUTING THE POWDER-TYPE COATING SUBSTANCES
ITW-13707	US	Granted	6889921	10-May-2005	BELL CUP SKIRT
ITW-13709	CA	Granted	2432521	19-Oct-2010	MODULAR COLOR CHANGER
ITW-13709	US	Granted	6682001	27-Jan-2004	MODULAR COLOR CHANGER
ITW-13747	US	Granted	6854672	15-Feb-2005	AIR-ASSISTED AIR VALVE FOR AIR ATOMIZED SPRAY GUNS
ITW-13766	CA	Granted	2447979	06-Jan-2009	METHOD AND APPARATUS FOR REPLICATING HEAT PROFILE OF INFRARED OVEN
ITW-13766	MX	Granted	238087	26-Jun-2006	LAB OVEN WHICH REPLICATES HEAT PROFILE CHARACTERISTICS OF INFRARED OVEN
ITW-13766	US	Granted	6642486	04-Nov-2003	METHOD AND APPARATUS FOR REPLICATING HEAT PROFILE OF INFRARED OVEN
ITW-13771	CA	Granted	2454872	30-Mar-2010	AUTOMATIC AIR-ASSISTED MANIFOLD MOUNTED GUN
ITW-13771	CA	Granted	2640640	11-Sep-2012	AUTOMATIC AIR-ASSITED MANIFOLD MOUNTED GUN
ITW-13771	CA	Granted	2640510	02-Apr-2013	AUTOMATIC AIR-ASSITED MANIFOLD MOUNTED GUN
ITW-13771	KR	Granted	10-1161391	25-Jun-2012	AUTOMATIC AIR ASSISTED MANIFOLD MOUNTED GUN WITH FIRST COMPONENT PROVIDING CONNECTION TO SOURCE OF COATING MATERIAL TO BE DISPENSED AND FILTER FOR FILTERING THE COATING MATERIAL
ITW-13771	MX	Granted	248921	11-Sep-2007	AUTOMATIC AIR ASSISTED AIRLESS MANIFOLD MOUNTED GUN
ITW-13771	US	Granted	6874708	05-Apr-2005	AUTOMATIC AIR ASSISTED AIRLESS MANIFOLD MOUNTED GUN
ITW-13771	US	Granted	8622319	07-Jan-2014	AUTOMATIC AIR ASSISTED MANIFOLD MOUNTED GUN
ITW-13771	US	Granted	7059545	13-Jun-2006	AUTOMATIC AIR ASSISTED AIRLESS MANIFOLD MOUNTED GUN
ITW-13798	BE	Granted	1375013	23-Jul-2008	PRESSURE GAUGE
ITW-13798	CA	Granted	2432498	06-Jan-2009	PRESSURE GAUGE FOR A SPRAY GUN
ITW-13798	CH	Granted	1375013	23-Jul-2008	PRESSURE GAUGE
ITW-13798	DE	Granted	1375013	23-Jul-2008	PRESSURE GAUGE

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ITW-13798	EP	Nationaliz	1375013	23-Jul-2008	PRESSURE GAUGE
ITW-13798	ES	Granted	1375013	23-Jul-2008	PRESSURE GAUGE
ITW-13798	FR	Granted	1375013	23-Jul-2008	PRESSURE GAUGE
ITW-13798	GB	Granted	2389908	13-Dec-2003	PRESSURE GAUGE
ITW-13798	GB	Granted	1375013	23-Jul-2008	PRESSURE GAUGE
ITW-13798	IT	Granted	1375013	23-Jul-2008	PRESSURE GAUGE
ITW-13798	JP	Granted	4276001	13-Mar-2009	PRESSURE GAUGE
ITW-13798	NL	Granted	1375013	23-Jul-2008	PRESSURE GAUGE
ITW-13798	PT	Granted	1375013	23-Jul-2008	PRESSURE GAUGE
ITW-13798	US	Granted	7216813	15-May-2007	PRESSURE GAUGE
ITW-13798	US	Granted	7249519	31-Jul-2007	PRESSURE GAUGE
ITW-13798	US	Granted	7384004	10-Jun-2008	PRESSURE GAUGE
ITW-13808	KR	Granted	101074842	12-Oct-2011	SPRAY GUN WITH IMPROVED ATOMIZATION
ITW-13808	MX	Granted	246079	28-Nov-2007	SPRAY GUN WITH IMPROVED ATOMIZATION
ITW-13808	US	Granted	7762476	27-Jul-2010	SPRAY GUN WITH IMPROVED ATOMIZATION
ITW-13810	DE	Granted	20118531.8	16-Jan-2003	PROCESS AND DEVICE ON A PAINTING INSTALLATION FOR THE CLEANING OF A PAINT DELIVERY LINE
ITW-13810	DE	Granted	50204660.0	26-Oct-2005	PROCESS AND APPARATUS FOR CLEANING A PAINT SUPPLY DEVICE IN A PAINTING INSTALLATION
ITW-13810	EP	Nationaliz	1284162	26-Oct-2005	PROCESS AND APPARATUS FOR CLEANING A PAIT SUPPLY DEVICE IN A PAINTING INSTALLATION
ITW-13810	ES	Granted	1284162	26-Oct-2005	PROCESS AND APPARATUS FOR CLEANING A PAINT SUPPLY DEVICE IN A PAINTING INSTALLATION
ITW-13810	FR	Granted	1284162	26-Oct-2005	PROCESS AND APPARATUS FOR CLEANING A PAINT SUPPLY DEVICE IN A PAINTING INSTALLATION
ITW-13810	GB	Granted	1284162	26-Oct-2005	PROCESS AND APPARATUS FOR CLEANING A PAINT SUPPLY DEVICE IN A PAINTING INSTALLATION
ITW-13810	IT	Granted	1284162	26-Oct-2005	PROCESS AND APPARATUS FOR CLEANING A PAINT SUPPLY DEVICE IN A PAINTING INSTALLATION
ITW-13810	JP	Granted	3828468	14-Jul-2006	METHOD AND APPARATUS FOR CLEANING LACQUER SUPPLY CONDUIT IN COATING APPARATUS
ITW-13810	MX	Granted	243280	12-Jan-2007	PROCESS AND DEVICE ON A PAINTING INSTALLATION FOR THE CLEANING OF A PAINT DELIVERY LINE
ITW-13810	US	Granted	7066186	27-Jun-2006	APPARATUS MOUNTED ON A PAINTING SYSTEM TO CLEAN A PAINT FEED LINE
ITW-13810	US	Granted	7117877	10-Oct-2006	METHOD OF CLEANING A PAINT FEED LINE OF A PAINTING SYSTEM
ITW-13831	US	Granted	6918551	19-Jul-2005	DUAL PURGE MANIFOLD
ITW-13843	CA	Granted	2437292	22-Dec-2009	SPRAY GUN WITH IMPROVED PRE-ATOMIZATION FLUID MIXING AND BREAKUP
ITW-13843	EP	Nationaliz	1391247	28-Nov-2007	SPRAY GUN WITH IMPROVED PRE-ATOMIZATION FLUID MIXING AND BREAKUP
ITW-13843	MX	Granted	248074	14-Aug-2007	SPRAY GUN WITH IMPROVED PRE-ATOMIZATION FLUID MIXING AND BREAKUP

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ITW-13843	US	Granted	6808122	26-Oct-2004	SPRAY GUN WITH IMPROVED PRE-ATOMIZATION FLUID MIXING AND BREAKUP
ITW-13843	US	Granted	7311271	25-Dec-2007	SPRAY GUN WITH IMPROVED PRE-ATOMIZATION FLUID MIXING AND BREAKUP
ITW-13843	US	Granted	7028916	18-Apr-2006	SPRAY GUN WITH IMPROVED PRE-ATOMIZATION FLUID MIXING AND BREAKUP
ITW-13843	US	Granted	8640976	04-Feb-2014	SPRAY GUN WITH IMPROVED PRE-ATOMIZATION FLUID MIXING AND BREAKUP
ITW-13866	EP	Nationaliz	1393814	02-Apr-2008	NON ADJUSTABLE CARTRIDGE SEAL
ITW-13866	US	Granted	6916023	12-Jul-2005	SELF ADJUSTING CARTRIDGE SEAL
ITW-13867	US	Granted	6964382	15-Nov-2005	GRIP COVER FOR COATING DISPENSING DEVICE HAND GRIP
ITW-13958	CA	Granted	2447213	11-May-2010	SPRAY-COATING DEVICE FOR A COATING LIQUID
ITW-13958	DE	Granted	50309010.7	16-Jan-2008	SPRAY COATING DEVICE FOR A COATING LIQUID
ITW-13958	EP	Nationaliz	1415718	16-Jan-2008	SPRAY COATING DEVICE FOR A COATING LIQUID
ITW-13958	ES	Granted	1415718	16-Jan-2008	SPRAY COATING DEVICE FOR A COATING LIQUID
ITW-13958	FR	Granted	1415718	16-Jan-2008	SPRAY COATING DEVICE FOR A COATING LIQUID
ITW-13958	IT	Granted	1415718	16-Jan-2008	SPRAY COATING DEVICE FOR A COATING LIQUID
ITW-13958	JP	Granted	4387756	09-Oct-2009	SPRAY-COATING DEVICE FOR COATING LIQUID
ITW-13958	KR	Granted	10-523026	13-Oct-2005	SPRAY TYPE COATING APPARATUS WITH FUNCTION OF AUTOMATICALLY DETERMINING OPENING/CLOSING OF VALVE ELEMENT
ITW-13958	MX	Granted	243442	23-Jan-2007	NEEDLE POSITION DETECTION
ITW-13958	US	Granted	6955724	18-Oct-2005	SPRAY-COATING DEVICE FOR A COATING LIQUID
ITW-13989	CN	Granted	ZL200910126481.X	06-Jun-2012	HAND-HELD COATING DISPENSING DEVICE
ITW-13989	CN	Granted	200680010829.3	27-Jul-2011	HAND-HELD COATING DISPENSING DEVICE
ITW-13989	JP	Granted	5487367	07-Mar-2014	HAND-HELD COATING DISPENSING DEVICE
ITW-13989	KR	Granted	10-1308535	09-Sep-2013	HAND-HELD COATING DISPENSING DEVICE
ITW-13989	US	Granted	8382015	26-Feb-2013	HAND-HELD COATING DISPENSER DEVICE
ITW-13989	US	Granted	7757973	20-Jul-2010	HAND-HELD COATING DISPENSING DEVICE
ITW-13989	US	Published	13/754,297	30-Jan-2013	HAND-HELD COATING DISPENSER DEVICE
ITW-13989	WO	Nationaliz	US06/012447	04-Apr-2006	MODULAR HAND GUN
ITW-14096	CA	Granted	2466801	26-Jul-2011	DISPOSABLE PAINT CUP ATTACHMENT SYSTEM FOR GRAVITY-FEED PAINT SPRAYER
ITW-14096	MX	Granted	252574	19-Oct-2007	DISPOSABLE PAINT CUP ATTACHMENT SYSTEM FOR GRAVITY-FEED PAINTING GUNS
ITW-14096	NZ	Granted	533386	11-May-2006	DISPOSABLE PAINT CUP ATTACHMENT SYSTEM FOR GRAVITY-FEED PAINT SPRAYER
ITW-14096	US	Granted	6945429	20-Sep-2005	DISPOSABLE PAINT CUP ATTACHMENT SYSTEM FOR GRAVITY-FEED PAINT SPRAYER
ITW-14096	ZA	Granted	2004/03736	28-Sep-2005	DISPOSABLE PAINT CUP ATTACHMENT SYSTEM FOR GRAVITY-FEED PAINTING GUNS
ITW-14102	EP	Nationaliz	1503860	19-Mar-2008	SPRAYING HEAD FOR A DEVICE INTENDED TO SPRAY A PRODUCT
ITW-14102	US	Granted	7328855	12-Feb-2008	SPRAY HEAD FOR A PRODUCT SUCH AS PAINT
ITW-14102	WO	Nationaliz	FR03/01298	24-Apr-2003	SPRAYING HEAD FOR A DEVICE INTENDED TO SPRAY A PRODUCT
ITW-14114	CA	Granted	2466785	14-Jul-2009	ADJUSTABLE ADAPTER FOR GRAVITY-FEED PAINT SPRAYER

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ITW-14114	KR	Granted	1107212	11-Jan-2012	ADJUSTABLE ADAPTER FOR GRAVITY FEED PAINT SPRAYER, WHICH IS EASILY HANDLED AND PREVENTS FLUID FROM BEING LEAKED FROM ADAPTER
ITW-14114	MX	Granted	252573	19-Oct-2007	ADJUSTABLE ADAPTER FOR GRAVITY-FEED PAINTING GUNS
ITW-14114	NZ	Granted	533388	08-Jun-2004	ADJUSTABLE ADAPTER FOR GRAVITY FEED PAINT SPRAYER
ITW-14114	US	Granted	6712292	30-Mar-2004	ADJUSTABLE ADAPTER FOR GRAVITY FEED PAINT SPRAYER
ITW-14115	CA	Granted	2466783	14-Jul-2009	FRICTION FIT PAINT CUP CONNECTION
ITW-14115	MX	Granted	246527	19-Jun-2007	FRICTION FIT PAINT CUP CONNECTION
ITW-14115	US	Granted	6698670	02-Mar-2004	FRICTION FIT PAINT CUP CONNECTION
ITW-14257	WO	Nationaliz	US06/013925	12-Apr-2006	CONTAINER FOR COATING SYSTEM
ITW-14406	AU	Granted	2004315258	16-Jul-2009	Fluid supply assembly for spray guns with cup and lid comprising mating flanges
ITW-14406	CA	Granted	2551570	23-Mar-2010	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	CN	Granted	ZL200480040100.1	15-Sep-2010	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	DE	Granted	602004020803.5	22-Apr-2009	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	EP	Nationaliz	1703988	22-Apr-2009	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	ES	Granted	1703988	22-Apr-2009	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	FR	Granted	1703988	22-Apr-2009	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	GB	Granted	1703988	22-Apr-2009	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	IT	Granted	1703988	22-Apr-2009	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	JP	Granted	4927922	17-Feb-2012	DISPOSABLE CUP AND DISPOSABLE LID FOR FLUID SUPPLY DEVICE
ITW-14406	JP	Granted	4437143	08-Jan-2010	FLUID SUPPLY ASSEMBLY
ITW-14406	KR	Granted	10-1158557	14-Jun-2012	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	NL	Granted	1703988	22-Apr-2009	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	NZ	Granted	548243	07-Oct-2010	FLUID SUPPLY ASSEMBLY FOR SPRAY GUNS WITH CUP AND LID COMPRISING MATING FLANGES
ITW-14406	TW	Granted	I290854	11-Dec-2007	DISPOSABLE PAINT CUP
ITW-14406	US	Granted	7066549	06-Aug-2006	FLUID SUPPLY ASSEMBLY
ITW-14406	US	Granted	7344040	18-Mar-2008	FLUID SUPPLY ASSEMBLY
ITW-14406	US	Granted	7565983	28-Jul-2009	FLUID SUPPLY ASSEMBLY
ITW-14406	US	Granted	8196770	12-Jun-2012	FLUID SUPPLY ASSEMBLY
ITW-14406	WO	Nationaliz	US04/039493	23-Nov-2004	DISPOSABLE PAINT CUP

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ITW-14425	US	Granted	7168678	30-Jan-2007	NEEDLE VALVE CONSTRUCTION
ITW-14469	US	Granted	7296759	20-Nov-2007	RATCHETING RETAINING RING
ITW-14470	CN	Granted	ZL200680025042.4	17-Jul-2013	IN-GUN POWER SUPPLY CONTROL
ITW-14470	DE	Granted	602006012041.9	27-Jan-2010	IN-GUN POWER SUPPLY CONTROL
ITW-14470	EP	Nationaliz	1890822	27-Jan-2010	IN-GUN POWER SUPPLY CONTROL
ITW-14470	FR	Granted	1890822	27-Jan-2010	IN-GUN POWER SUPPLY CONTROL
ITW-14470	JP	Granted	5215179	08-Mar-2013	IN-GUN POWER SUPPLY CONTROL
ITW-14470	KR	Granted	10-1273950	03-Jun-2013	IN-GUN POWER SUPPLY CONTROL
ITW-14470	US	Granted	7460924	02-Dec-2008	IN-GUN POWER SUPPLY CONTROL
ITW-14470	WO	Nationaliz	US06/021346	31-May-2006	IN-GUN POWER SUPPLY CONTROL
ITW-14471	CA	Granted	2585121	10-Jan-2012	INDEXING VALVE
ITW-14471	CN	Granted	ZL200580037345.3	08-Apr-2009	INDEXING VALVE
ITW-14471	KR	Granted	10/1226622	21-Jan-2013	INDEXING VALVE
ITW-14471	MX	Granted	270426	29-Sep-2009	INDEXING FAN VALVE
ITW-14471	TW	Granted	I344388	01-Jul-2011	INDEXING FAN VALVE
ITW-14471	US	Granted	7296760	20-Nov-2007	INDEXING VALVE
ITW-14471	WO	Nationaliz	IB05/053728	11-Nov-2005	INDEXING FAN VALVE
ITW-14487	CA	Granted	2550762	02-Aug-2011	BAYONET TYPE ADAPTER ASSEMBLY FOR THE SUPPLY CUP OF A SPRAY GUN
ITW-14487	KR	Granted	10-1144239	02-May-2012	BAYONET TYPE ADAPTER ASSEMBLY FOR THE SUPPLY CUP OF A SPRAY GUN
ITW-14487	MX	Granted	255211	10-Mar-2008	BAYONET TYPE ADAPTER ASSEMBLY FOR THE SUPPLY CUP OF A SPRAY GUN
ITW-14487	US	Granted	7165732	23-Jan-2007	ADAPTER ASSEMBLY FOR A FLUID SUPPLY ASSEMBLY
ITW-14487	US	Granted	7625016	01-Dec-2009	ADAPTER ASSEMBLY FOR A FLUID SUPPLY ASSEMBLY
ITW-14487	WO	Nationaliz	US04/040700	09-Dec-2004	BAYONET TYPE ADAPTER ASSEMBLY FOR THE SUPPLY CUP OF A SPRAY GUN
ITW-14492	CA	Granted	2550579	25-May-2010	PUMPS
ITW-14492	CN	Granted	ZL200480037600.X	05-Aug-2009	PUMPS
ITW-14492	DE	Granted	602004023129.0	09-Sep-2009	PUMP
ITW-14492	EP	Nationaliz	1740829	09-Sep-2009	A.C. MOTOR DRIVEN PAINT PUMP
ITW-14492	ES	Granted	1740829	09-Sep-2009	PUMP
ITW-14492	FR	Granted	1740829	09-Sep-2009	PUMP
ITW-14492	GB	Granted	1740829	09-Sep-2009	PUMP
ITW-14492	IT	Granted	1740829	09-Sep-2009	PUMP
ITW-14492	JP	Published	2011266394	06-Dec-2011	PUMP
ITW-14492	KR	Granted	10-1245670	14-Mar-2013	PUMPS
ITW-14492	MX	Granted	272443	07-Dec-2009	PUMPS
ITW-14492	US	Granted	7938632	10-May-2011	PISTON PUMP WITH CAM FOLLOWER ARRANGEMENT
ITW-14492	WO	Nationaliz	GB04/005219	14-Dec-2004	PUMPS

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ITW-14499	EP	Nationaliz	1781415	03-Dec-2008	PNEUMATICALLY OPERATED DEVICE HAVING CHECK VALVE VENT
ITW-14499	MX	Granted	268094	02-Jul-2009	PNEUMATICALLY OPERATED DEVICE HAVING CHECK VALVE VENT
ITW-14499	US	Granted	7703702	27-Apr-2010	PNEUMATICALLY OPERATED DEVICE HAVING CHECK VALVE VENT AND METHOD FOR MAKING SAME
ITW-14499	WO	Nationaliz	IB05/051046	28-Mar-2005	PNEUMATICALLY OPERATED DEVICE HAVING CHECK VALVE VENT
ITW-14678	US	Granted	7568635	04-Aug-2009	TURBO SPRAY NOZZLE and spray coating device incorporating same
ITW-14732	CA	Granted	2564819	12-Mar-2013	ADAPTER ASSEMBLY AND DISPOSABLE LINING FOR THE FLUID SUPPLY CUP OF A SPRAY GUN
ITW-14732	CN	Granted	ZL200680031674.1	02-Dec-2009	ADAPTER FOR A FLUID SUPPLY
ITW-14732	CN	Granted	200580012912.X	10-Jun-2009	ADAPTER ASSEMBLY AND DISPOSABLE LINING FOR THE FLUID SUPPLY CUP OF A SPRAY GUN
ITW-14732	DE	Granted	602007017626.3	15-Jan-2014	ADAPTER FOR A FLUID SUPPLY
ITW-14732	EP	Granted	1982610	15-Jan-2014	ADAPTER FOR A FLUID SUPPLY
ITW-14732	FR	Granted	1982610	15-Jan-2014	ADAPTER FOR A FLUID SUPPLY
ITW-14732	GB	Granted	1982610	15-Jan-2014	ADAPTER FOR A FLUID SUPPLY
ITW-14732	JP	Granted	5487371	07-Mar-2014	CONVERSION ADAPTER FOR A FLUID SUPPLY ASSEMBLY
ITW-14732	JP	Granted	5154925	14-Dec-2012	ADAPTER ASSEMBLY AND DISPOSABLE LINING FOR THE FLUID SUPPLY CUP OF A SPRAY GUN
ITW-14732	KR	Granted	10-1185898	19-Sep-2012	ADAPTER ASSEMBLY AND DISPOSABLE LINING FOR THE FLUID SUPPLY CUP OF A SPRAY GUN
ITW-14732	TW	Granted	I311074	21-Jun-2009	IMPROVED DISPOSABLE PAINT CUP ADAPTER
ITW-14732	US	Granted	7757972	20-Jul-2010	CONVERSION ADAPTER FOR A FLUID SUPPLY ASSEMBLY
ITW-14732	US	Granted	7354074	08-Apr-2008	ADAPTER ASSEMBLY FOR A FLUID SUPPLY ASSEMBLY
ITW-14732	WO	Nationaliz	US06/034436	05-Sep-2006	ADAPTER FOR A FLUID SUPPLY
ITW-14732	WO	Nationaliz	US05/018922	27-May-2005	ADAPTER FOR A FLUID SUPPLY ASSEMBLY
ITW-14733	CA	Granted	2653724	08-Nov-2011	ANTISTATIC PAINT CUP
ITW-14733	CA	Granted	2546606	17-Jul-2012	ANTISTATIC PAINT CUP
ITW-14733	MX	Granted	274292	01-Mar-2010	ANTISTATIC PAINT CUP
ITW-14733	US	Granted	7753289	13-Jul-2010	ANTISTATIC PAINT CUP
ITW-14733	US	Granted	7665672	23-Feb-2010	ANTISTATIC PAINT CUP
ITW-14733	US	Granted	7766250	03-Aug-2010	ANTISTATIC PAINT CUP
ITW-14733	US	Granted	7744011	29-Jun-2010	ANTISTATIC PAINT CUP
ITW-14733	WO	Nationaliz	US05/18947	27-May-2005	ANTISTATIC PAINT CUP
ITW-14733	WO	Nationaliz	US07/014436	21-Jun-2007	ANTISTATIC PAINT CUP
ITW-14780	AT	Granted	E352378T1	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	BE	Granted	1660237	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE

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ITW-14780	CA	Granted	2535254	22-Jun-2010	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	CN	Granted	ZL200480023001.2	24-Dec-2008	VOLTAGE INTERRUPTING DEVICE AND ELECTROSTATIC COATING SYSTEM USING THE SAME
ITW-14780	DE	Granted	602004004547.0	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	EP	Nationaliz	1660237	24-Jan-2007	VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	ES	Granted	1660237	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	FR	Granted	1660237	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	GB	Granted	1660237	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	IN	Granted	229962	24-Feb-2009	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	IT	Granted	1660237	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	JP	Granted	44630401	26-Feb-2010	VOLTAGE INTERRUPTING DEVICE AND ELECTROSTATIC COATING SYSTEM USING THE SAME
ITW-14780	KR	Granted	101112184	27-Jan-2012	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	MX	Granted	260661	19-Sep-2008	VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	NL	Granted	1660237	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	RU	Granted	2314877	20-Jan-2008	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	SE	Granted	1660237	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	SK	Granted	1660237	24-Jan-2007	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	TW	Granted	256320	11-Jun-2006	VOLTAGE BLOCK AND ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK
ITW-14780	US	Granted	7757630	20-Jul-2010	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14780	WO	Nationaliz	JP04/011875	12-Aug-2004	VOLTAGE BLOCK AND ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK
ITW-14780	ZA	Granted	2006/02055	25-Feb-2009	A VOLTAGE BLOCK DEVICE AND AN ELECTROSTATIC COATING SYSTEM WITH THE VOLTAGE BLOCK DEVICE
ITW-14782	CA	Granted	117120	29-Oct-2007	COATING MATERIAL DISPENSING DEVICE
ITW-14782	CN	Granted	ZL200630144932.X	24-Sep-2008	2014-04-24 updated title to match US priority application; no other changes since ITW data transfer.
ITW-14782	EM	Granted	000585815-01	08-Sep-2006	P-2 GUN
ITW-14782	EM	Granted	000585815-02	08-Sep-2006	P-2 GUN
ITW-14782	JP	Granted	1342242	19-Sep-2008	P-2 GUN
ITW-14782	KR	Granted	300458698	06-Aug-2007	P-2 GUN

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ITW-14782	MX	Granted	24758	29-Oct-2007	P-2 GUN
ITW-14782	US	Granted	D545943	03-Jul-2007	COATING MATERIAL DISPENSING DEVICE
ITW-14785	CA	Granted	2653779	29-Oct-2013	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	CA	Granted	2570070	05-Nov-2013	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	CN	Granted	ZL200780024444.7	12-Jun-2013	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	MX	Granted	298946	04-May-2012	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	MX	Granted	284693	11-Mar-2011	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	TH	Published	0701002049	25-Apr-2007	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	US	Granted	7883026	08-Feb-2011	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	US	Granted	7992808	09-Aug-2011	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	US	Granted	7926733	19-Apr-2011	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	WO	Nationaliz	IB05/052151	28-Jun-2005	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14785	WO	Nationaliz	US07/009965	26-Apr-2007	FLUID ATOMIZING SYSTEM AND METHOD
ITW-14811	CA	Granted	2569470	17-Jan-2012	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	CN	Granted	200580018821.7	03-Jun-2009	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	DE	Granted	602005026280.6	09-Feb-2011	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	DE	Granted	602005032564.6	01-Feb-2012	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	EP	Nationaliz	1753541	09-Feb-2011	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	EP	Nationaliz	2221112	01-Feb-2012	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	ES	Granted	1753541	09-Feb-2011	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	ES	Granted	2221112	01-Feb-2012	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	FR	Granted	1753541	09-Feb-2011	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	FR	Granted	2221112	01-Feb-2012	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	GB	Granted	1753541	09-Feb-2011	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	GB	Granted	2221112	01-Feb-2012	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	IT	Granted	1753541	09-Feb-2011	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	IT	Granted	2221112	01-Feb-2012	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	JP	Granted	4833979	30-Sep-2011	FLUID SUPPLY ASSEMBLY
ITW-14811	KR	Granted	10-1237390	20-Feb-2013	FLUID SUPPLY ASSEMBLY
ITW-14811	MX	Granted	271477	09-Nov-2009	FLUID SUPPLY ASSEMBLY
ITW-14811	NL	Granted	2221112	01-Feb-2012	LINER WITH IMPROVED SEAL FOR THE PAINT SUPPLY CUP OF A SPRAY GUN
ITW-14811	NZ	Granted	587158	02-Apr-2012	FLUID SUPPLY ASSEMBLY WITH A DISPOSABLE CONTAINER PLACED INSIDE AN OUTER REUSEABLE CUP
ITW-14811	TW	Granted	I315218	01-Oct-2009	EXPANDING DISPOSABLE LID APPLICATION
ITW-14811	US	Granted	7353964	08-Apr-2008	FLUID SUPPLY ASSEMBLY

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ITW-14811	US	Granted	7874323	25-Jan-2011	FLUID SUPPLY ASSEMBLY
ITW-14811	WO	Nationaliz	US05/19098	01-Jun-2005	FLUID SUPPLY ASSEMBLY
ITW-14849	CA	Granted	2556013	26-Jul-2011	RADIUS EDGE BELL CUP AND METHOD FOR SHAPING AN ATOMIZED SPRAY PATTERN
ITW-14849	US	Published	11/228671	16-Sep-2005	RADIUS EDGE BELL CUP AND METHOD FOR SHAPING AN ATOMIZED SPRAY PATTERN
ITW-14856	CN	Granted	ZL200680016387.3	29-Sep-2010	SPRAY COATING APPLICATOR SYSTEM
ITW-14856	DE	Granted	602006034617.4	20-Feb-2013	SPRAY COATING APPLICATOR SYSTEM
ITW-14856	EP	Nationaliz	1868732	20-Feb-2013	SPRAY COATING APPLICATOR SYSTEM
ITW-14856	FR	Granted	1868732	20-Feb-2013	SPRAY COATING APPLICATOR SYSTEM
ITW-14856	GB	Granted	1868732	20-Feb-2013	SPRAY COATING APPLICATOR SYSTEM
ITW-14856	JP	Granted	5215170	08-Mar-2013	SPRAY COATING APPLICATOR SYSTEM
ITW-14856	KR	Granted	10-1258552	22-Apr-2013	SPRAY COATING APPLICATOR SYSTEM
ITW-14856	US	Published	11/911301	20-Jun-2008	SPRAY COATING APPLICATOR SYSTEM
ITW-14856	WO	Nationaliz	US06/013269	10-Apr-2006	SPRAY COATING APPLICATOR SYSTEM
ITW-14951	CA	Granted	110400	08-Mar-2007	PUMP FOR HIGH VOLUME DISPENSING OF RESIN MATERIAL
ITW-14951	MX	Granted	20260	23-Mar-2006	DESIGN FOR PUMP
ITW-14951	NZ	Granted	405989	17-Mar-2005	DESIGN FOR PUMP
ITW-14951	US	Granted	D516583	07-Mar-2006	PUMP
ITW-15002	CA	Granted	2650108	26-Nov-2013	ELECTRICAL ASSEMBLY
ITW-15002	CN	Granted	ZL200780016491.7	27-Apr-2011	ELECTRICAL ASSEMBLY
ITW-15002	JP	Granted	5368298	20-Sep-2013	ELECTRICAL ASSEMBLY
ITW-15002	US	Granted	8351213	08-Jan-2013	ELECTRICAL ASSEMBLY
ITW-15002	WO	Nationaliz	US07/069773	25-May-2007	ELECTRICAL ASSEMBLY
ITW-15006	AU	Granted	2005276194	24-Dec-2009	AIR VALVE FOR A PAINT GUN
ITW-15006	CA	Granted	2575623	24-May-2011	AIR VALVE FOR A PAINT GUN
ITW-15006	CN	Granted	ZL200580026045.5	14-Jan-2009	AIR VALVE FOR A PAINT GUN
ITW-15006	DE	Granted	602005012290.7	07-Jan-2009	AIR VALVE FOR A PAINT GUN
ITW-15006	EP	Nationaliz	1796846	07-Jan-2009	AIR VALVE FOR A PAINT GUN
ITW-15006	ES	Granted	1796846	07-Jan-2009	AIR VALVE FOR A PAINT GUN
ITW-15006	FR	Granted	1796846	07-Jan-2009	AIR VALVE FOR A PAINT GUN
ITW-15006	GB	Granted	1796846	07-Jan-2009	AIR VALVE FOR A PAINT GUN
ITW-15006	GB	Granted	2417544	23-Apr-2008	AIR VALVE FOR A PAINT GUN
ITW-15006	KR	Granted	10-1191848	10-Oct-2012	AIR VALVE FOR A PAINT GUN
ITW-15006	MX	Granted	268042	06-Jul-2009	AIR VALVE FOR A PAINT GUN
ITW-15006	TW	Granted	I317655	01-Dec-2009	AIR VALVE FOR A PAINT GUN
ITW-15006	US	Granted	8235356	07-Aug-2012	AIR VALVE FOR A PAINT GUN
ITW-15006	WO	Nationaliz	IB05/002475	22-Aug-2005	AIR VALVE FOR A PAINT GUN

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ITW-15111	EP	Published	06710747.4	25-Jan-2006	FLUID SUPPLY ASSEMBLY WITH MEASURING GUIDE
ITW-15111	JP	Granted	4695461	06-Apr-2012	FLUID SUPPLY ASSEMBLY WITH MEASURING GUIDE
ITW-15111	KR	Granted	10-1245668	14-Mar-2013	FLUID SUPPLY ASSEMBLY WITH MEASURING GUIDE
ITW-15111	US	Granted	7263893	04-Sep-2007	FLUID SUPPLY ASSEMBLY WITH MEASURING GUIDE
ITW-15111	US	Granted	7350418	01-Apr-2008	FLUID SUPPLY ASSEMBLY WITH MEASURING GUIDE
ITW-15111	WO	Nationaliz	IB06/050271	25-Jan-2006	FLUID SUPPLY ASSEMBLY WITH MEASURING GUIDE
ITW-15113	CA	Granted	2547101	16-Nov-2010	VOLTAGE BLOCK
ITW-15113	EP	Nationaliz	1726967	19-Sep-2007	VOLTAGE BLOCK
ITW-15113	JP	Granted	4373411	11-Sep-2009	VOLTAGE CUT-OFF DEVICE
ITW-15113	US	Granted	7296756	20-Nov-2007	VOLTAGE BLOCK
ITW-15145	US	Granted	7296981	20-Nov-2007	PUMP HAVING INDEPENDENTLY RELEASABLE ENDS
ITW-15149	AU	Granted	2005216722	18-Dec-2008	PRESSURE MONITORING DEVICE FOR A PAINT SPRAY GUN
ITW-15149	CA	Granted	2556057	16-Oct-2012	PRESSURE MONITORING DEVICE FOR A PAINT SPRAY GUN
ITW-15149	DE	Granted	602005014445.5	13-May-2009	PRESSURE MONITORING DEVICE FOR A PAINT SPRAY GUN
ITW-15149	EP	Nationaliz	1715957	13-May-2009	PRESSURE MONITORING DEVICE FOR A PAINT SPRAY GUN
ITW-15149	FR	Granted	1715957	13-May-2009	PRESSURE MONITORING DEVICE FOR A PAINT SPRAY GUN
ITW-15149	GB	Granted	1715957	13-May-2009	PRESSURE MONITORING DEVICE FOR A PAINT SPRAY GUN
ITW-15149	IT	Granted	1715957	13-May-2009	PRESSURE MONITORING DEVICE FOR A PAINT SPRAY GUN
ITW-15149	US	Granted	8387656	05-Mar-2013	PRESSURE MONITORING DEVICE FOR A PAINT SPRAY GUN
ITW-15149	WO	Nationaliz	IB05/000404	17-Feb-2005	PRESSURE MONITORING DEVICE FOR A PAINT SPRAY GUN
ITW-15150	FR	Granted	0314471	20-Jan-2006	SPRAY GUN FOR PRODUCT E.G. PAINT, HAS BELLOW WHOSE END DIRECTED TOWARDS PRODUCT CHAMBER INCLUDES JOINT TO ENSURE TIGHTNESS OF NEEDLE THAT HAS SCRAP WALL FOR JOINT, WHERE NEEDLE IS MOVED TOO AND FRO
ITW-15151	AU	Granted	2011200439	23-Feb-2012	AUTOMATED SPRAYGUN FITTED WITH A SPRAY SYSTEM MOUNTED ON A FEED FOUNDATION
ITW-15151	CA	Granted	2572927	17-Apr-2012	AUTOMATED SPRAYGUN FITTED WITH A SPRAY SYSTEM MOUNTED ON A FEED FOUNDATION
ITW-15151	CN	Granted	ZL200580023183.8	04-Jul-2012	AUTOMATED SPRAY GUN FITTED WITH A SPRAY SYSTEM MOUNTED ON SUPPLY BASE
ITW-15151	DE	Granted	2005021265.4	12-Jul-2007	Automatisierte Sprühpistole, ausgerüstet mit einem Sprühsystem, welches auf einer Versorgungsbasis montiert ist
ITW-15151	FR	Granted	2872717	15-Sep-2006	PISTOLET DE PULVERISATION AUTOMATIQUE COMPRENANT UN CORPS DE PULVERISATION MONTE SUR UNE EMBASE D'ALIMENTATION
ITW-15151	JP	Granted	5221130	15-Mar-2013	PISTOLET DE PULVERISATION AUTOMATIQUE COMPRENANT UN CORPS DE PULVERISATION MONTE SUR UNE EMBASE D'ALIMENTATION
ITW-15151	KR	Granted	10-1177795	22-Aug-2012	AUTOMATED SPRAY GUN FITTED WITH A SPRAY SYSTEM MOUNTED ON SUPPLY BASE
ITW-15151	MX	Granted	266999	28-May-2009	AUTOMATED SPRAY GUN FITTED WITH A SPRAY SYSTEM MOUNTED ON A SUPPLY BASE
ITW-15151	TW	Granted	I317654	01-Dec-2009	AUTOMATIC GUN FOR SPRAYING A PRODUCT SUCH AS A PAINT, A LACQUER, AN ENAMEL OR A SIMILAR PRODUCT
ITW-15151	US	Allowed	12/614034	06-Nov-2009	AUTOMATIC SPRAY GUN
ITW-15151	US	Granted	7661606	16-Feb-2010	AUTOMATED SPRAYGUN FITTED WITH A SPRAY SYSTEM MOUNTED ON A FEED FOUNDATION

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ITW-15151	WO	Nationaliz	IB05/001921	06-Jul-2005	AUTOMATIC SPRAY GUN FITTED WITH A SPRAY SYSTEM MOUNTED ON A FEED FOUNDATION
ITW-15166	CA	Granted	2591539	15-May-2012	ELECTROSTATIC PAINT SPRAYER
ITW-15166	CN	Granted	ZL200580044836.0	05-Aug-2009	ELECTROSTATIC COATER
ITW-15166	DE	Granted	602005033683.4	11-Apr-2012	ELECTROSTATIC COATER
ITW-15166	EP	Nationaliz	1832348	11-Apr-2012	ELECTROSTATIC COATER
ITW-15166	ES	Granted	1832348	11-Apr-2012	ELECTROSTATIC COATER
ITW-15166	FR	Granted	1832348	11-Apr-2012	ELECTROSTATIC COATER
ITW-15166	GB	Granted	1832348	11-Apr-2012	ELECTROSTATIC COATER
ITW-15166	IT	Granted	1832348	11-Apr-2012	ELECTROSTATIC COATER
ITW-15166	KR	Granted	10/1245677	14-Mar-2013	ELECTROSTATIC COATER
ITW-15166	MX	Granted	288052	04-Jul-2011	ELECTROSTATIC COATER
ITW-15166	TW	Granted	I272130	01-Feb-2007	ELECTROSTATIC COATING APPARATUS
ITW-15166	US	Granted	7784718	31-Aug-2010	ELECTROSTATIC PAINT SPRAYER
ITW-15166	WO	Nationaliz	JP05/024269	28-Dec-2005	ELECTROSTATIC COATER
ITW-15175	US	Granted	7621471	24-Nov-2009	HIGH VOLTAGE MODULE WITH GAS DIELECTRIC MEDIUM OR VACUUM
ITW-15175	WO	Nationaliz	US06/044383	15-Nov-2006	HIGH VOLTAGE MODULE WITH GAS OR VACUUM DIELECTRIC MEDIUM
ITW-15178	WO	Nationaliz	US06/013378	10-Apr-2006	PAINT PUSH SHUTTLE
ITW-15180	US	Granted	8312896	20-Nov-2012	AIR VALVE FOR SPRAY GUNS
ITW-15181	CA	Granted	2548656	17-Jul-2012	INFRARED CURING DEVICE HAVING ELECTRICALLY ACTUATED ARM AND SYSTEM AND METHOD THEREWITH
ITW-15181	US	Granted	7212736	01-May-2007	INFRARED CURING DEVICE HAVING ELECTRICALLY ACTUATED ARM AND SYSTEM AND METHOD THEREWITH
ITW-15229	WO	Nationaliz	US06/013618	12-Apr-2006	RESERVOIR PAINT CONTAINER
ITW-15232	US	Granted	7384670	10-Jun-2008	COATING METHOD AND ATOMIZER
ITW-15232	WO	Nationaliz	JP04/004122	24-Mar-2004	COATING METHOD AND COATING MACHINE
ITW-15233	JP	Granted	4153332	11-Jul-2008	ROTARY ATOMIZATION PAINTING DEVICE
ITW-15234	JP	Granted	4279603	19-Mar-2009	OSCILLATOR FOR CLEANING OF RESIDUAL COATING
ITW-15236	CA	Granted	2480615	29-Jan-2009	ROTARY ATOMIZER AND COATING METHOD BY IT
ITW-15236	CN	Granted	ZL200410089941.3	21-Mar-2007	ROTARY ATOMIZER AND COATING METHOD BY IT
ITW-15236	DE	Granted	602004027693.6	16-Jun-2010	ROTARY ATOMIZER AND COATING METHOD BY IT
ITW-15236	EP	Nationaliz	1514605	16-Jun-2010	ROTARY ATOMIZER AND COATING METHOD BY IT
ITW-15236	FR	Granted	1514605	16-Jun-2010	ROTARY ATOMIZER AND COATING METHOD BY IT
ITW-15236	GB	Granted	1514605	16-Jun-2010	ROTARY ATOMIZER AND COATING METHOD BY IT
ITW-15236	JP	Granted	4428973	25-Dec-2009	ROTARY ATOMIZATION COATING APPARATUS AND COATING METHOD
ITW-15236	US	Granted	7143963	05-Dec-2006	ROTARY ATOMIZER AND COATING METHOD BY IT
ITW-15237	CA	Granted	2537142	28-May-2013	ELECTROSTATIC COATING MACHINE AND METHOD FOR CLEANING SAME

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ITW-15237	CN	Granted	ZL200480024444.3	12-May-2010	ELECTROSTATIC ATOMIZER AND ITS CLEANING METHOD
ITW-15237	DE	Granted	602004039715.6	17-Oct-2012	ELECTROSTATIC COATING MACHINE AND METHOD FOR CLEANING SAME
ITW-15237	EP	Nationaliz	1666157	17-Oct-2012	ELECTROSTATIC COATING MACHINE AND METHOD FOR CLEANING SAME
ITW-15237	FR	Granted	1666157	17-Oct-2012	ELECTROSTATIC COATING MACHINE AND METHOD FOR CLEANING SAME
ITW-15237	GB	Granted	1666157	17-Oct-2012	ELECTROSTATIC COATING MACHINE AND METHOD FOR CLEANING SAME
ITW-15237	JP	Granted	4850515	28-Oct-2011	ELECTROSTATIC COATING MACHINE AND METHOD FOR CLEANING SAME
ITW-15237	US	Granted	8342432	01-Jan-2013	ELECTROSTATIC ATOMIZER AND ITS CLEANING METHOD
ITW-15237	WO	Nationaliz	JP04/012696	26-Aug-2004	ELECTROSTATIC COATING MACHINE AND METHOD FOR CLEANING SAME
ITW-15238	CN	Granted	200480019936.7	22-May-2013	ELECTROSTATIC COATING SYSTEM
ITW-15238	DE	Granted	602004020352.1	01-Apr-2009	ELECTROSTATIC PAINTING DEVICE
ITW-15238	EP	Nationaliz	1655076	01-Apr-2009	ELECTROSTATIC PAINTING DEVICE
ITW-15238	FR	Granted	1655076	01-Apr-2009	ELECTROSTATIC PAINTING DEVICE
ITW-15238	GB	Granted	1655076	01-Apr-2009	ELECTROSTATIC PAINTING DEVICE
ITW-15238	JP	Granted	4678858	10-Feb-2011	ELECTROSTATIC COATING SYSTEM
ITW-15238	KR	Granted	1106696	10-Jan-2012	ELECTROSTATIC PAINTING DEVICE
ITW-15238	US	Granted	7617997	17-Nov-2009	ELECTROSTATIC COATING SYSTEM
ITW-15238	WO	Nationaliz	JP04/010872	23-Jul-2004	ELECTROSTATIC PAINTING DEVICE
ITW-15342	US	Granted	8,225,968	24-Jul-2012	SEAL SYSTEM FOR GEAR PUMPS
ITW-15342	WO	Nationaliz	US10/029906	05-Apr-2010	SEAL SYSTEM FOR GEAR PUMPS
ITW-15343	AT	Granted	1830966	05-Nov-2008	BACK PRESSURE REGULATOR
ITW-15343	AU	Granted	2006290399	18-Nov-2010	BACK PRESSURE REGULATOR
ITW-15343	BE	Granted	1830966	05-Nov-2008	BACK PRESSURE REGULATOR
ITW-15343	CA	Granted	2621330	01-Nov-2012	BACK PRESSURE REGULATOR
ITW-15343	CH	Granted	1830966	05-Nov-2008	BACK PRESSURE REGULATOR
ITW-15343	CN	Granted	200680033362.4	25-Aug-2010	BACK PRESSURE REGULATOR
ITW-15343	DE	Granted	602006003526.8	05-Nov-2008	BACK PRESSURE REGULATOR
ITW-15343	EP	Nationaliz	1830966	05-Nov-2008	BACK PRESSURE REGULATOR
ITW-15343	ES	Granted	1830966	05-Nov-2008	BACK PRESSURE REGULATOR
ITW-15343	FR	Granted	1830966	05-Nov-2008	BACK PRESSURE REGULATOR
ITW-15343	GB	Granted	1830966	05-Nov-2008	BACK PRESSURE REGULATOR
ITW-15343	IT	Granted	1830966	05-Nov-2008	BACK PRESSURE REGULATOR
ITW-15343	JP	Granted	5180079	18-Jan-2013	BACK PRESSURE REGULATOR
ITW-15343	KR	Granted	10-1275767	11-Jun-2013	BACK PRESSURE REGULATOR
ITW-15343	MX	Granted	289586	12-Aug-2011	BACK PRESSURE REGULATOR
ITW-15343	TW	Granted	I329532	01-Sep-2010	SMART BACK PRESSURE REGULATOR
ITW-15343	US	Granted	8733392	27-May-2014	BACK PRESSURE REGULATOR

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ITW-15343	WO	Nationaliz	IB06/002503	12-Sep-2006	BACK PRESSURE REGULATOR
ITW-15344	AT	Granted	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	AU	Granted	2006291408	26-Aug-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	BE	Granted	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	CA	Granted	2621333	05-Nov-2013	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	CN	Granted	ZL200680033259.X	03-Oct-2012	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	DE	Granted	602006017643.0	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	EP	Nationaliz	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	ES	Granted	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	FR	Granted	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	GB	Granted	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	IT	Granted	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	JP	Granted	5350794	30-Aug-2013	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	KR	Granted	10-1305091	26-Aug-2013	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	MX	Granted	291865	09-Nov-2011	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	NL	Granted	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	PT	Granted	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	SK	Granted	1789202	20-Oct-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	TW	Granted	I312296	21-Jul-2009	SMART CIRCULATION SYSTEM AND PROCESS
ITW-15344	US	Granted	7828527	09-Nov-2010	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15344	WO	Nationaliz	US06/030176	03-Aug-2006	PAINT CIRCULATING SYSTEM AND METHOD
ITW-15368	US	Granted	8684281	01-Apr-2014	SPRAY DEVICE HAVING REMOVABLE HARD COATED TIP
ITW-15368	WO	Nationaliz	US07/004907	26-Feb-2007	SPRAY DEVICE HAVING REMOVABLE HARD COATED TIP
ITW-15587	CA	Granted	2628982	21-Feb-2012	FILTERING APPARATUS, FILTER REGULATOR FOR USE WITH SPRAY GUN AND SPRAYING SYSTEM USING THE SAME
ITW-15587	US	Granted	7563299	21-Jul-2009	Filtering apparatus, filter regulator for use with spray gun and spraying system using the same
ITW-15587	WO	Nationaliz	US06/043447	07-Nov-2006	FILTER REGULATOR
ITW-15623	WO	Nationaliz	US07/076460	22-Aug-2007	BELL CUP CLEANING SYSTEM AND METHOD
ITW-15626	DE	Published	112006003268.2	27-Nov-2006	ELECTRICAL GENERATOR
ITW-15626	US	Granted	7781944	24-Aug-2010	ELECTRICAL GENERATOR
ITW-15626	WO	Nationaliz	US06/045442	27-Nov-2006	ELECTRICAL GENERATOR
ITW-15631	CN	Allowed	200780011216.6	08-Feb-2007	COMBINED DIRECT AND INDIRECT CHARGING SYSTEM FOR ELECTROSTATICALLY-AIDED COATING SYSTEM
ITW-15631	EP	Published	07750223.5	08-Feb-2007	COMBINED DIRECT AND INDIRECT CHARGING SYSTEM FOR ELECTROSTATICALLY-AIDED COATING SYSTEM
ITW-15631	JP	Published	2009-502778	08-Feb-2007	COMBINED DIRECT AND INDIRECT CHARGING SYSTEM FOR ELECTROSTATICALLY-AIDED COATING SYSTEM

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ITW-15631	TW	Granted	I332305	21-Oct-2010	DUAL CHARGING SYSTEM-HYBRID DIRECT AND INDIRECT CHARGING
ITW-15631	US	Granted	7455249	25-Nov-2008	COMBINED DIRECT AND INDIRECT CHARGING SYSTEM FOR ELECTROSTATICALLY-AIDED COATING SYSTEM
ITW-15631	WO	Nationaliz	US07/003368	08-Feb-2007	COMBINED DIRECT AND INDIRECT CHARGING SYSTEM FOR ELECTROSTATICALLY-AIDED COATING SYSTEM
ITW-20161	US	Granted	7520450	21-Apr-2009	ELECTRICAL CONNECTIONS FOR COATING MATERIAL DISPENSING EQUIPMENT
ITW-20162	CA	Granted	2561899	09-Feb-2010	DISPOSABLE CARTRIDGE FOR AIR/GAS DRYER
ITW-20162	MX	Granted	288049	04-Jul-2011	DISPOSABLE CARTRIDGE FOR AIR/GAS DRYER
ITW-20162	US	Granted	7361214	22-Apr-2008	DISPOSABLE CARTRIDGE FOR AIR/GAS DRYER
ITW-20162	WO	Nationaliz	US05/009182	18-Mar-2005	DISPOSABLE CARTRIDGE FOR AIR/GAS DRYER
ITW-20163	CA	Granted	2560297	27-Jul-2010	DISPOSABLE CARTRIDGE AIR/GAS DRYER
ITW-20163	MX	Granted	282585	05-Jan-2011	DISPOSABLE CARTRIDGE AIR/GAS DRYER
ITW-20163	US	Granted	7320725	22-Jan-2008	DISPOSABLE CARTRIDGE AIR/GAS DRYER
ITW-20163	WO	Nationaliz	US05/008990	18-Mar-2005	DISPOSABLE CARTRIDGE AIR/GAS DRYER
ITW-20226	JP	Granted	5225979	22-Mar-2013	PAINT SPRAY GUN WITH DIGITAL PRESSURE GAUGE AND RELATIVE HUMIDITY INDICATOR REMOVABLY MOUNTED THEREON
ITW-20226	US	Granted	7509864	31-Mar-2009	PAINT SPRAY GUN WITH DIGITAL PRESSURE GAUGE AND RELATIVE HUMIDITY INDICATOR REMOVABLY MOUNTED THEREON
ITW-20226	WO	Nationaliz	US07/009413	18-Apr-2007	PAINT SPRAY GUN WITH DIGITAL PRESSURE GAUGE AND RELATIVE HUMIDITY INDICATOR REMOVABLY MOUNTED THEREON
ITW-20256	WO	Nationaliz	US07/013260	06-Jun-2007	HIGH VOLTAGE HIGH PRESSURE PAINT HOSE
ITW-20303	BR	Published	PI0716487-4	20-Jul-2007	TRIGGERS FOR FLUID APPLICATORS
ITW-20303	US	Granted	7628343	08-Dec-2009	TRIGGERS FOR FLUID APPLICATORS
ITW-20303	WO	Nationaliz	US07/016416	20-Jul-2007	TRIGGERS FOR FLUID APPLICATORS
ITW-20308	CA	Granted	2660135	06-Aug-2013	ELECTRIC POWER GENERATOR
ITW-20308	TH	Published	0701009612	19-Jul-2007	MULTI-STAGE FLUID OPERATED THERMOELECTRIC GENERATOR
ITW-20308	TW	Published	96125262	11-Jul-2007	MULTI-STAGE FLUID OPERATED THERMOELECTRIC GENERATOR
ITW-20308	US	Granted	8134066	13-Mar-2012	ELECTRIC POWER GENERATOR
ITW-20308	WO	Nationaliz	US07/015125	29-Jun-2007	MULTI-STAGE FLUID OPERATED THERMOELECTRIC GENERATOR
ITW-20309	EP	Published	07111037.3	26-Jun-2007	A CURING SYSTEM
ITW-20309	KR	Allowed	10070063599	27-Jun-2007	SYSTEM AND METHOD HAVING ARM WITH CABLE PASSAGE THROUGH JOINT TO INFRARED LAMP
ITW-20309	US	Granted	7974739	05-Jul-2011	SYSTEM AND METHOD HAVING ARM WITH CABLE PASSAGE THROUGH JOINT TO INFRARED LAMP
ITW-20417	AU	Granted	2008214148	08-Sep-2011	FLUID SUPPLY ASSEMBLY
ITW-20417	CA	Granted	2675563	05-Nov-2013	FLUID SUPPLY ASSEMBLY
ITW-20417	CN	Granted	ZL200880003955.5	29-May-2013	FLUID SUPPLY ASSEMBLY
ITW-20417	CN	Published	201310154341.X	16-Apr-2013	FLUID SUPPLY ASSEMBLY

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ITW-20417	HK	Published	14100422.2	15-Jan-2014	IMPROVED DISPOSABLE PAINT CUP
ITW-20417	HK	Published	14100423.1	15-Jan-2014	IMPROVED DISPOSABLE PAINT CUP
ITW-20417	NZ	Granted	578884	09-Jul-2012	FLUID SUPPLY ASSEMBLY COMPRISING A SHELL HAVING A TUBULAR AND POLYGON-SHAPED SLEEVE AND A CYLINDRICAL FLANGE
ITW-20417	TH	Published	0801000547	04-Feb-2008	IMPROVED DISPOSABLE PAINT CUP
ITW-20417	US	Granted	7380680	03-Jun-2008	FLUID SUPPLY ASSEMBLY
ITW-20417	WO	Nationaliz	US08/051380	18-Jan-2008	IMPROVED DISPOSABLE PAINT CUP
ITW-20455	CA	Granted	2687658	05-Nov-2013	SPRAY DEVICE HAVING A PARABOLIC FLOW SURFACE
ITW-20455	CN	Allowed	200880019863.6	28-May-2008	SPRAY DEVICE HAVING A PARABOLIC FLOW SURFACE
ITW-20455	EP	Published	08780706.1	28-May-2008	SPRAY DEVICE HAVING A PARABOLIC FLOW SURFACE
ITW-20455	JP	Published	2010514919	28-May-2008	SPRAY DEVICE HAVING A PARABOLIC FLOW SURFACE
ITW-20455	TW	Published	97119555	27-May-2008	SPRAY DEVICE HAVING A PARABOLIC FLOW SURFACE
ITW-20455	US	Granted	8602362	10-Dec-2013	SPRAY DEVICE HAVING A PARABOLIC FLOW SURFACE
ITW-20455	US	Published	14/099840	06-Dec-2013	SPRAY DEVICE HAVING A PARABOLIC FLOW SURFACE
ITW-20455	WO	Nationaliz	US08/064953	28-May-2008	SPRAY DEVICE HAVING A PARABOLIC FLOW SURFACE
ITW-20456	US	Granted	8096264	17-Jan-2012	REPULSION RING
ITW-20495	CN	Granted	ZL200880015089.1	10-Apr-2013	VALVE WITH MAGNETIC DETENTS
ITW-20495	JP	Granted	5487369	07-Mar-2014	VALVE WITH MAGNETIC DETENTS
ITW-20495	TW	Granted	I425142	01-Feb-2014	MAGNETIC PILOT AIR MOTOR
ITW-20495	US	Granted	7603855	20-Oct-2009	VALVE WITH MAGNETIC DETENTS
ITW-20495	WO	Nationaliz	US08/054932	26-Feb-2008	MAGNETIC PILOT AIR MOTOR
ITW-20497	DE	Granted	112007001824.0	18-Jul-2013	Druckluft-Materialzerstäuberkopf
ITW-20497	FR	Granted	0607723	21-Nov-2008	TETE DE PULVERISATION
ITW-20497	GB	Granted	2454134	06-Jul-2011	SPRAY GUN HEAD, DOUBLE SPRAY
ITW-20497	JP	Allowed	2009-526189	27-Aug-2007	TETE DE PULVERISATION
ITW-20497	WO	Nationaliz	IB07/002456	27-Aug-2007	SPRAY GUN HEAD, DOUBLE SPRAY
ITW-20523	CA	Granted	2663666	01-Nov-2011	SPRAY DEVICE AND METHOD OF MANUFACTURING THE SAME
ITW-20523	CN	Granted	200710080085.9	08-Apr-2009	SPRAY DEVICE AND METHOD OF MANUFACTURING THE SAME
ITW-20523	EP	Published	07807357.4	14-Sep-2007	SPRAY DEVICE AND METHOD OF MANUFACTURING THE SAME
ITW-20523	HK	Granted	1110828	21-Aug-2009	VAPORIZER AND THE PRODUCING PROCESS THEREOF
ITW-20523	JP	Granted	4834804	07-Oct-2011	SPRAY APPARATUS AND METHOD OF MANUFACTURING THE SAME
ITW-20523	JP	Granted	4834803	14-Dec-2011	SPRAY APPARATUS AND METHOD OF MANUFACTURING THE SAME
ITW-20523	KR	Granted	KR1008850397	04-Aug-2011	VAPORIZER AND PRODUCING PROCESS THEROF
ITW-20523	MX	Granted	311,286	08-Jul-2013	SPRAY APPARATUS AND METHOD FOR MANUFACTURING IT
ITW-20523	US	Granted	8720801	13-May-2014	SPRAY DEVICE AND PROCESS FOR MANUFACTURING THE SAME
ITW-20523	WO	Nationaliz	JP07/067953	14-Sep-2007	SPRAY APPARATUS AND METHOD FOR MANUFACTURING IT

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ITW-20702	JP	Granted	5487372	07-Mar-2014	POWDER GUN DEFLECTOR
ITW-20702	JP	Published	2013-221280	24-Oct-2013	POWDER GUN DEFLECTOR
ITW-20702	US	Granted	8371517	12-Feb-2013	POWDER GUN DEFLECTOR
ITW-20702	US	Published	13727933	27-Dec-2012	POWDER GUN DEFLECTOR
ITW-20702	WO	Nationaliz	US08/065616	03-Jun-2008	POWDER GUN DEFLECTOR
ITW-20712	US	Granted	7789327	07-Sep-2010	MODULAR SPRAY GUN WITH REPLACEABLE COMPONENTS
ITW-20713	CN	Granted	ZL200880017682.X	12-May-2013	AIRLESS SPRAY GUN HAVING OVERHEAD VALVE AND REMOVABLE HEAD
ITW-20713	JP	Granted	5487370	07-Mar-2014	AIRLESS SPRAY GUN HAVING OVERHEAD VALVE AND REMOVABLE HEAD
ITW-20713	US	Granted	8360345	29-Jan-2013	AIRLESS SPRAY GUN HAVING OVERHEAD VALVE AND REMOVABLE HEAD
ITW-20713	WO	Nationaliz	US08/063424	12-May-2008	AIRLESS SPRAY GUN WITH DETACHABLE FLUID HEAD WITH INTEGRAL TRIGGER AND OVERHEAD VALVE MECHANISM
ITW-20717	US	Published	11/683948	08-Mar-2007	COLOR MATCHING SYSTEM AND METHOD
ITW-21103	CA	Granted	2688154	01-Oct-2013	COATING MATERIAL DISPENSING APPARATUS AND METHOD
ITW-21103	CN	Granted	ZL200880020449.7	17-Jul-2013	COATING MATERIAL DISPENSING APPARATUS
ITW-21103	EP	Published	08795971.4	23-Jun-2008	COATING MATERIAL DISPENSING APPARATUS
ITW-21103	JP	Granted	5373784	27-Sep-2013	COATING MATERIAL DISPENSING APPARATUS
ITW-21103	US	Granted	8104423	31-Jan-2012	COATING MATERIAL DISPENSING APPARATUS AND METHOD
ITW-21103	WO	Nationaliz	US08/067853	23-Jun-2008	DETACHABLE HIGH VOLTAGE RING
ITW-21191	CN	Granted	ZL200880009447.8	31-Jul-2013	SPRAY GUN LINE CONNECTION DEVICE
ITW-21191	DE	Granted	502008003873.6	15-Jun-2011	SPRAY GUN LINE CONNECTION DEVICE
ITW-21191	EP	Nationaliz	2139608	15-Jun-2011	SPRAY GUN TUBE CONNECTION DEVICE
ITW-21191	ES	Granted	2139608	15-Jun-2011	SPRAY GUN LINE CONNECTION DEVICE
ITW-21191	FR	Granted	2139608	15-Jun-2011	SPRAY GUN LINE CONNECTION DEVICE
ITW-21191	IT	Granted	2139608	15-Jun-2011	SPRAY GUN LINE CONNECTION DEVICE
ITW-21191	JP	Granted	5485867	28-Feb-2014	SPRAY GUN LINE CONNECTION DEVICE
ITW-21191	US	Granted	8256694	04-Sep-2012	SPRAY-GUN LINE-CONNECTING DEVICE
ITW-21191	WO	Nationaliz	EP08/053179	17-Mar-2008	SPRAY GUN TUBE CONNECTION DEVICE
ITW-21199	US	Granted	7587897	15-Sep-2009	MAGNETICALLY SEQUENCED PNEUMATIC MOTOR
ITW-21199	WO	Nationaliz	US08/055062	27-Feb-2008	A MAGNETICALLY ACTUATED PILOT VALVE
ITW-21200	CN	Granted	ZL200880015020.9	10-Apr-2013	PNEUMATICALLY SELF REGULATING VALVE
ITW-21200	JP	Granted	5499243	20-Mar-2014	PNEUMATICALLY SELF-REGULATING VALVE
ITW-21200	TW	Allowed	97106874	27-Feb-2008	A PNEUMATICALLY SELF REGULATING PILOT VALVE
ITW-21200	US	Granted	7603854	20-Oct-2009	PNEUMATICALLY SELF-REGULATING VALVE
ITW-21200	WO	Nationaliz	US08/055217	28-Feb-2008	A PNEUMATICALLY SELF REGULATING PILOT VALVE
ITW-21299	EP	Published	08771856.5	25-Jun-2008	SHAPING AIR AND BELL CUP COMBINATION
ITW-21299	WO	Nationaliz	US08/068077	25-Jun-2008	SHAPING AIR & BELL CUP COMBINATION TO ELIMINATE GHOST PATTERN

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ITW-21310	AU	Granted	2008338712	26-Apr-2013	CORDLESS SPRAY GUN WITH AN ON-BOARD COMPRESSED AIR SOURCE
ITW-21310	CA	Allowed	2706441	10-Dec-2008	CORDLESS SPRAY GUN WITH AN ON-BOARD COMPRESSED AIR SOURCE
ITW-21310	EP	Published	08861284.1	10-Dec-2008	CORDLESS SPRAY GUN WITH AN ON-BOARD COMPRESSED AIR SOURCE
ITW-21310	NZ	Granted	586127	01-Oct-2013	SPRAY GUN WITH BASE WITH BATTERY POWERED FAN AND HANDLE LOCATED BETWEEN SPRAY HEAD AND BASE HAVING AIR PASSAGE
ITW-21310	US	Granted	8025243	27-Sep-2011	CORDLESS SPRAY GUN WITH AN ON-BOARD COMPRESSED AIR SOURCE
ITW-21310	WO	Nationaliz	US08/086120	10-Dec-2008	CORDLESS SPRAY GUN WITH AN ON-BOARD COMPRESSED AIR SOURCE
ITW-21313	US	Granted	8313047	20-Nov-2012	SPRAY GUN HAVING ADJUSTABLE HANDLE
ITW-21343	TW	Published	98126978	11-Aug-2009	METHOD FOR PREVENTING VOLTAGE FROM ESCAPING FLUID INTERFACE FOR WATER BASE GRAVITY FEED APPLICATORS
ITW-21343	US	Granted	7815132	19-Oct-2010	METHOD FOR PREVENTING VOLTAGE FROM ESCAPING FLUID INTERFACE FOR WATER BASE GRAVITY FEED APPLICATORS
ITW-21346	CA	Allowed	2685784	02-May-2007	PAINT SPRAYER WITH ROTARY ATOMIZER
ITW-21346	JP	Granted	5351016	30-Aug-2013	ROTARY ATOMIZER
ITW-21346	TH	Published	0801002174	30-Apr-2009	ROTARY ATOMIZER
ITW-21346	TW	Granted	I346580	11-Aug-2011	ROTARY ATOMIZER
ITW-21346	US	Granted	8662416	04-Mar-2014	ROTARY ATOMIZER
ITW-21346	WO	Nationaliz	JP07/059803	02-May-2007	ROTARY ATOMIZER
ITW-21425	CN	Granted	ZL200580038221.7	07-Aug-2009	ELECTROSTATIC COATING SYSTEM
ITW-21425	DE	Granted	602005026960.6	16-Mar-2011	ELECTROSTATIC COATING SYSTEM
ITW-21425	EP	Nationaliz	1800757	16-Mar-2011	ELECTROSTATIC COATING MACHINE AND METHOD OF CLEANING THE SAME
ITW-21425	FR	Granted	1800757	16-Mar-2011	ELECTROSTATIC COATING SYSTEM
ITW-21425	GB	Granted	1800757	16-Mar-2011	ELECTROSTATIC COATING SYSTEM
ITW-21425	JP	Granted	4578908	03-Sep-2010	ELECTROSTATIC COATING APPARATUS
ITW-21425	US	Granted	7966967	28-Jun-2011	ELECTROSTATIC COATING SYSTEM
ITW-21425	WO	Nationaliz	JP05/018045	16-Sep-2005	ELECTROSTATIC COATING MACHINE AND METHOD OF CLEANING THE SAME
ITW-21428	JP	Granted	4458900	19-Feb-2010	ELECTROSTATIC HAND GUN TYPE ATOMIZER AND ITS PAINT CARTRIDGE
ITW-21430	JP	Granted	4445830	22-Jan-2010	ELETROSTATIC SPRAYING APPARATUS
ITW-21432	JP	Granted	4705818	18-Mar-2011	ELECTROSTATIC COATING APPARATUS
ITW-21432	US	Granted	8434702	07-May-2013	ELECTROSTATIC COATING SYSTEM
ITW-21433	CA	Granted	2655181	11-Jun-2013	ROTARY ELECTROSTATIC ATOMIZER
ITW-21433	WO	Nationaliz	JP07/069210	01-Oct-2007	ROTARY ELETROSTATIC ATOMIZER
ITW-21442	BE	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	BR	Published	MU89030931	24-Mar-2009	MULTIPLE CHARGING EMITTERS
ITW-21442	CA	Allowed	2720259	24-Mar-2009	MULTIPLE CHARGING ELECTRODES
ITW-21442	CH	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	CN	Granted	ZL200990100191.1	11-Apr-2012	MULTIPLE CHARGING ELECTRODES

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ITW-21442	CZ	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	DE	Granted	602009020970.1	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	DK	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	EP	Nationaliz	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	ES	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	FR	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	GB	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	IT	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	JP	Granted	3167889	27-Apr-2011	MULTIPLE CHARGING EMITTERS
ITW-21442	MX	Granted	2631	04-May-2012	MULTIPLE CHARGING EMITTERS
ITW-21442	NL	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	PL	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	SE	Granted	2279043	25-Dec-2013	MULTIPLE CHARGING ELECTRODES
ITW-21442	US	Granted	7918409	05-Apr-2011	MULTIPLE CHARGING ELECTRODES
ITW-21442	WO	Nationaliz	US09/038018	24-Mar-2009	MULTIPLE CHARGING EMITTERS
ITW-21443	CA	Granted	2717833	20-Aug-2013	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	CN	Granted	ZL200980109083.5	17-Jul-2013	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	DE	Granted	602009007339.7	30-May-2012	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	EP	Nationaliz	2265382	30-May-2012	SOLVENT RESISTANT TURBINE MOTOR
ITW-21443	ES	Granted	2265382	30-May-2012	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	FR	Granted	2265382	30-May-2012	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	GB	Granted	2265382	30-May-2012	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	IT	Granted	2265382	30-May-2012	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	MX	Allowed	2010009882	02-Mar-2009	SOLVENT RESISTANT TURBINE MOTOR
ITW-21443	NL	Granted	2265382	30-May-2012	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	SE	Granted	2265382	30-May-2012	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	US	Granted	8590817	26-Nov-2013	SEALED ELECTRICAL SOURCE FOR AIR-POWERED ELECTROSTATIC ATOMIZING AND DISPENSING DEVICE
ITW-21443	WO	Nationaliz	US09/035720	02-Mar-2009	SOLVENT RESISTANT TURBINE MOTOR
ITW-21444	CA	Allowed	2717837	27-Feb-2009	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING

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ITW-21444	CH	Granted	2265383	12-Sep-2012	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING
ITW-21444	CN	Granted	ZL200990100141.3	28-Sep-2011	METHOD OF RETAINING HIGHLY TORQUED FITTINGS IN RESIN HOUSING
ITW-21444	DE	Granted	602009009710.5	12-Sep-2012	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING
ITW-21444	EP	Nationaliz	2265383	12-Sep-2012	METHOD OF RETAINING HIGHLY TORQUED FITTINGS IN RESIN HOUSING
ITW-21444	ES	Granted	2265383	12-Sep-2012	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING
ITW-21444	FR	Granted	2265383	12-Sep-2012	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING
ITW-21444	GB	Granted	2265383	12-Sep-2012	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING
ITW-21444	IT	Granted	2265383	12-Sep-2012	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING
ITW-21444	JP	Granted	3170820	14-Sep-2011	METHOD OF RETAINING HIGHLY TORQUED FITTINGS IN RESIN HOUSING
ITW-21444	KR	Granted	20-0471644	28-Feb-2014	METHOD OF RETAINING HIGHLY TORQUED FITTINGS IN RESIN HOUSING
ITW-21444	MX	Allowed	2010/009881	27-Feb-2009	METHOD OF RETAINING HIGHLY TORQUED FITTINGS IN RESIN HOUSING
ITW-21444	NL	Granted	2265383	12-Sep-2012	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING
ITW-21444	SE	Granted	2265383	12-Sep-2012	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING
ITW-21444	TW	Published	98107733	10-Mar-2009	METHOD OF RETAINING HIGHLY TORQUED FITTINGS IN RESIN HOUSING
ITW-21444	US	Granted	8496194	30-Jul-2013	METHOD AND APPARATUS FOR RETAINING HIGHLY TORQUED FITTINGS IN MOLDED RESIN OR POLYMER HOUSING
ITW-21444	VN	Published	1201002690	27-Feb-2009	METHOD OF RETAINING HIGHLY TORQUED FITTINGS IN RESIN HOUSING
ITW-21444	WO	Nationaliz	US09/035439	27-Feb-2009	METHOD OF RETAINING HIGHLY TORQUED FITTINGS IN RESIN HOUSING
ITW-21447	US	Granted	D608858	26-Jan-2010	COATING MATERIAL DISPENSING DEVICE
ITW-21449	BE	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	CA	Granted	2717829	04-Feb-2014	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	CN	Granted	ZL200980109075.0	11-Sep-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21449	CZ	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	DE	Granted	602009014850.8	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	DK	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	EP	Nationaliz	2271435	10-Apr-2013	POWER SUPPLY BOARD FOR TURBINE GENERATOR
ITW-21449	ES	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN

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Case Number	Country	Status	Application or Patent Number	Filing or Issue Date	Application Title
ITW-21449	FR	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	GB	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	IT	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	JP	Granted	5495136	14-Mar-2014	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21449	MX	Allowed	2010/009887	26-Feb-2009	POWER SUPPLY BOARD FOR TURBINE GENERATOR
ITW-21449	NL	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	PL	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	SE	Granted	2271435	10-Apr-2013	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED SPRAY GUN
ITW-21449	TW	Published	98107588	09-Mar-2009	POWER SUPPLY BOARD FOR TURBINE GENERATOR
ITW-21449	US	Granted	7988075	02-Aug-2011	CIRCUIT BOARD CONFIGURATION FOR AIR- POWERED ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21449	WO	Nationaliz	US09/035242	26-Feb-2009	POWER SUPPLY BOARD FOR TURBINE GENERATOR
ITW-21450	CA	Allowed	2717822	27-Feb-2009	CONTROLLING TEMPERATURE IN AIR-POWERED ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21450	CN	Granted	ZL200990100137.7	14-Sep-2011	TEMPERATURE CONTROL
ITW-21450	EP	Allowed	09720841.7	27-Feb-2009	CONTROLLING TEMPERATURE IN AIR-POWERED ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21450	JP	Granted	3170489	31-Aug-2011	TEMPERATURE CONTROL
ITW-21450	MX	Allowed	2010/009915	27-Feb-2009	TEMPERATURE CONTROL
ITW-21450	TW	Published	98107184	05-Mar-2009	TEMPERATURE CONTROL
ITW-21450	US	Granted	8016213	13-Sep-2011	CONTROLLING TEMPERATURE IN AIR-POWERED ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21450	VN	Published	1201002691	27-Feb-2009	TEMPERATURE CONTROL
ITW-21450	WO	Nationaliz	US09/035485	27-Feb-2009	TEMPERATURE CONTROL
ITW-21451	CA	Allowed	2717815	26-Feb-2009	CIRCUIT FOR DISPLAYING THE RELATIVE VOLTAGE AT THE OUTPUT ELECTRODE OF AN ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21451	CN	Granted	ZL200980109082.0	24-Apr-2013	CIRCUIT FOR DISPLAYING THE RELATIVE VOLTAGE AT THE OUTPUT ELECTRODE OF AN ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21451	EP	Published	09720209.7	26-Feb-2009	CIRCUIT FOR DISPLAYING THE RELATIVE VOLTAGE AT THE OUTPUT ELECTRODE OF AN ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21451	JP	Granted	5511012	04-Apr-2014	CIRCUIT FOR DISPLAYING THE RELATIVE VOLTAGE AT THE OUTPUT ELECTRODE OF AN ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21451	MX	Granted	293559	08-Dec-2011	CIRCUIT FOR DISPLAYING RELATIVE OUTPUT VOLTAGE AT PRESENT ELECTRODE OF ELECTROSTATIC SPRAY GUN.

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ITW-21451	TW	Published	98106855	03-Mar-2009	CIRCUIT FOR DISPLAYING RELATIVE OUTPUT VOLTAGE AT PRESENT ELECTRODE OF ELECTROSTATIC SPRAY GUN
ITW-21451	US	Allowed	12/045169	10-Mar-2008	CIRCUIT FOR DISPLAYING THE RELATIVE VOLTAGE AT THE OUTPUT ELECTRODE OF AN ELECTROSTATICALLY AIDED COATING MATERIAL ATOMIZER
ITW-21451	WO	Nationaliz	US09/035232	26-Feb-2009	CIRCUIT FOR DISPLAYING RELATIVE OUTPUT VOLTAGE AT PRESENT ELECTRODE OF ELECTROSTATIC SPRAY GUN.
ITW-21452	CA	Granted	2717797	17-Sep-2013	GENERATOR FOR AIR-POWERED ELECTROSTATICALLY AIDED COATING DISPENSING DEVICE
ITW-21452	CN	Granted	ZL200980109081.6	07-Aug-2013	GENERATOR FOR AIR-POWERED ELECTROSTATICALLY AIDED COATING DISPENSING DEVICE
ITW-21452	EP	Published	09718937.7	27-Feb-2009	GENERATOR FOR AIR-POWERED ELECTROSTATICALLY AIDED COATING DISPENSING DEVICE
ITW-21452	JP	Published	2010550749	27-Feb-2009	GENERATOR FOR AIR-POWERED ELECTROSTATICALLY AIDED COATING DISPENSING DEVICE
ITW-21452	MX	Granted	309733	20-May-2013	MULTI-PHASE MOTOR WITH DELAYED HIGH VOLTAGE ACTIVATION
ITW-21452	TW	Published	98107417	06-Mar-2009	MULTI-PHASE MOTOR WITH DELAYED HIGH VOLTAGE ACTIVATION
ITW-21452	US	Granted	7926748	19-Apr-2011	GENERATOR FOR AIR-POWERED ELECTROSTATICALLY AIDED COATING DISPENSING DEVICE
ITW-21452	VN	Published	1201002694	27-Feb-2009	MULTI-PHASE MOTOR WITH DELAYED HIGH VOLTAGE ACTIVATION
ITW-21452	WO	Nationaliz	US09/035411	27-Feb-2009	MULTI-PHASE MOTOR WITH DELAYED HIGH VOLTAGE ACTIVATION
ITW-21654	WO	Nationaliz	EP08/065111	07-Nov-2008	AUTOMATIC SPRAY GUN FOR COATING LIQUID AND ITS COMBINATION WITH A ROBOT
ITW-21804	JP	Published	2009-056995	10-Mar-2009	SPRAY COATING DEVICE, ATOMIZATION SHAPING SYSTEM, SPRAY COATING SYSTEM, AND PAINT SPRAYING METHOD
ITW-21804	US	Granted	8113445	14-Feb-2012	SPRAY GUN HAVING AIR CAP WITH UNIQUE SPRAY SHAPING FEATURES
ITW-21886	CA	Granted	2656804	15-May-2012	EASILY REMOVABLE FILTER BOWL FOR PAINT SPRAY GUNS
ITW-21886	US	Granted	7981197	19-Jul-2011	EASILY REMOVABLE FILTER BOWL FOR PAINT SPRAY GUNS
ITW-21908	US	Granted	8308086	13-Nov-2012	AIRLESS SPRAY GUN HAVING A REMOVABLE VALVE CARTRIDGE
ITW-21908	US	Published	12/541346	14-Aug-2009	AIRLESS SPRAY GUN HAVING A REMOVABLE VALVE CARTRIDGE AND PROTECTIVE INSERT
ITW-21939	CN	Allowed	200980113159.1	09-Apr-2009	SPLASH PLATE RETENTION METHOD AND APPARATUS
ITW-21939	EP	Published	09729257.7	09-Apr-2009	SPLASH PLATE RETENTION METHOD AND APPARATUS
ITW-21939	JP	Published	2011504162	09-Apr-2009	SPLASH PLATE RETENTION METHOD AND APPARATUS
ITW-21939	US	Published	12/420295	08-Apr-2009	SPLASH PLATE RETENTION METHOD AND APPARATUS
ITW-21939	WO	Nationaliz	US09/039991	09-Apr-2009	SPLASH PLATE HOLDER IMPROVEMENT
ITW-22021	BE	Granted	2244838	09-May-2012	PAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	CA	Granted	2716441	26-Nov-2013	BALL LOCK MOUNTING ARRANGEMENT
ITW-22021	CN	Granted	ZL200980107026.3	12-Jun-2013	BALL LOCK MOUNTING ARRANGEMENT
ITW-22021	DE	Granted	602009006771.0	09-May-2012	BALL LOCK MOUNTING ARRANGEMENTPAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	DK	Granted	2244838	09-May-2012	PAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	EP	Nationaliz	2244838	09-May-2012	BALL LOCK MOUNTING ARRANGEMENT

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ITW-22021	ES	Granted	2244838	09-May-2012	PAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	FR	Granted	2244838	09-May-2012	PAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	GB	Granted	2244838	09-May-2012	PAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	IT	Granted	2244838	09-May-2012	PAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	MX	Allowed	2010009426	24-Feb-2009	BALL LOCK MOUNTING ARRANGEMENT
ITW-22021	NL	Granted	2244838	09-May-2012	PAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	PL	Granted	2244838	09-May-2012	PAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	SE	Granted	2244838	09-May-2012	PAINT GUN ASSEMBLY HAVING A BALL LOCKING ARRANGEMENT
ITW-22021	US	Granted	8403589	26-Mar-2013	BALL LOCK MOUNTING ARRANGEMENT
ITW-22021	WO	Nationaliz	US09/034951	24-Feb-2009	BALL LOCK MOUNTING ARRANGEMENT
ITW-22145	AU	Granted	2009202952	15-Dec-2011	FLUID FILTER SYSTEM AND METHOD
ITW-22145	NZ	Granted	578514	07-Jun-2011	FLUID FILTER SYSTEM WITH FILTERS OF THREE DIFFERENT DENSITY MATERIALS AND METHOD
ITW-22145	US	Granted	8105411	31-Jan-2012	FLUID FILTER SYSTEM AND METHOD
ITW-22179	JP	Granted	1373317	09-Oct-2009	PUMP DESIGN
ITW-22179	US	Granted	D605664	08-Dec-2009	PUMP DESIGN
ITW-22185	BE	Granted	2188528	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	CZ	Granted	2188528	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	DE	Granted	602008029975.9	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	EP	Nationaliz	2188528	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	ES	Granted	2188528	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	FR	Granted	2188528	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	GB	Granted	2188528	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	IT	Granted	2188528	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	PL	Granted	2188528	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	SE	Granted	2188528	15-Jan-2014	LIQUID PAINT PUMPING APPARATUS
ITW-22185	TW	Published	97131285	15-Aug-2008	IMPROVEMENTS IN PUMPS FOR PAINT
ITW-22185	WO	Nationaliz	IB08/002143	14-Aug-2008	IMPROVEMENTS IN PUMPS FOR PAINT
ITW-22363	EP	Published	09838566.9	17-Dec-2009	ELECTROSTATIC SPRAY SYSTEM AND METHOD
ITW-22363	NZ	Granted	593825	23-May-2013	ELECTROSTATIC SPRAY SYSTEM TO APPLY ELECTROSTATIC CHARGE TO SELF-CONTAINED SPRAY CAN
ITW-22363	US	Published	12/636681	15-Dec-2009	ELECTROSTATIC SPRAY SYSTEM AND METHOD
ITW-22363	WO	Nationaliz	US09/068422	17-Dec-2009	ELECTROSTATIC AEROSOL PAINT CANISTER
ITW-22424	CA	Published	2742971	05-Nov-2009	SPRAY GUN HAVING PROTECTIVE LINER AND LIGHT TRIGGER PULL
ITW-22424	US	Published	12/613372	05-Nov-2009	SPRAY GUN HAVING PROTECTIVE LINER AND LIGHT TRIGGER PULL
ITW-22424	WO	Nationaliz	US09/063435	05-Nov-2009	2100 SPRAY GUN

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ITW-22499	EM	Granted	001067680-0001	09-Jan-2009	PUMP DESIGN
ITW-22500	EM	Granted	001067680-0002	09-Jan-2009	HEAT EXCHANGER DESIGN FOR PUMP
ITW-22624	DE	Granted	202009005436.5	18-Jun-2009	SPRAY COATING DEVICE FOR COATING MATERIAL
ITW-22624	US	Published	12/769849	29-Apr-2010	SPRAY COATING DEVICE FOR COATING MATERIAL
ITW-22703	CA	Allowed	2760056	26-Apr-2010	FLUID THROUGH NEEDLE FOR APPLYING MULTIPLE COMPONENT MATERIAL
ITW-22703	CN	Published	201080024743.2	26-Apr-2010	FLUID THROUGH NEEDLE FOR APPLYING MULTIPLE COMPONENT MATERIAL
ITW-22703	EP	Published	10716223.2	26-Apr-2010	FLUID THROUGH NEEDLE FOR APPLYING MULTIPLE COMPONENT MATERIAL
ITW-22703	US	Allowed	12/765699	22-Apr-2010	FLUID THROUGH NEEDLE FOR APPLYING MULTIPLE COMPONENT MATERIAL
ITW-22703	WO	Nationaliz	US10/032362	26-Apr-2010	FLUID THROUGH NEEDLE FOR APPLYING MULTIPLE COMPONENT MATERIAL (HOLLOW NEEDLE)
ITW-22704	CA	Allowed	2760093	13-Apr-2010	SYSTEM AND METHOD FOR DELIVERING FLUID THROUGH HORNS OF AN AIR CAP FOR APPLYING MULTIPLE COMPONENT MATERIAL
ITW-22704	CN	Published	201080024742.8	13-Apr-2010	SYSTEM AND METHOD FOR DELIVERING FLUID THROUGH HORNS OF AN AIR CAP FOR APPLYING MULTIPLE COMPONENT MATERIAL
ITW-22704	EP	Published	10714771.2	13-Apr-2010	SYSTEM AND METHOD FOR DELIVERING FLUID THROUGH HORNS OF AN AIR CAP FOR APPLYING MULTIPLE COMPONENT MATERIAL
ITW-22704	US	Allowed	12/717100	03-Mar-2010	SYSTEM AND METHOD FOR DELIVERING FLUID THROUGH HORNS OF AN AIR CAP FOR APPLYING MULTIPLE COMPONENT MATERIAL
ITW-22704	WO	Nationaliz	US10/030808	13-Apr-2010	FLUID THROUGH HORNS FOR APPLYING MULTIPLE COMPONENT MATERIAL (CONCENTRIC TUBE IN HORN)
ITW-22745	US	Published	12/907501	19-Oct-2010	NON-INTRUSIVE, LOW CHATTER PRESSURE RELIEF VALVE SYSTEM
ITW-22745	WO	Nationaliz	US10/056533	12-Nov-2010	CAVITY FREE MECHANICAL RELIEF VALVE
ITW-22762	CA	Allowed	2767815	12-Jul-2010	INTERNAL MIXING SPRAY GUN
ITW-22762	CN	Published	201080040599.1	12-Jul-2010	INTERNAL MIXING SPRAY GUN
ITW-22762	DE	Granted	602010010038.3	04-Sep-2013	INTERNAL MIXING SPRAY GUN
ITW-22762	EP	Nationaliz	2454064	04-Sep-2013	INTERNAL MIX SPRAY GUN
ITW-22762	ES	Granted	2454064	04-Sep-2013	INTERNAL MIXING SPRAY GUN
ITW-22762	FR	Granted	2454064	04-Sep-2013	INTERNAL MIXING SPRAY GUN
ITW-22762	GB	Granted	2454064	04-Sep-2013	INTERNAL MIXING SPRAY GUN
ITW-22762	IT	Granted	2454064	04-Sep-2013	INTERNAL MIXING SPRAY GUN
ITW-22762	NL	Granted	2454064	04-Sep-2013	INTERNAL MIXING SPRAY GUN
ITW-22762	US	Granted	8322632	04-Dec-2012	INTERNAL MIXING SPRAY GUN
ITW-22762	US	Allowed	13/675504	13-Nov-2012	INTERNAL MIXING SPRAY GUN
ITW-22762	WO	Nationaliz	US10/041662	12-Jul-2010	INTERNAL MIX SPRAY GUN
ITW-22816	TW	Published	100107414	04-Mar-2011	OVER-CENTER LINKAGE
ITW-22816	US	Published	13/635748	18-Sep-2012	OVER-CENTER LINKAGE
ITW-22816	WO	Nationaliz	US11/028623	16-Mar-2011	OVER-CENTER LINKAGE
ITW-22816	ZA	Allowed	2012/06553	25-Jun-2014	OVER-CENTER LINKAGE

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ITW-22855	TW	Published	98123787	14-Jul-2009	DOUBLE TRIGGERING FUNCTION (2 NEEDLE PULL POSITION)
ITW-22855	WO	Nationaliz	JP09/062785	15-Jul-2009	SPRAY DEVICE WITH MOVABLE NEEDLE
ITW-22856	CA	Granted	2750848	01-Apr-2014	SPRAY DEVICE HAVING AN ADJUSTMENT MEMBER FOR NEEDLE VALVE OPENING RANGE
ITW-22856	CN	Granted	ZL201080006978.9	12-Mar-2014	SPRAY DEVICE HAVING AN ADJUSTMENT MEMBER FOR NEEDLE VALVE OPENING RANGE
ITW-22856	EP	Published	10703775.6	08-Feb-2010	SPRAY DEVICE HAVING AN ADJUSTMENT MEMBER FOR NEEDLE VALVE OPENING RANGE
ITW-22856	TW	Published	99101399	19-Jan-2010	CHANGING THE NEEDLE POSITION SET BY DIAL (3 PRESET POSITION)
ITW-22856	WO	Nationaliz	US10/023439	08-Feb-2010	CHANGING THE NEEDLE POSITION SET BY DIAL (3 PRESET POSITION)
ITW-22945	EP	Published	11701710.3	13-Jul-2012	LIQUID SUPPLY SYSTEM FOR A GRAVITY FEED SPRAY DEVICE
ITW-22945	RU	Allowed	2012136128	21-Aug-2012	Liquid Supply System for a Gravity Feed Spray Device
ITW-22945	TW	Published	100100407	05-Jan-2011	FLUID SUPPLY SYSTEM
ITW-22945	US	Published	12/692329	22-Jan-2010	LIQUID SUPPLY SYSTEM FOR A GRAVITY FEED SPRAY DEVICE
ITW-22945	WO	Nationaliz	US11/020970	12-Jan-2011	LIQUID SUPPLY SYSTEM FOR A GRAVITY FEED SPRAY DEVICE (Changed by ISA to "VENTING SYSTEM FOR THE PAINT CUP OF A GRAVITY FEED SPRAY DEVICE")
ITW-23040	JP	Granted	5159586	21-Dec-2012	VOLTAGE CUT-OFF DEVICE AND ELECTROSTATIC COATING SYSTEM USING THE SAME
ITW-23108	CN	Published	201180011148.X	24-Aug-2012	ELECTROSTATIC SPRAY SYSTEM
ITW-23108	MX	Published	MX/a/2012/009917	24-Aug-2012	ELECTROSTATIC SPRAY SYSTEM
ITW-23108	RU	Granted	2500483	10-Dec-2013	ELECTROSTATIC SPRAY SYSTEM
ITW-23108	TW	Published	100101251	13-Jan-2011	ELECTROSTATIC SPRAY SYSTEM
ITW-23108	US	Allowed	12/714280	26-Feb-2010	ELECTROSTATIC SPRAY SYSTEM
ITW-23108	WO	Nationaliz	US11/026063	24-Feb-2011	ELECTROSTATIC SPRAY SYSTEM
ITW-23174	US	Published	13/291365	08-Nov-2011	APPARATUS AND METHOD FOR GROUNDING AN ELECTROSTATIC DEVICE ATTACHED TO AGRICULTURAL SPRAY EQUIPMENT
ITW-23231	US	Granted	8690083	08-Apr-2014	ADJUSTABLE NEEDLE PACKING ASSEMBLY FOR A SPRAY GUN
ITW-23232	US	Published	12/908642	20-Oct-2010	FINE FINISH AIRLESS SPRAY TIP ASSEMBLY FOR A SPRAY GUN
ITW-23240	US	Published	12/908656	20-Oct-2010	TWIST TIP AIR CAP ASSEMBLY INCLUDING AN INTEGRAL SLEEVE FOR A SPRAY GUN
ITW-31253	CA	Allowed	2718057	11-Mar-2009	ROTARY ATOMIZER AND COATING PATTERN CONTROL METHOD
ITW-31253	EP	Published	09719370.0	11-Mar-2009	ROTARY ATOMIZER AND COATING PATTERN CONTROL METHOD
ITW-31253	US	Granted	8490572	23-Jul-2013	ROTARY ATOMIZER AND COATING PATTERN CONTROL METHOD
ITW-31253	WO	Nationaliz	IB09/000490	11-Mar-2009	ROTARY ATOMIZER AND COATING PATTERN CONTROL METHOD
ITW-31254	AU	Granted	2008330834	04-Apr-2013	PAINT ROBOT AND PAINT CARTRIDGE
ITW-31254	CA	Allowed	2706234	04-Nov-2008	PAINT ROBOT AND PAINT CARTRIDGE
ITW-31254	CN	Granted	ZL200880118080.3	20-Feb-2013	PAINT ROBOT AND PAINT CARTRIDGE
ITW-31254	DE	Granted	602008026860.8	14-Aug-2013	PAINT ROBOT
ITW-31254	EP	Nationaliz	2226126	14-Aug-2013	COATING ROBOT AND COATING CARTRIDGE
ITW-31254	ES	Granted	2226126	14-Aug-2013	PAINT ROBOT
ITW-31254	FR	Granted	2226126	14-Aug-2013	PAINT ROBOT

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ITW-31254	GB	Granted	2226126	14-Aug-2013	PAINT ROBOT
ITW-31254	IT	Granted	2226126	14-Aug-2013	PAINT ROBOT
ITW-31254	NL	Granted	2226126	14-Aug-2013	PAINT ROBOT
ITW-31254	NZ	Granted	586425	30-Jul-2013	ELECTROSTATIC PAINT ROBOT WITH PAINT CARTRIDGE AND FEEDING MECHANISM
ITW-31254	US	Granted	8225740	24-Jul-2012	PAINT ROBOT AND PAINT CARTRIDGE
ITW-31254	WO	Nationaliz	JP08/070025	04-Nov-2008	COATING ROBOT AND COATING CARTRIDGE
ITW-60097	HK	Published	13113173.7	26-Nov-2013	LIQUID SUPPLY CONTAINER FOR A SPRAY COATING DEVICE
ITW-60097	MX	Published	MX/a/2013/000467	11-Jan-2013	SMALL CUP ATTACHMENT
ITW-60097	US	Published	13/050928	17-Mar-2011	SYSTEM COMPRISING A SPRAY COATING DEVICE WITH A LIQUID SUPPLY CONTAINER
ITW-60097	US	Published	13/809465	10-Jan-2013	SYSTEM COMPRISING A SPRAY COATING DEVICE WITH A LIQUID SUPPLY CONTAINER
ITW-60097	WO	Nationaliz	US11/043588	11-Jul-2011	SMALL CUP ATTACHMENT
ITW-60175	TW	Published	99131663	17-Sep-2010	METHOD OF CLEANING PAINT CARTRIDGE FOR ELECTROSTATIC PAINT APPLICATOR AND PAINT BAG FOR USE IN PAINT CARTRIDGE
ITW-60175	WO	Nationaliz	JP10/066333	21-Sep-2010	METHOD OF CLEANING PAINT CARTRIDGE FOR ELECTROSTATIC PAINT APPLICATOR AND PAINT BAG FOR USE IN PAINT CARTRIDGE
ITW-60176	TW	Published	99131664	17-Sep-2010	ELECTROSTATIC PAINT APPLICATOR HAVING DETACHABLY MOUNTABLE PAINT CARTRIDGE
ITW-60176	WO	Nationaliz	JP10/066334	21-Sep-2010	ELECTROSTATIC PAINT APPLICATOR HAVING DETACHABLY MOUNTABLE PAINT CARTRIDGE
ITW-60177	TW	Published	99131665	17-Sep-2010	PAINT CARTRIDGE FOR ELECTROSTATIC PAINT APPLICATOR AND ELECTROSTATIC PAINT APPLICATOR INCLUDING PAINT CARDRIDGE
ITW-60177	WO	Nationaliz	JP10/066335	21-Sep-2010	PAINT CARTRIDGE FOR ELECTROSTATIC PAINT APPLICATOR AND ELECTROSTATIC PAINT APPLICATOR INCLUDING PAINT CARDRIDGE
ITW-60178	CN	Published	201080042941.1	21-Sep-2010	PAINT CARTRIDGE AND ELECTROSTATIC PAINT APPLICATOR
ITW-60178	KR	Published	20127010212	21-Sep-2010	COATING CARTRIDGE AND ELECTROSTATIC COATING MACHINE
ITW-60178	TW	Published	99131666	17-Sep-2010	PAINT CARTRIDGE AND ELECTROSTATIC PAINT APPLICATOR
ITW-60178	WO	Nationaliz	JP10/066336	21-Sep-2010	PAINT CARTRIDGE AND ELECTROSTATIC PAINT APPLICATOR
ITW-60189	US	Published	12/954525	24-Nov-2010	ELECTROSTATIC SPRAY SYSTEM WITH GROUNDING TEETH
ITW-60189	WO	Published	US11/062037	23-Nov-2011	ELECTROSTATIC SPRAY SYSTEM WITH GROUNDING TEETH
ITW-60294	US	Published	13/356513	23-Jan-2012	HIGH SWIRL AIR CAP
ITW-60340	CN	Published	2012800179364	11-Oct-2013	AEROSOL SPRAY NOZZLE
ITW-60340	EP	Published	12704641.5	12-Sep-2013	AEROSOL SPRAY NOZZLE
ITW-60340	US	Published	13/357607	24-Jan-2012	AEROSOL SPRAY NOZZLE
ITW-60340	WO	Nationaliz	US12/024866	13-Feb-2012	AEROSOL SPRAY NOZZLE
ITW-60365	CN	Published	2012800177087	10-Oct-2013	ELECTROSTATIC DISINFECTANT TOOL
ITW-60365	US	Published	13/360623	27-Jan-2012	ELECTROSTATIC DISINFECTANT TOOL
ITW-60365	WO	Nationaliz	US12/024679	10-Feb-2012	ELECTROSTATIC DISINFECTANT TOOL
ITW-60380	JP	Granted	467027	28-Jan-2011	POWDER COATING GUN AND POWDER COATING SYSTEM
ITW-60403	CN	Granted	200880003730.X	09-May-2012	BLOT PREVENTING COVER FOR COATER

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ITW-60403	EP	Published	2008753080	15-May-2008	BLOT PREVENTING COVER FOR COATER
ITW-60403	JP	Granted	4769762	24-Jun-2011	STAIN PROOF COVER FOR COATER
ITW-60403	US	Granted	8261689	11-Sep-2012	STAIN PREVENTING COVER FOR COATING MACHINE
ITW-60403	WO	Nationaliz	JP08/059408	15-May-2008	BLOT PREVENTING COVER FOR COATER
ITW-60450	CN	Granted	ZL2008080113916	20-Mar-2013	ELECTROSTATIC COATING APPARATUS
ITW-60450	JP	Granted	4456147	28-Apr-2010	ELECTROSTATIC COATING APPARATUS
ITW-60450	US	Granted	8307780	13-Nov-2012	ELECTROSTATIC COATING APPARATUS
ITW-60450	WO	Nationaliz	JP08/069550	28-Oct-2008	ELECTROSTATIC COATING APPARATUS
ITW-60493	US	Published	13/787640	06-Mar-2013	SYSTEM AND METHOD HAVING MULTI-COMPONENT CONTAINER FOR SPRAY DEVICE
ITW-60568	JP	Granted	4395181	23-Oct-2009	DEVICE FOR RECOVERING COATING MACHINE CLEANING LIQUID
ITW-60569	CN	Published	2008080017247	23-May-2008	Rotary atomizing head, rotary atomizing painting device, and rotary atomizing painting method
ITW-60569	EP	Published	2008764944	23-May-2008	ROTARY ATOMIZING HEAD, ROTARY ATOMIZING PAINTING DEVICE, AND ROTARY ATOMIZING PAINTING METHOD
ITW-60569	JP	Granted	4584283	17-Nov-2010	ROTARY ATOMIZATION HEAD AND ROTARY ATOMIZATION COATING DEVICE
ITW-60569	JP	Granted	4584291	10-Sep-2010	ROTARY ATOMIZING ELECTROSTATIC COATER AND ROTARY ATOMIZING COATING METHOD
ITW-60569	US	Published	12/601044	23-May-2008	ROTARY ATOMIZING HEAD, ROTARY ATOMIZATION COATING APPARATUS, AND ROTARY ATOMIZATION COATING METHOD
ITW-60569	WO	Nationaliz	JP08/060088	23-May-2008	ROTARY ATOMIZING HEAD
ITW-60570	JP	Granted	4347372	23-Oct-2009	ELECTROSTATIC COATING APPRATUS FOR MOTOR VEHICLE
ITW-60570	US	Granted	8430058	30-Apr-2013	ELECTROSTATIC COATING APPARATUS WITH INSULATION ENLARGING PORTIONS
ITW-60570	WO	Nationaliz	JP08/064188	08-Jul-2008	ELECTROSTATIC COATING APPRATUS FOR MOTOR VEHICLE
ITW-60571	US	Published	13/821248	18-Apr-2013	ROTARY ATOMIZING PAINTING DEVICE
ITW-60571	WO	Nationaliz	PCT/JP11/70443	08-Sep-2011	ROTARY ATOMIZING PAINTING DEVICE
ITW-60572	JP	Published	2010265803	29-Nov-2010	ROTARY ATOMIZING COATING DEVICE AND COATING METHOD BY THE ROTARY ATOMIZING COATING DEVICE
ITW-60573	CN	Published	201180040772. 2	12-Aug-2011	ROTARY ATOMIZING HEAD FOR ELECTROSTATIC COATER
ITW-60573	JP	Published	2010-188344	25-Aug-2010	ROTARY ATOMIZING HEAD FOR ELECTROSTATIC COATER
ITW-60573	WO	Nationaliz	JP11/068453	12-Aug-2011	ROTARY ATOMIZING HEAD FOR ELECTROSTATIC COATER
ITW-60574	JP	Granted	5060594	10-Aug-2012	Airless Spray Coating Apparatus
ITW-60575	US	Published	13/541858	05-Jul-2012	ROTARY ATOMIZING HEAD FOR ELECTROSTATIC COATING MACHINE
ITW-60575	WO	Nationaliz	JP11/050136	06-Jan-2011	ROTARY ATOMIZING HEAD FOR ELECTROSTATIC COATING MACHINE
ITW-60576	JP	Granted	4494498	16-Apr-2010	ROTARY ATOMIZING HEAD, ROTARY ATOMIZATION COATER AND ROTARY ATOMIZATION COATING METHOD
ITW-60576	US	Published	12/483514	12-Jun-2009	ROTARY ATOMIZING HEAD, ROTARY ATOMIZER PAINTING DEVICE ROTARY ATOMIZATION PAINTING METHOD
ITW-60577	JP	Published	2008100535	08-Apr-2008	Airless Spray Coating Apparatus
ITW-60593	TW	Published	101135948	28-Sep-2012	SPRAY DEVICE HAVING CURVED PASSAGES
ITW-60593	US	Published	13/620606	14-Sep-2012	SPRAY DEVICE HAVING CURVED PASSAGES

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Exhibit 1
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Case Number	Country	Status	Application or Patent Number	Filing or Issue Date	Application Title
ITW-60593	WO	Published	PCT/US2012/55830	17-Sep-2012	SPRAY DEVICE HAVING CURVED PASSAGES
ITW-60828	WO	Published	PCT/US2013/29701	07-Mar-2013	CORDLESS SPRAY DEVICE
ITW-60924	TW	Published	102113470	16-Apr-2013	Binks "Smart" Pressure Tank
ITW-60924	US	Published	13/838435	15-Mar-2013	MULTI-COMPONENT PRESSURE TANK ASSEMBLY FOR SPRAY COATING SYSTEMS
ITW-60924	WO	Published	PCT/US2013/32863	18-Mar-2013	MULTI-COMPONENT PRESSURE TANK ASSEMBLY FOR SPRAY COATING SYSTEMS
ITW-61138	TW	Published	102115261	29-Apr-2013	DISPOSABLE VENTED LID WITH VALVE FOR PAINT DELIVERY SYSTEM
ITW-61138	US	Published	13/789,528	13-Mar-2013	VENT SYSTEM FOR A GRAVITY FEED SPRAY DEVICE
ITW-61138	WO	Published	PCT/US2013/03003 9	08-Mar-2013	VENT SYSTEM FOR A GRAVITY FEED SPRAY DEVICE
ITW-61166	US	Published	13/798075	12-Mar-2013	METHOD OF CONTROLLING INDEPENDENT AIR SOURCE IN A CONSTANT PRESSURE SYSTEM
ITW-61166	WO	Published	PCT/US2013/31089	13-Mar-2013	AIR FLOW SWITCH FOR AN ELECTROSTATIC TOOL
ITW-61281	JP	Published	2006104940	06-Apr-2006	TWO-LIQUID MIXING APPARATUS
ITW-61332	US	Published	13/799707	13-Mar-2013	BELT MOUNTED POWER SOURCE FOR ELECTROSTATIC HANDGUN
ITW-61332	WO	Published	PCT/US2013/03109 1	13-Mar-2013	ELECTROSTATIC SPRAY TOOL POWER SUPPLY
ITW-61362	US	Published	13/964,541	12-Aug-2013	COMBINED CAPACITOR/DIODE COMPONENT, CIRCUIT, AND HIGH VOLTAGE MULTIPLER
ITW-61362	WO	Published	PCT/US2013/05480 0	13-Aug-2013	COMBINED CAPACITOR/DIODE COMPONENT, CIRCUIT, AND HIGH VOLTAGE MULTIPLER
ITW-65006	WO	Published	PCT/US13/63932	08-Oct-2013	Spray System & Method
ITW-65007	US	Published	13/966,178	13-Aug-2013	SYSTEM AND METHOD FOR USING AN ELECTROSTATIC TOOL [per publication, was Spray System & Method]
ITW-65007	WO	Published	PCT/US2013/05498 9	14-Aug-2013	Spray System & Method
RIFA-0348	JP	Granted	5162723	41346	ELECTROSTATIC COATING CABLE MAINTENANCE DEVICE
RIFA-0349	JP	Granted	5230041	41465	ELECTROSTATIC COATER AND ELECTROSTATIC COATING METHOD

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Exhibit 4: Trademarks
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Trademark Name	Country	Application or Registration Number
2001	US	1315437
AEROBELL	US	1491961
AERODRY	CA	TMA613751
AERODRY	US	2840313
Ai (or indigo) in kanji (??)[1]	JP	5017765
AIR BLADE	US	3466118
AquaRing with katakana (??????)[1]	JP	4918121
ARNOLD	AU	360479
ARNOLD	NZ	62144
AUTOCURE	US	1964168
BINKS	AR	1994810
BINKS	AR	1994811
BINKS	AU	154063
BINKS	BR	3424669
BINKS	BR	3563944
BINKS	BX	78912
BINKS	BY	21250
BINKS	CA	UCA046389
BINKS	CH	2P277883
BINKS	CL	952068
BINKS	CN	244213
BINKS	CN	5182392
BINKS	CN	5182393
BINKS	CO	34262
BINKS	DE	738808
BINKS	DK	VG196200070
BINKS	EM	7224637
BINKS	ES	350166 MM
BINKS	FR	1215907
BINKS	GR	79172
BINKS	IE	114413
BINKS	IL	17748
BINKS	IN	1394725
BINKS	IT	1094793
BINKS	IT	1219622
BINKS	JP	4946467
BINKS	KR	4007254910000
BINKS	MX	954144
BINKS	NO	57076
BINKS	NZ	60807

[1]?? indicates Japanese characters which were unable to translate into this document.

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Trademark Name	Country	Application or Registration Number
BINKS	RU	272998
BINKS	SG	T8405132C
BINKS	TR	2012 97022
BINKS	TT	16915
BINKS	TW	292853
BINKS	US	0595948
BINKS	US	0598462
BINKS	US	1343776
BINKS	UY	377859
BINKS	VE	F029298
BINKS	ZA	2515/55
BINKS (Stylized)	US	594106
BINKS DX	EM	011893856
BINKS DX	US	85/964797
BINKS in Chinese Characters	CN	4269638
BRONTO	BR	824743156
CAMAIR	US	2116147
CASCADIUM	BR	822245094
CHAMPION BY DEVILBISS	US	85892889
CHAMPION BY DEVILBISS (Stylized)	US	85893353
CHAMPION BY DEVILBISS (Stylized, colors)	US	85892990
COBRA BY DEVILBISS	EM	4327896
COMPACT BY DEVILBISS	GB	2320088
COMPACT BY DEVILBISS	US	3514738
Cvi	EM	5891511
Cvi	US	3347180
DAGR	US	3405171
DEKUPS	BR	830167692
DEKUPS	CA	TMA763579
DEKUPS	CN	7165451
DEKUPS	EM	7554785
DEKUPS	IN	1774271
DEKUPS	MX	1093903
DEKUPS	RU	400208
DEKUPS	US	3079784
DEV	AU	181269
DEV	IN	462985
DEV & Design	BR	002735342
DEV (Stylized)	US	0533019
DEV DEVILBISS & Design	HK	199403401

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Trademark Name	Country	Application or Registration Number
DEV DEVILBISS & Design	JP	2722541
DEV DEVILBISS & Design	MY	91/01592
DEVAIR	CA	TMA616327
DEVILBISS	AE	60775
DEVILBISS	AR	2177722
DEVILBISS	AR	2177723
DEVILBISS	AR	2177724
DEVILBISS	AR	2178433
DEVILBISS	AR	2186762
DEVILBISS	AT	14885
DEVILBISS	AU	158998
DEVILBISS	AU	159000
DEVILBISS	BR	3200361
DEVILBISS	BX	106684
DEVILBISS	BX	108340
DEVILBISS	BY	20759
DEVILBISS	CA	TMDA017978
DEVILBISS	CH	2P326 717
DEVILBISS	CL	697648
DEVILBISS	CN	999008
DEVILBISS	CO	109462
DEVILBISS	CR	4918
DEVILBISS	CZ	89151
DEVILBISS	DE	307571
DEVILBISS	DK	VR194000299
DEVILBISS	EG	35270
DEVILBISS	EM	1668656
DEVILBISS	ES	50864 M
DEVILBISS	FR	1604253
DEVILBISS	GB	707035
DEVILBISS	GT	4743
DEVILBISS	HU	117271
DEVILBISS	IN	160486
DEVILBISS	IN	462983
DEVILBISS	IN	546610
DEVILBISS	IR	19789
DEVILBISS	IT	109556
DEVILBISS	JP	114940
DEVILBISS	KR	4000743250000
DEVILBISS	MX	304464

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Trademark Name	Country	Application or Registration Number
DEVILBISS	MX	304465
DEVILBISS	MX	306319
DEVILBISS	MX	313859
DEVILBISS	NO	10468
DEVILBISS	NO	67353
DEVILBISS	NZ	153357
DEVILBISS	NZ	153358
DEVILBISS	NZ	153359
DEVILBISS	NZ	153361
DEVILBISS	NZ	153362
DEVILBISS	PE	34803
DEVILBISS	PT	123855
DEVILBISS	RS	44517
DEVILBISS	RU	264116
DEVILBISS	SA	870/34
DEVILBISS	SE	27285
DEVILBISS	SK	89151
DEVILBISS	TR	208663
DEVILBISS	TW	151089
DEVILBISS	US	0771830
DEVILBISS	US	3314902
DEVILBISS	UY	395065
DEVILBISS	VE	F014529
DEVILBISS	VE	F018143
DEVILBISS	ZA	1984/5492
DEVILBISS	ZA	1984/5493
DEVILBISS	ZA	1984/5495
DEVILBISS (Stylized in Color)	CN	6908973
DEVILBISS (Stylized in Color)	CN	8897680
DEVILBISS (Stylized)	MX	45495
DEVILBISS (Stylized)	US	0166404
DEVILBISS AG-360	IN	2631172
DEVILBISS AG-360	IN	2631173
DEVILBISS CLEAN	US	86/201,198
DEVILBISS CLEAN (black & orange design)	US	86/201,194
DEVILBISS CLEAN (black & white design)	US	86/201,189
DEVILBISS COMPACT	GB	2320087
DEVILBISS DEV & Design	ES	744326 M
DEVILBISS EMG	IN	2631170
DEVILBISS EUROLINE	GB	1219808

[1]?? indicates Japanese characters which were unable to translate into this document.

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Trademark Name	Country	Application or Registration Number
DEVILBISS FINISHMASTER & Design	GB	2060285
DEVILBISS GTI	EM	779892
DEVILBISS GTI	GB	2145091
DEVILBISS in Chinese Characters	CN	4269637
DEVILBISS in Chinese Characters	CN	8897679
DEVILBISS RANSBURG & Design	CH	P-388879
DEWIPE-OUTS	US	3534043
DGI Stylized	EM	3789666
DRD	US	3534044
DUOTECH & Design	GB	1392069
DX	EM	011893799
DX	US	85/964799
FANTASTIC with katakana ?????????[1]	JP	5417910
FINISHLINE	AU	672774
FINISHLINE	BX	583664
FINISHLINE	CA	TMA474190
FINISHLINE	CN	986991
FINISHLINE	DE	39538729
FINISHLINE	DK	VR199506924
FINISHLINE	ES	1987264MX
FINISHLINE	FR	95590998
FINISHLINE	GR	126585
FINISHLINE	IE	170607
FINISHLINE	IT	1136047
FINISHLINE	JP	4335227
FINISHLINE	KR	4003663040000
FINISHLINE	NO	179301
FINISHLINE	PT	312592
FINISHLINE	SE	311257
FINISHLINE	TR	164005
FINISHLINE	TW	733777
FINISHLINE	US	2067854
FINISHLINE	ZA	1995/12554
FRC-600 FILTRO REGULADOR	BR	900343273
FRC-650 FILTRO REGULADOR	BR	900343303
GAPPTEC	US	86124824
GREENSPRAY	EM	8635385
GREENWORKS	US	3717414
GTI	CA	TMA613750
GTI	EM	5271184

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Trademark Name	Country	Application or Registration Number
GTI	US	2834578
GTI PRO	EM	5593736
GTI PRO (Series)	AU	1154735
HURRICANE	BR	817917810
ION-O-VAC	EM	818450
IR SMART	US	86/265159
JGA Design (Misc Design)	US	1450363
JUPITER with katakana (?????)[1]	JP	5427483
Kyu-Kyoku	JP	4916664
Kyu-Kyoku in Kanji	JP	4916665
LOW MIST	WO	417726
LOW MIST (Part of WO Registration)	BX	417726
LOW MIST (Part of WO Registration)	DE	417726
LOW MIST (Part of WO Registration)	ES	417726
LOW MIST (Part of WO Registration)	IT	417726
LUNA with katakana (??)[1]	JP	5103886
MEDBELL	US	86124842
MEDE'STAT	US	86124838
MEDPRO	US	86124850
MEDSPRAY	US	86124831
O-LIGHT with katakana	JP	5305370
OMX	EM	3434
PLUS	US	4501447
PLUS & Design	US	4520916
POGO	US	693818
POLY-CRAFT	US	1107789
POP & Design	BR	829106669
PRI	CA	TMA613682
PRI	US	2834579
PRi Stylized	EM	2654416
PULSETRACK	US	1496635
RANSBURG	AT	37899
RANSBURG	BR	812402871
RANSBURG	BR	817947787
RANSBURG	BX	41388
RANSBURG	BY	21169
RANSBURG	CA	TMA162027
RANSBURG	CN	4961953
RANSBURG	CN	4961954
RANSBURG	DE	717823

[1]?? indicates Japanese characters which were unable to translate into this document.

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Trademark Name	Country	Application or Registration Number
RANSBURG	EM	4584306
RANSBURG	IN	222631
RANSBURG	IN	222632
RANSBURG	IT	1133071
RANSBURG	JP	513564
RANSBURG	JP	513565
RANSBURG	KR	4001294260000
RANSBURG	KR	4001298340000
RANSBURG	RU	165992
RANSBURG	SE	201445
RANSBURG	SG	T65371671
RANSBURG	TH	TM131225
RANSBURG	TH	TM134178
RANSBURG	TR	2012 97023
RANSBURG	US	628159
RANSBURG & Design	AU	123357
RANSBURG & Design	AU	123358
RANSBURG & Design	DE	892908
RANSBURG & Design	GB	904119
RANSFLOW	US	3628173
RANSSERVICE	CA	TMA421511
RANSSERVICE	JP	2661152
RANSSERVICE	JP	3092770
REA	AU	219021
REA	US	0775279
R-E-A	AR	2405366
R-E-A	CA	TMA139070
R-E-A	IT	1148203
R-E-A	JP	668801
R-E-H	CA	TMA141420
R-E-H	FR	1520037
R-E-M	BR	814497519
R-E-M	CA	TMA365280
R-E-M	US	1518753
RETROCLEAN	EM	2590925
RETROCLEAN	JP	4699297
SGK	BR	826256473
Shirokuma-kun (or white bear) in Japanese	JP	5378655
SNAPNFLOW	US	86164383
SNAPNFLOW	US	86164465

[1]?? indicates Japanese characters which were unable to translate into this document.

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Exhibit 4: Trademarks
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Trademark Name	Country	Application or Registration Number
SPACE-GUN with katakana	JP	4960196
SPRAY GUN CONFIGURATION	US	1415580
STARTINGLINE	US	3534045
TAKUMIWAZA in kanji (??)[1]	JP	5417935
TEKNA	US	3347179
TLC & Design	CA	TMA311324
TOSOUNIN in kanji (???)[1]	JP	5417934
T-REX	BR	824150007
TUFÃO	BR	818010282
TUFÃO II	BR	811385957
TUFÃO II & Design	BR	818010274
TURBODISK	JP	1755021
TURBODISK	US	1270569
VECTOR SOLO	US	77372076

[1]?? indicates Japanese characters which were unable to translate into this document.

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Appendix 6
Exhibit 5: Inactive Trademarks

Trademark Name	Country	Application or Registration Number
DEVILBISS	VE	F109322
PLUS	US	3135130
PLUS & Design	US	3128916
RAPTOR	BR	824743164
Sakura (or cherry blossoms) in hiragana	JP	4973943
Beldy with katakana (????)[1]	JP	4766519
IR SMART	US	3059735

The inclusion by the FTC of the Inactive Trademarks designation on this page in this Appendix 6 shall not be construed as an express or implied abandonment of any of the trademarks or other IP listed herein. Such information is provided solely for purposes of this Order, and the inclusion of such inactive trademarks designation by the FTC in this Order shall not be used in any manner adverse to the Commission-approved Acquirer and shall not in any way impact or otherwise affect the ability of the Commission-approved Acquirer to enforce and/or revive any of the IP listed herein.

[1] ?? indicates Japanese characters which were unable to translate into this document.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission"), subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders, containing both a Proposed Decision and Order ("Proposed Order") and an Order To Hold Separate and Maintain Assets, with Graco, Inc. ("Graco"), Illinois Tool Works Inc., and ITW Finishing LLC ("ITW"), collectively referred to as the Respondents, to resolve an Administrative Complaint issued by the Commission on December 15, 2011. The Complaint alleged that Graco's proposed acquisition of ITW would substantially reduce competition in various markets for industrial liquid finishing equipment in North America. The proposed acquisition would harm industrial liquid finishing equipment customers by resulting in higher prices and less choice in the relevant markets. The Proposed Order requires Graco to divest all overlapping ITW businesses and to hold those assets separate pending that divestiture. The Proposed Order is for settlement purposes only and tailored to remedy the effects of Graco's proposed acquisition of ITW.

The Commission has placed the Proposed Order on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during the comment period will become part of the public record. After thirty days, the Commission will review the Proposed Order and comments received and will decide whether it should withdraw from the Agreement or make final the Proposed Order.

I. The Commission's Complaint

The Federal Trade Commission voted 4-0 to issue an Administrative Complaint against Respondents on December 15, 2011.[1] Graco is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. Illinois Tool Works Inc. is a Delaware corporation with its principal place of business in Glenview, Illinois. Illinois Tool Works Inc., at the time of the Commission's Complaint, wholly owned ITW, a Delaware

1 http://ftc.gov/os/adjpro/d9350/111215gracoadmincmpt.pdf.

limited liability company with its principal place of business in Glenview, Illinois.[2] Graco and ITW manufacture and sell industrial liquid finishing equipment throughout North America and the world. Industrial manufacturers use industrial liquid finishing equipment to apply paint and other coatings to all kinds of finished goods, including automobiles, office furniture, and home appliances.

The Complaint alleged that Graco's proposed acquisition of ITW would harm competition in five specific product markets: the manufacture and sale of (1) liquid finishing pumps for industrial uses; (2) liquid finishing spray guns, which apply paint and other liquid coatings to surfaces in industrial uses; (3) proportioners, which mix and blend paint with catalysts and other liquids before applying the coating in industrial uses; (4) circulation pumps for paint systems in automotive assembly plants; and (5) industrial liquid finishing equipment for resale.

The Complaint charged that if the proposed acquisition were completed, the combined firm would control a dominant share of all North American sales of industrial liquid finishing equipment and create a monopoly for circulation pumps used in paint systems in the automobile industry.

The Complaint also alleged that the proposed transaction would end the close competition between Graco and ITW, its largest competitor, reduce or eliminate the substantial one-time price breaks or other discounts both firms offer to distributors, and lessen Graco's incentives to develop new products after the

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2 On March 13, 2012, the Secretary withdrew the Commission's administrative challenge to Graco's acquisition of ITW in order to consider Graco's proposed settlement. Graco agreed to an Agreement Containing Consent Orders requiring it to hold separate all of the ITW liquid finishing businesses and to divest up to all of the hold-separate assets to a Commission-approved acquirer. On March 27, the Commission issued an Order to Hold Separate and Maintain Assets ("Hold Separate") covering the ITW liquid finishing equipment businesses worldwide, allowing Graco to close on the Acquisition but to retain and integrate only the ITW powder finishing assets. The Commission deferred voting to accept the Consent Agreement to allow staff an opportunity to investigate whether a narrower divestiture package would fully remedy the competitive harm alleged in the Complaint. http://ftc.gov/opa/2012/03/graco.shtm.

merger. The competition lost by the acquisition could not be easily replaced, as Exel North America, the firm in the market with a distant third place in sales, as well as other fringe firms, lack the brand acceptance and distribution to challenge a combined Graco/ITW. Significant hurdles and barriers would also deter new competitors from entering the markets.

II. The Agreement Containing Consent Orders

The purpose of the Proposed Order is to ensure the continuation of ITW's liquid finishing business assets as an ongoing, viable business operating in the same relevant markets in which they were competing at the time Graco announced the proposed acquisition, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's Complaint. In order to do that, the Proposed Order requires Graco to divest ITW's liquid finishing business assets, including the Binks, DeVilbiss, Ransburg, and BGK brands, no later than 180 days after the date the Proposed Order becomes final, to a Commission-approved Acquirer. If Graco has not divested ITW's liquid finishing business assets within 180 days, the Commission may appoint a trustee to divest ITW's liquid finishing business assets in a manner that satisfies the requirements of the Proposed Order.

The divestiture maintains that status quo ante in the markets alleged in the Commission's Complaint. The Proposed Order permits Graco to complete its acquisition of ITW, but requires it to hold the businesses containing ITW's industrial liquid finishing equipment assets separate and to maintain them while it looks for a buyer for the assets to be divested. The Order to Hold Separate and Maintain Assets will protect the competitive status quo during this process.

The Proposed Order requires Graco, or the divestiture trustee, if appointed, to file periodic reports detailing efforts to divest the assets and the status of that undertaking. Commission representatives may have reasonable access to Graco's business records related to compliance with the Proposed Order.

III. Opportunity for Public Comment

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Order to aid the Commission in its determination of whether it should make final the Proposed Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

Complaint

IN THE MATTER OF

PRESTIGE BRANDS HOLDINGS, INC.
AND
INSIGHT PHARMACEUTICALS CORPORATION

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

Docket No. C-4487; File No. 141 0159
Complaint, August 27, 2014 – Decision, October 7, 2014

This consent order addresses the $750 million acquisition by Prestige Brands Holdings, Inc. of certain assets of Insight Pharmaceuticals Corporation. The complaint alleges that the acquisition violates Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in U.S. markets for the manufacture, marketing, distribution, and sale of OTC motion sickness medications. The consent order requires Prestige to divest all of Insight's rights and assets related to its OTC motion sickness product, Bonine.

Participants

For the *Commission*: *Christina Perez* and *David Von Nirschl.*

For the *Respondents*: *Debra Dermody, ReedSmith; Marin Boney* and *Mark Kovner, Kirkland & Ellis LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Prestige Brands Holdings, Inc. ("Prestige"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Insight Pharmaceuticals Corporation. ("Insight"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the

public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Prestige is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office and principal place of business located at 660 White Plains Road, Suite 250, Tarrytown, New York 10591.

2. Respondent Insight is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office and principal place of business located at 900 Northbrook Drive, Suite 200, Trevose, Pennsylvania 19053.

3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to a Stock Purchase Agreement dated April 25, 2014 (the "Agreement"), Medtech Products Inc. ("Medtech"), a subsidiary of Prestige, intends to purchase all of the outstanding shares of Insight for approximately $750 million (the "Acquisition"). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKET

5. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, marketing, distribution, and sale of over-the-counter ("OTC") motion sickness medications.

6. For the purposes of this Complaint, the United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in the relevant line of commerce.

IV. THE STRUCTURE OF THE MARKETS

7. Prestige and Insight are the two leading suppliers of branded OTC motion sickness medication in the United States and each other's closest competitor. The only other branded OTC motion sickness medication supplier has minimal sales. Private label OTC motion sickness products account for a substantial share of sales, but they have only a limited competitive impact in the market because they are usually priced at a fixed discount to branded OTC motion sickness medication products, and are not promoted or marketed. The Acquisition would substantially increase the Herfindahl-Hirschman Index.

V. ENTRY CONDITIONS

8. Entry into the relevant market described in Paragraphs 5 and 6 would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. Given the limited sales opportunities available in the U.S. OTC motion sickness medication market, potential new entrants are unlikely to incur the high up-front investment costs required to establish a recognized brand and compete effectively. A potential new entrant would also find it difficult to convince retailers to replace established brands in the limited shelf space they allocate to OTC motion sickness products.

VI. EFFECTS OF THE ACQUISITION

9. The effects of the Acquisition, if consummated, may be substantially to lessen competition, or tend to create a monopoly, in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by, among other things, eliminating actual, direct, and substantial competition between Prestige and Insight and reducing the number of significant competitors in the market for OTC motion sickness medications, thereby increasing the likelihood that: (1) Prestige would be able to unilaterally

exercise market power in this market; and (2) customers would be forced to pay higher prices.

VII. VIOLATIONS CHARGED

10. The Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

11. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of August, 2014 issues its Complaint against said Respondents.

By the Commission.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Prestige Brands Holdings, Inc. ("Prestige") of the voting securities of Respondent Insight Pharmaceuticals Corporation ("Insight"), collectively "Respondents", and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent

Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Prestige is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 660 White Plains Road, Suite 250, Tarrytown, New York 10591.

2. Respondent Insight is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 900 Northbrook Drive, Suite 200, Trevose, Pennsylvania 19053.

3. The 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, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which

are incorporated herein by reference and made a part hereof, shall apply:

A. "Prestige" means: Prestige Brands Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Prestige Brands Holdings, Inc. (including, without limitation, Medtech Products Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Prestige shall include Insight.

B. "Insight" means: Insight Pharmaceuticals Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Insight Pharmaceuticals Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Prestige and Insight, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.

F. "Bonine Business" means the Business of Respondent Insight within the Geographic Territory specified in

the Decision and Order related to Bonine to the extent that such Business is owned, controlled, or managed by Respondent Insight and the assets related to such Business to the extent such assets are owned by, controlled by, managed by, or licensed to, the Respondent Insight.

G. "Interim Monitor" means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.

H. "Orders" means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

A. Until Respondents fully transfer and deliver the Bonine Assets to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Bonine Business, to minimize any risk of loss of competitive potential for such Bonine Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bonine Assets except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Bonine Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the Bonine Business.

B. Until Respondents fully transfer and deliver the Bonine Assets to an Acquirer, Respondents shall maintain the operations of the Bonine Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such Business) and/or as may be necessary to preserve the full economic marketability, viability, and competitiveness of the

Bonine Business and shall use their best efforts to preserve the existing relationships with the following: manufacturers; suppliers; vendors and distributors; High Volume Accounts; end-use customers; Agencies; employees; and others having business relations with the Bonine Business. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing the Bonine Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such Business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for such Bonine Business;

2. continuing, at least at their scheduled pace, any additional expenditures the Bonine Business authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;

3. providing such resources as may be necessary to respond to competition against Bonine and/or to prevent any diminution in sales of Bonine during and after the Acquisition process and prior to the complete transfer and delivery of the related Bonine Assets to an Acquirer;

4. providing such resources as may be necessary to maintain the competitive strength and positioning of Bonine at the High Volume Accounts;

5. making available for use by the Bonine Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such Business;

6. providing such support services to the Bonine Business as were being provided to such Business by Respondents as of the date the Consent Agreement was signed by Respondents;

7. developing and implementing a detailed transition plan to ensure that the commencement of the marketing, distribution and sale of Bonine by the Acquirer is not delayed or impaired by the Respondents for the purposes of ensuring and orderly marketing and distribution transition to the Acquirer;

8. designating employees of Respondents knowledgeable about the marketing, distribution and sale related to Bonine who will be responsible for communicating directly with the Acquirer, and the Interim Monitor (if one has been appointed), for the purposes of assisting in the transfer of Bonine;

9. maintaining and managing inventory levels of Bonine in consideration of the marketing and distribution transition to the Acquirer;

10. continuing to market, distribute and sell Bonine until such time as agreed upon with the Acquirer for the Acquirer to assume these functions, including, continuing, at their scheduled pace, any meetings with customers of the Bonine Business (such as, meetings to review planograms or displays, discuss marketing strategies, product promotions or product purchases);

11. allowing the Acquirer to access at reasonable business hours to all Confidential Business Information related to Bonine and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to Bonine that contain such Confidential Business Information pending the

completed delivery of such Confidential Business Information to the Acquirer;

12. providing the Acquirer with a listing of inventory levels (week of supply) for each customer (*i.e.*, retailer, group purchasing organization, wholesaler or distributor) in a timely manner;

13. providing the Acquirer with anticipated reorder dates for each customer in a timely manner; and

14. establishing projected time lines for accomplishing all tasks necessary to effect the marketing and distribution transition to the Acquirer in an efficient and timely manner.

C. Until Respondents fully transfer and deliver the Bonine Assets to an Acquirer, Respondents shall maintain a work force that is (i) at least as large (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with Bonine for the last fiscal year.

D. Pending divestiture of the Bonine Assets, Respondents shall:

1. not use, directly or indirectly, any Confidential Business other than as necessary to comply with the following:

   a. the requirements of this Order;

   b. Respondents' obligations to the Acquirer under the terms of any related Remedial Agreement; or

   c. applicable Law;

2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by such Acquirer to receive

such information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed);

3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information to the employees associated with the Business related to the Retained Product Dramamine; and

4. institute procedures and requirements to ensure that the above-described employees:

   a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and

   b. do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.

E. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.

F. Respondents shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the notification to the relevant Acquirer. Respondents shall maintain complete records of all such notifications at Respondents' registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been

implemented and is being complied with. Respondents shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

G. Respondents shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.

H. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Bonine Business within the Geographic Territory through its full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Bonine Business within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Bonine Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.

B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the

Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Bonine Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of the Orders;

provided, however, that, the Interim Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to extend or modify

this period as may be necessary or appropriate to accomplish the purposes of the Orders.

E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.

F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

H. Respondents shall report to the Interim Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by each Acquirer with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders; *provided, however*, beginning ninety (90) days after Respondents have filed their final report pursuant to Paragraph VII.B. of the Decision and Order, and ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward any necessary approvals to manufacture Bonine and obtaining the ability to manufacture Bonine in commercial quantities, in a manner consistent with cGMP, independently of Respondents.

I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the

Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.

L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

M. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every sixty (60) days thereafter until Respondents have fully complied with this Order to Maintain Assets and the Paragraphs that are enumerated in Paragraph VII.B. of the related Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders. Respondents shall submit at the same time a copy of their report concerning compliance with the Orders to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a detailed description of their efforts to comply with the relevant paragraphs of the Orders, including:

A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, and (ii) transitional services being provided by the Respondents to the Acquirer; and

B. a detailed description of the timing for the completion of such obligations.

Provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VII of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of a Respondent;

B. any proposed acquisition, merger or consolidation of a Respondent; or

C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized

representative(s) of the Commission and at the expense of the Respondent; and

B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

A. three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. the day after the divestiture of all of the Bonine Assets, as required by and described in the Decision and Order, has been completed and the Interim Monitor (if one has been appointed), in consultation with Commission staff and the Acquirer(s), notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated.

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Prestige Brands Holdings, Inc. ("Prestige") of the voting securities of Respondent Insight Pharmaceuticals Corporation ("Insight"), collectively "Respondents", and Respondents having been furnished thereafter with a copy of a

draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Prestige is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 660 White Plains Road, Suite 250, Tarrytown, New York 10591.

2. Respondent Insight is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 900 Northbrook Drive, Suite 200, Trevose, Pennsylvania 19053.

3. The 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, as used in the Order, the following definitions shall apply:

A. "Prestige" means: Prestige Brands Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Prestige Brands Holdings, Inc. (including, without limitation, Medtech Products Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Prestige shall include Insight.

B. "Insight" means: Insight Pharmaceuticals Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Insight Pharmaceuticals Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Prestige and Insight, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer(s)" means the following:

1. a Person specified by name in this Order to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order

and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective; or

2. a Person approved by the Commission to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

F. "Acquisition" means Respondent Prestige's acquisition of fifty percent (50%) or more of the voting securities of Insight. Respondents entered into a *Stock Purchase Agreement* on April 25, 2014, to effect the Acquisition, by and among Medtech Products Inc. (a subsidiary of Prestige), Insight Pharmaceuticals Corporation, SPC Partners IV, L.P., and other shareholders in Insight that was submitted to the Commission.

G. "Acquisition Date" means the date on which the Acquisition is consummated.

H. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term "Agency" includes, without limitation, the United States Food and Drug Administration ("FDA").

I. "Application(s)" means all of the following: "New Drug Application" ("NDA"), "Abbreviated New Drug Application" ("ANDA"), "Supplemental New Drug Application" ("SNDA"), or "Marketing Authorization Application" ("MAA"), the applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 314 et seq., and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between a Respondent

and the FDA related thereto. The term "Application" also includes an "Investigational New Drug Application" ("IND") filed or to be filed with the FDA pursuant to 21 C.F.R. Part 312, and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between a Respondent and the FDA related thereto.

J. "Bonine" means all of the over-the-counter Products that contain the active pharmaceutical ingredient generically known as meclizine hydrochloride in Development, manufactured, marketed, sold, owned or controlled by Respondent Insight. "Bonine" includes, without limitation, all Products marketed or sold under the trademark Bonine®.

K. "Bonine Assets" means the following assets and rights of Respondent Insight, as such assets and rights are in existence as of the date Respondent Insight signs the Agreement Containing Consent Orders in this matter and as are maintained by Respondent Insight in accordance with the Asset Maintenance Order until the Closing Date:

1. all rights to all of the Applications related to Bonine;

2. all Product Intellectual Property related to Bonine that is not Product Licensed Intellectual Property;

3. all Product Approvals related to Bonine;

4. all Product Manufacturing Technology related to Bonine that is not Product Licensed Intellectual Property;

5. all Product Marketing Materials related to Bonine;

6. all Product Scientific and Regulatory Material related to Bonine;

7. all Website(s) related exclusively to Bonine;

8. the content related exclusively to Bonine that is displayed on any Website that is not dedicated exclusively to Bonine;

9. a list of all of the NDC Numbers related to Bonine, and rights, to the extent permitted by Law:

    a. to require Respondents to discontinue the use of those NDC Numbers in the sale or marketing of Bonine *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement;

    b. to prohibit Respondents from seeking from any customer any type of cross- referencing of those NDC Numbers with any Retained Product(s) *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and *except* as may be required by applicable Law;

    c. to seek to change any cross-referencing by a customer of those NDC Numbers with a Retained Product (including the right to receive notification from the Respondents of any such cross-referencing that is discovered by Respondent);

    d. to seek cross-referencing from a customer of the Respondent's NDC Numbers related to Bonine with the Acquirer's NDC Numbers related to Bonine;

    e. to approve the timing of Respondent's discontinued use of those NDC Numbers in the sale or marketing of Bonine *except* for returns,

rebates, allowances, and adjustments for Bonine sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement; and

f. to approve any notification(s) from Respondents to any customer(s) regarding the use or discontinued use of such NDC numbers by the Respondents prior to such notification(s) being disseminated to the customer(s);

10. all Product Development Reports related to Bonine;

11. at the option of the Acquirer of Bonine, all Product Assumed Contracts related to Bonine (copies to be provided to the Acquirer on or before the Closing Date);

12. a list of all customers and targeted customers for Bonine and a listing of the net sales (in either units or dollars) of Bonine to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of Bonine on behalf of the High Volume Account and his or her business contact information;

13. at the option of the Acquirer of Bonine and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to Bonine;

14. copies of all unfilled customer purchase orders for Bonine as of the Closing Date, to be provided to

the Acquirer of Bonine not later than five (5) days after the Closing Date;

15. at the option of the Acquirer of Bonine, all unfilled customer purchase orders for Bonine; and

16. all of the Respondent's books, records, and files directly related to the foregoing;

provided, however, that "Bonine Assets" shall not include: (i) documents relating to any Respondent's general business strategies or practices relating to the conduct of its Business of marketing over-the-counter pharmaceutical Products, where such documents do not discuss with particularity Bonine; (ii) administrative, financial, and accounting records; (iii) quality control records that are determined not to be material to the manufacture of Bonine by the Interim Monitor or the Acquirer of Bonine; (v) any real estate and the buildings and other permanent structures located on such real estate; and (vi) all Product Licensed Intellectual Property;

provided further, *however*, that in cases in which documents or other materials included in the assets to be divested contain information: (i) that relates both to Bonine and to Retained Products or Businesses of any Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to Bonine; or (ii) for which any Respondent has a legal obligation to retain the original copies, the Respondents shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer of Bonine, the Respondents shall provide the Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that the Respondents provides the Acquirer with the above-described information without requiring the Respondents completely to divest itself

of information that, in content, also relates to Retained Product(s).

L. "Bonine Divestiture Agreements" means the *Asset Purchase Agreement* between Wellspring Pharmaceutical Corporation and Medtech Products Inc. (an indirect subsidiary of Prestige Brands Holdings, Inc.) dated as of August 14, 2014; and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Bonine Assets that have been approved by the Commission to accomplish the requirements of this Order. The Bonine Divestiture Agreements are contained in Non-Public Appendix I.

M. "Business" means the research, Development, manufacture, commercialization, distribution, marketing, importation, advertisement and sale of a Product.

N. "cGMP" means current Good Manufacturing Practice as set forth in the United States Federal Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.

O. "Clinical Trial(s)" means a controlled study in humans of the safety or efficacy of a Product, and includes, without limitation, such clinical trials as are designed to support expanded labeling or to satisfy the requirements of an Agency in connection with any Product Approval and any other human study used in research and Development of a Product.

P. "Closing Date" means the date on which a Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Bonine Assets to the Acquirer pursuant to this Order.

Q. "Confidential Business Information" means all information owned by, or in the possession or control of, any Respondent that is not in the public domain and

that is directly related to the conduct of the Business related to Bonine. The term "Confidential Business Information" *excludes* the following:

1. information relating to any Respondent's general business strategies or practices that does not discuss with particularity Bonine;

2. information specifically excluded from the Bonine Assets;

3. information that is contained in documents, records or books of any Respondent that is provided to the Acquirer by a Respondent that is unrelated to Bonine or that is exclusively related to Retained Product(s); and

4. information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws.

R. "Development" means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including any government price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.

S. "Direct Cost" means a cost not to exceed the cost of labor, material, travel and other expenditures to the

extent the costs are directly incurred to provide the relevant assistance or service. "Direct Cost" to the Acquirer for its use of any of a Respondent's employees' labor shall not exceed the average hourly wage rate for such employee;

provided, however, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for Bonine, "Direct Cost" means such cost as is provided in such Remedial Agreement for Bonine.

T. "Divestiture Product License" means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) under a Remedial Agreement with rights to sublicense to all Product Licensed Intellectual Property and all Product Manufacturing Technology related to general manufacturing know-how that was owned, licensed, or controlled by Respondent Insight:

1. to research and Develop Bonine for marketing, distribution or sale within the Geographic Territory;

2. to use, make, have made, distribute, offer for sale, promote, advertise, or sell Bonine within the Geographic Territory;

3. to import or export Bonine to or from the Geographic Territory to the extent related to the marketing, distribution or sale of Bonine in the Geographic Territory; and

4. to have Bonine made anywhere in the World for distribution or sale within, or import into the Geographic Territory;

provided however, that for any Product Licensed Intellectual Property that is the subject of a license from a Third Party entered into by a Respondent prior to the Acquisition, the scope of the rights granted

hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to that Respondent.

U. "Divestiture Product Releasee(s)" means the following Persons:

1. the Acquirer for the Bonine Assets;

2. any Person controlled by or under common control with the Acquirer; and

3. any Manufacturing Designees, licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Acquirer, or of such Acquirer-affiliated entities.

V. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.

W. "Domain Name" means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration; *provided, however*, "Domain Name" shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.

X. "Dramamine" means all Products Developed, marketed, sold, owned, or controlled by the Respondents under the trade name Dramamine®.

Y. "Geographic Territory" shall mean the United States of America, including all of its territories and possessions, unless otherwise specified.

Z. "Government Entity" means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.

AA. "High Volume Account(s)" means any retailer, wholesaler or distributor whose annual or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of Bonine in the United States of America from Respondent Insight was, or is projected to be among the top twenty highest of such purchase amounts by Respondent Insight's U.S. customers on any of the following dates: (i) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; (ii) the end of the last quarter that immediately preceded the Acquisition Date; (iii) the end of the last quarter that immediately preceded the Closing Date for the Bonine Assets; or (iv) the end of the last quarter following the Acquisition or the Closing Date.

BB. "Interim Monitor" means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.

CC. "Law" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.

DD. "Manufacturing Designee" means any Person other than a Respondent that has been designated by the Acquirer to manufacture Bonine for the Acquirer.

EE. "NDC Number(s)" means the National Drug Code number, including both the labeler code assigned by the FDA and the additional numbers assigned by the labeler as a product code for a specific Product.

FF. "Orders" means this Decision and Order and the related Order to Maintain Assets.

GG. "Order Date" means the date on which the final Decision and Order in this matter is issued by the Commission.

HH. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.

II. "Patent(s)" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case filed, or in existence, on or before the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

JJ. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.

KK. "Product(s)" means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient and/or that is the subject of an Application.

LL. "Product Approval(s)" means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of a Product within the United States of America, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application related to that Product.

MM. "Product Assumed Contracts" means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):

1. that make specific reference to Bonine and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, Bonine from Respondent Insight unless such contract applies generally to Respondent Insight's sales of Products to that Third Party;

2. pursuant to which Respondent Insight had or has as of the Closing Date the ability to independently purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) or had planned to purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) from any Third Party for use in connection with the manufacture of Bonine;

3. relating to any Clinical Trials involving Bonine;

4. with universities or other research institutions for the use of Bonine in scientific research;

5. relating to the particularized marketing of Bonine or educational matters relating solely to Bonine(s);

6. pursuant to which a Third Party manufactures Bonine on behalf of Respondent Insight;

7. pursuant to which a Third Party provides any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of Bonine on behalf of Respondent;

8. pursuant to which a Third Party provides the Product Manufacturing Technology related to Bonine to Respondent Insight;

9. pursuant to which a Third Party is licensed by Respondent Insight to use the Product Manufacturing Technology;

10. constituting confidentiality agreements involving Bonine;

11. involving any royalty, licensing, covenant not to sue, or similar arrangement involving Bonine;

12. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of Bonine to Respondent Insight including, but not limited to, consultation arrangements; and/or

13. pursuant to which any Third Party collaborates with Respondent Insight in the performance of research, Development, marketing, distribution or selling of Bonine or the Business related to Bonine;

provided, however, that where any such contract or agreement also relates to a Retained Product(s), Respondent Insight shall assign the Acquirer all such rights under the contract or agreement as are related to Bonine, but concurrently may retain similar rights for the purposes of the Retained Product(s).

NN. "Product Copyrights" means rights to all original works of authorship of any kind directly related to Bonine and any registrations and applications for registrations thereof within the Geographic Territory, including, but not limited to, the following: all such rights with respect to all promotional materials for healthcare providers, all promotional materials for patients, and educational materials for the sales force; copyrights in all preclinical, clinical and process development data and reports relating to the research and Development of that Product or of any materials used in the research, Development, manufacture, marketing or sale of that Product, including all

copyrights in raw data relating to Clinical Trials of that Product, all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information, promotional and marketing materials, that Product's sales forecasting models, medical education materials, sales training materials, and advertising and display materials; all records relating to employees of a Respondent who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to that Product or relating to its biology; all copyrights in adverse experience reports and files related thereto (including source documentation) and all copyrights in periodic adverse experience reports and all data contained in electronic databases relating to adverse experience reports and periodic adverse experience reports; all copyrights in analytical and quality control data; and all correspondence with the FDA or any other Agency.

OO. "Product Development Reports" means:

1. Pharmacokinetic study reports related to Bonine;

2. Bioavailability study reports (including reference listed drug information) related to Bonine;

3. Bioequivalence study reports (including reference listed drug information) related to Bonine;

4. all correspondence, submissions, notifications, communications, registrations or other filings

made to, received from or otherwise conducted with the FDA relating to the Application(s) related to Bonine;

5. annual and periodic reports related to the above-described Application(s), including any safety update reports;

6. FDA approved Product labeling related to Bonine;

7. currently used or planned product package inserts (including historical change of controls summaries) related to Bonine;

8. FDA approved patient circulars and information related to Bonine;

9. adverse event reports, adverse experience information, descriptions of material events and matters concerning safety or lack of efficacy related to Bonine;

10. summary of Product complaints from physicians related to Bonine;

11. summary of Product complaints from customers related to Bonine;

12. Product recall reports filed with the FDA related to Bonine, and all reports, studies and other documents related to such recalls;

13. investigation reports and other documents related to any out of specification results for any impurities found in Bonine;

14. reports related to Bonine from any consultant or outside contractor engaged to investigate or perform testing for the purposes of resolving any product or process issues, including without limitation, identification and sources of impurities;

15. reports of vendors of the active pharmaceutical ingredients, excipients, packaging components and detergents used to produce Bonine that relate to the specifications, degradation, chemical interactions, testing and historical trends of the production of Bonine;

16. analytical methods development records related to Bonine;

17. manufacturing batch records related to Bonine;

18. stability testing records related to Bonine;

19. change in control history related to Bonine; and

20. executed validation and qualification protocols and reports related to Bonine.

PP. "Product Intellectual Property" means all of the following related to Bonine (other than Product Licensed Intellectual Property):

1. Patents;

2. Product Copyrights;

3. Product Trademarks, Product Trade Dress, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and

4. rights to obtain and file for patents, trademarks, and copyrights and registrations thereof and to bring suit against a Third Party for the past, present or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;

provided, however, "Product Intellectual Property" does not include the corporate names or corporate trade dress of "Prestige" or "Insight" or the related

corporate logos thereof, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by the Respondents or the related corporate logos thereof, or general registered images or symbols by which Prestige, or Insight can be identified or defined.

QQ. "Product Licensed Intellectual Property" means the following:

1. Patents that are related to Bonine that the Respondents can demonstrate have been used, prior to the Acquisition Date, for any Retained Product; and

2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the Geographic Territory to limit the use or disclosure thereof, that are related to Bonine and that the Respondents can demonstrate have been used, prior to the Acquisition Date, for any Retained Product.

RR. "Product Manufacturing Technology" means all of the following related to Bonine:

1. all technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of that Product, including, but not limited to, the following: all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA

Application(s) conformance and cGMP compliance, and labeling and all other information related to the manufacturing process, and supplier lists;

2. all ingredients, materials, or components used in the manufacture of that Product including the active pharmaceutical ingredient, excipients or packaging materials; and,

3. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer's option, all such equipment used to manufacture that Product.

SS. "Product Marketing Materials" means all marketing materials used specifically in the marketing or sale of Bonine in the Geographic Territory as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, detailing reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, television masters and other similar materials related to Bonine.

TT. "Product Scientific and Regulatory Material" means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and Clinical Trial materials and information.

UU. "Product Trade Dress" means the current trade dress of a Product, including but not limited to, Product

packaging, and the lettering of the Product trade name or brand name.

VV. "Product Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for a Product.

WW. "Remedial Agreement(s)" means the following:

1. any agreement between a Respondent(s) and the Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;

2. any agreement between a Respondent(s) and a Third Party to effect the assignment of assets or rights of that Respondent(s) related to Bonine to the benefit of the Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;

3. any agreement between a Respondent(s) and the Acquirer (or between a Divestiture Trustee and the Acquirer) that has been approved by the

Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement by that Respondent(s) to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of this Order; and/or

4. any agreement between a Respondent(s) and a Third Party to effect the assignment of assets or rights of that Respondent(s) related to Bonine to the benefit of the Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

XX. "Retained Product" means any Product(s) other than Bonine.

YY. "Technology Transfer Standards" means requirements and standards sufficient to ensure that the information and assets required to be delivered to the Acquirer pursuant to this Order are delivered in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner. Such standards and requirements shall include, *inter alia*,

1. designating employees of the Respondent(s) knowledgeable about the Product Manufacturing Technology (and all related intellectual property) related to Bonine who will be responsible for communicating directly with the Acquirer or its Manufacturing Designee, and the Interim Monitor (if one has been appointed), for the purpose of effecting such delivery;

2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to Bonine that are acceptable to the Acquirer;

3. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all such Product Manufacturing Technology (including all related intellectual property) to the Acquirer or its Manufacturing Designee; and

4. providing, in a timely manner, assistance and advice to enable the Acquirer or its Manufacturing Designee to:

   a. manufacture Bonine in the quality and quantities achieved by the Respondent Insight, or the manufacturer Bonine on behalf of Respondent Insight;

   b. obtain any Product Approvals necessary for the Acquirer or its Manufacturing Designee, to manufacture, distribute, market, and sell Bonine in commercial quantities and to meet all Agency-approved specifications for Bonine; and

   c. receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to Bonine.

ZZ. "Third Party(ies)" means any non-governmental Person other than the following: the Respondents; or, the Acquirer of particular assets or rights pursuant to this Order.

AAA. "Website" means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by

a Respondent; *provided, however,* "Website" shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by a Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that a Respondent can convey its rights, if any, therein; or (2) content unrelated to Bonine.

BBB. "Wellspring" means Wellspring Pharmaceutical Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 5911 North Honore Avenue, Suite 211, Sarasota, Florida 34243.

II.

IT IS FURTHER ORDERED that:

A. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondents shall divest the Bonine Assets and grant the related Divestiture Product License, absolutely and in good faith, to Wellspring pursuant to, and in accordance with, the Bonine Divestiture Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Wellspring or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Bonine Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Bonine Assets to Wellspring prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that Wellspring is not an acceptable purchaser of the Bonine Assets, then

Respondents shall immediately rescind the transaction with Wellspring, in whole or in part, as directed by the Commission, and shall divest the Bonine Assets within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondents have divested the Bonine Assets to Wellspring prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Bonine Assets to Wellspring (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the assets required to be divested pursuant to this Order to the Acquirer, and to permit the Acquirer to continue the Business of Bonine;

provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

C. Respondents shall:

1. submit to the Acquirer, at Respondents' expense, all Confidential Business Information;

2. deliver all Confidential Business Information to the Acquirer:

a. in good faith;

b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

3. pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to Bonine that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

4. not use, directly or indirectly, any such Confidential Business Information related to the Business of Bonine other than as necessary to comply with the following:

   a. the requirements of this Order;

   b. Respondents' obligations to the Acquirer under the terms of any related Remedial Agreement; or

   c. applicable Law;

5. not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by the Acquirer to receive such information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed); and

6. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business

Information related to the marketing or sales of Bonine to the marketing or sales employees associated with the Business related to the Retained Product Dramamine.

D. Respondents shall provide, or cause to be provided to the Acquirer in a manner consistent with the Technology Transfer Standards the following:

1. all Product Manufacturing Technology (including all related intellectual property) related to Bonine; and

2. all rights to all Product Manufacturing Technology (including all related intellectual property) that is owned by a Third Party and licensed to any Respondent related to Bonine.

Respondents shall obtain any consents from Third Parties required to comply with this provision. No Respondent shall enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to use or to acquire from the Third Party the Product Manufacturing Technology (including all related intellectual property) related to Bonine. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to such agreements that allows the Third Party to provide the Product Manufacturing Technology to the Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Acquirer.

E. Respondents shall require, as a condition of continued employment post-divestiture of the assets required to be divested pursuant to this Order, that each employee that has had responsibilities related to the marketing or

sales of Bonine within the one (1) year period prior to the Closing Date and each employee that has responsibilities related to the marketing or sales of the Retained Product Dramamine, in each case who have or may have had access to Confidential Business Information, and the direct supervisor(s) of any such employee sign a confidentiality agreement pursuant to which that employee shall be required to maintain all Confidential Business Information related to Bonine as strictly confidential, including the nondisclosure of that information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

F. Not later than thirty (30) days after the Closing Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to Bonine by Respondents' personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondents shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the notification to the Acquirer. Respondents shall maintain complete records of all such notifications at Respondents' principal business office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondents shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

G. Until Respondents complete the divestitures required by this Order and fully provide, or cause to be provided, the Product Manufacturing Technology related to a particular Bonine to the Acquirer,

1. Respondents shall take actions as are necessary to:

   a. maintain the full economic viability and marketability of the Businesses associated with Bonine;

   b. minimize any risk of loss of competitive potential for that Business;

   c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to Bonine;

   d. ensure that the Bonine Assets are provided to the Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the Business associated with Bonine; and

   e. ensure the completeness of the transfer and delivery of such Product Manufacturing Technology; and

2. Respondents shall not sell, transfer, encumber or otherwise impair the Bonine Assets (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Businesses associated with Bonine.

H. From the Closing Date, Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Acquirer or the Divestiture Product Releasee(s) of the Acquirer under the following:

1. any Patent owned by or licensed to a Respondent as of the day after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;

2. any Patent that was filed or in existence on or before the Acquisition Date that is acquired by or licensed to a Respondent at any time after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;

if such suit would have the potential directly to limit or interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of Bonine for the purposes of marketing, sale or offer for sale within the United States of America of Bonine; or (ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of Bonine. Each Respondent shall also covenant to the Acquirer that as a condition of any assignment or license from that Respondent to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Acquirer or the related Divestiture Product Releasee(s) under such Patents, if the suit would have the potential directly to limit or interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of Bonine for the purposes of marketing, sale or offer for sale within the United States of America of Bonine; or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of Bonine. The provisions of this Paragraph do not apply to any Patent owned by, acquired by or licensed to or from a Respondent that claims inventions conceived by and reduced to practice after the Acquisition Date.

I. Upon reasonable written notice and request from the Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondents to assist the Acquirer to defend against,

respond to, or otherwise participate in any litigation brought by a Third Party related to the Product Intellectual Property related to Bonine, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of Bonine for the purposes of marketing, sale or offer for sale within the United States of America of Bonine; or (ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of Bonine.

J. For any patent infringement suit filed prior to the Closing Date in which any Respondent is alleged to have infringed a Patent of a Third Party or any potential patent infringement suit from a Third Party that any Respondent has prepared or is preparing to defend against as of the Closing Date, and where such a suit would have the potential directly to limit or interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of Bonine for the purposes of marketing, sale or offer for sale within the United States of America of Bonine; or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of Bonine, that Respondent shall:

1. cooperate with the Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from that Respondent in connection with obtaining resolution of any pending patent litigation related to Bonine;

2. waive conflicts of interest, if any, to allow that Respondent's outside legal counsel to represent the Acquirer in any ongoing patent litigation related to Bonine; and

3. permit the transfer to the Acquirer of all of the litigation files and any related attorney work-

product in the possession of that Respondent's outside counsel related to Bonine.

K. The purpose of the divestiture of the Bonine Assets and the provision of the related Product Manufacturing Technology and the related obligations imposed on the Respondents by this Order is:

1. to ensure the continued use of such assets for the purposes of the Business associated with Bonine within the Geographic Territory; and

2. to create a viable and effective competitor that is independent of Respondents in the Business of Bonine within the Geographic Territory; and,

3. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements.

B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be

deemed to have consented to the selection of the proposed Interim Monitor.

C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Bonine Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of the Orders;

provided, however, that, the Interim Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the Bonine Assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.

F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

H. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the

reports submitted to the Interim Monitor by Respondents, and any reports submitted by each Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order; *provided, however*, beginning ninety (90) days after Respondents have filed their final report pursuant to Paragraph VII.B., and ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining any necessary approvals to manufacture Bonine and obtaining the ability to manufacture Bonine in commercial quantities, in a manner consistent with cGMP, independently of Respondents.

I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.

L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional

orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

M. The Interim Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Bonine Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and

expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to the Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary

terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the

relevant provisions of this Order or the Order to Maintain Assets in this matter.

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, each Respondent shall assure that its

own counsel (including its own in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to the Acquirer or access original documents provided to the Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

A. To assure such Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or

B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of Bonine or the assets and Businesses associated with Bonine;

provided, *however*, that a Respondent may disclose such information as necessary for the purposes set forth in this Paragraph V pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, *however,* that pursuant to this Paragraph V, the Respondent needing such access to original documents shall: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Acquirer (but shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and (ii) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VI.

IT IS FURTHER ORDERED that:

A. Any Remedial Agreement shall be deemed incorporated into this Order.

B. Any failure by a Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

C. Respondents shall include in each Remedial Agreement a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligation to the Acquirer pursuant to this Order.

D. No Respondent shall seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to Bonine a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.

E. No Respondent shall modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VII.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Within thirty (30) days after the Order Date, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II.A., II.B., II.C.1.-3., II.D., II.E., and II.G., Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Order, including:

1. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, and (ii) transitional services being provided by the Respondents to the Acquirer; and

2. a detailed description of the timing for the completion of such obligations.

C. One (1) year after the Order Date, annually for the next nine (9) years on the anniversary of the Order Date, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of a Respondent;

B. any proposed acquisition, merger or consolidation of a Respondent; or

C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on October 7, 2024.

By the Commission.

NON-PUBLIC APPENDIX I

AGREEMENTS RELATED TO THE DIVESTITURE

[Redacted From the Public Record Version, But Incorporated By Reference]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Prestige Brands Holdings, Inc. ("Prestige") and Insight Pharmaceuticals Corporation ("Insight"), which is designed to remedy the anticompetitive effects of Prestige's acquisition of Insight.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the

Commission will again evaluate the proposed Consent Agreement, along with the comments received, in order to make a final decision as to whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order ("Order").

Pursuant to a Stock Purchase Agreement dated April 25, 2014, Medtech Products Inc. ("Medtech"), a subsidiary of Prestige, intends to purchase all of the outstanding shares of Insight for approximately $750 million (the "Proposed Acquisition"). Both parties sell over-the-counter ("OTC") motion sickness medications in the United States. The Commission alleges in its Complaint that the Proposed Acquisition, if consummated, would violate 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, by lessening competition in U.S. markets for the manufacture, marketing, distribution, and sale of OTC motion sickness medications. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Proposed Acquisition. Specifically, under the terms of the Consent Agreement, Prestige would be required to divest all of Insight's rights and assets related to its OTC motion sickness product, Bonine. Prestige has proposed Wellspring Pharmaceutical Corporation ("Wellspring") as the buyer of the assets.

II. The Product and Structure of the Market

Prestige's proposed acquisition of Insight would significantly increase concentration in the OTC motion sickness medications market. Motion sickness is a condition in which a disagreement exists between visually perceived movement and the balance center of the inner ear's sense of movement. For example, a passenger on a ship might experience motion sickness if the inner ear senses the motion of waves, but the passenger's eyes do not see any movement. The most common symptoms of motion sickness are dizziness, fatigue, and nausea.

Prestige markets and sells the bestselling brand of OTC motion sickness medication, Dramamine. The only other branded OTC motion sickness medication with significant sales

is Bonine, which is sold and marketed by Insight. Alva-Amco sells the only other branded OTC motion sickness medication, but its sales are minimal. Private label OTC motion sickness products have significant sales, but private label OTC products have only a limited competitive impact in the market because they are usually priced at a fixed discount to branded OTC motion sickness medication products. Plus, private label products are not typically promoted or marketed. Unremedied, the Proposed Acquisition will consolidate the two most significant suppliers of OTC motion sickness medications and would substantially increase the Herfindahl-Hirschman Index.

III. Entry

Entry into the manufacture and sale of OTC motion sickness medications would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. The high up-front costs associated with establishing a reputable and competitive brand are significant when compared to the limited sales available in the United States. This high cost of entry relative to sales opportunities is exacerbated by the difficulty a new entrant would have in convincing retailers to either add a new untested brand to shelves or supplant an existing brand with its new brand.

IV. Effects

The Proposed Acquisition would likely cause significant anticompetitive harm to consumers in the market for the manufacture and sale of OTC motion sickness medications by eliminating actual, direct, and substantial competition between Prestige and Insight in this market. The Proposed Acquisition would likely result in higher prices for consumers because it would remove the close competition between Prestige's Dramamine and Insight's Bonine in terms of pricing and promotional activities.

V. The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the relevant

market. Pursuant to the Consent Agreement, the parties are required to divest Insight's rights and assets related to Bonine to Wellspring. Further, the proposed Consent Agreement requires Insight to assign to Wellspring its contract manufacturing and contract packaging agreements for the divested assets. The parties must accomplish these divestitures and relinquish their rights no later than ten days after the Proposed Acquisition is consummated.

Wellspring is well-suited to acquire the Bonine assets because of its current presence in other OTC retail markets. Wellspring produces and markets a portfolio of OTC brands, including anti-nausea products, skin creams, hygiene products, and potassium supplements, which are widely distributed throughout the United States and Canada. In addition, WellSpring is a contract manufacturing organization serving well-known U.S. pharmaceutical companies while also manufacturing many of its own products at its plant in Oakville, Ontario, Canada. Since Wellspring will step into Insight's existing contract manufacturing relationship for the production of Bonine, no transfer of manufacturing will be necessary for the proposed divestiture and Wellspring will be able to compete immediately in the OTC motion sickness medications market.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. If the Commission determines that Wellspring is not an acceptable acquirer of the divested assets, or that the manner of the divestiture is not acceptable, the parties must unwind the sale of rights to Wellspring, and divest the Bonine assets to a Commission-approved acquirer within six months of the date the Order becomes final. In that circumstance, the Commission may appoint a trustee to divest the product if the parties fail to divest it as required.

The proposed Consent Agreement contains several provisions to help ensure that the divestiture is successful. The Order requires Prestige and Insight to take all action necessary to maintain the economic viability, marketability, and competitiveness of the product to be divested until such time that they are transferred to a Commission-approved acquirer. The

Order also requires that Prestige and Insight transfer all confidential business information, including customer information related to the divestiture product, to Wellspring.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

JOHN MATTHEW DWYER III
A/K/A
MATTHEW DWYER

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

Docket No. C-4492; File No. 122 3287
Complaint, October 22, 2014 – Decision, October 22, 2014

This consent order addresses John Matthew Dwyer III's advertising for HealthyLife Sciences, LLC's Healthe Trim line of weight loss dietary supplements ("Healthe Trim"). The complaint alleges that Dwyer, a co-founder of HealthyLife Sciences, LLC, and former chief executive officer and spokesman for Healthe Trim, violated Sections 5(a) and 12 of the Federal Trade Commission Act by making false or unsubstantiated representations that Healthe Trim would cause rapid and substantial weight loss, including as much as 35, 130, and 165 pounds. The consent order bans Dwyer from manufacturing, marketing, or distributing any weight-loss product or program, or assisting others in any of the foregoing. The order also prohibits any representation about the health benefits, performance, or efficacy of any dietary supplement, food, or drug, unless it is non-misleading and supported by competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

Participants

For the *Commission*: *Christine DeLorme* and *Elizabeth Nach.*

For the *Respondent*: *John Matthew Dwyer III, pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe John Matthew Dwyer III, individually ("Respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent John Matthew Dwyer III, a/k/a Matthew Dwyer ("Dwyer"), is the co-founder of HealthyLife Sciences,

LLC ("HealthyLife Sciences"). Until September 2011, Dwyer served as company CEO, and he also was a company co-owner until 2013. Individually or in concert with others, he participated in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business from 2009 to 2012 was that of the corporation, and his current principal office or place of business is in Atlanta, Georgia.

2. Beginning in 2009, Respondent participated in the advertising, offering for sale, sale, and distribution of the Healthe Trim line of weight-loss dietary supplements to consumers, including Healthe Trim Original Formula and Healthe Trim Powered by Raspberry Ketone (collectively, "the Healthe Trim Products"). These products are "foods" and/or "drugs," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

Healthe Trim Weight-Loss Products

4. The Healthe Trim Products were sold primarily through HealthyLife Science's website www.healthytrim.com, and were also available in retail stores including CVS, GNC, and Walgreens. The price for a one-month supply of the Healthe Trim Products ranged from approximately $49.95 to $64.95.

5. Respondent participated in the dissemination of or caused to be disseminated advertising, packaging, and promotional materials for the Healthe Trim Products, including, but not necessarily limited to, the attached Exhibits A through E. These materials contain the following statements:

a. MATTHEW DWYER: Fall is here. So it's time for your weight to start falling off. Healthe Trim is the answer to your weight loss struggles. It's a natural supplement that actually works.

Hi, it's Matthew, founder of Healthe Trim, and we've sold over 1.5 million bottles. That should tell you right there that Healthe Trim works. Lose weight easily and quickly today . . . .

***

If you've tried diets, meal plans, clinics, meetings and nothing's worked for you, it doesn't surprise me. You got to give Healthe Trim a try.

Healthe Trim is so easy. Just a couple of capsules in the morning right when you wake up, drink water and go about your day. We guarantee it or your money back.

Make today the day you stop struggling with your weight and give Healthe Trim a try . . . .

(Exhibit A, 60-second radio ad).

b. MATTHEW DWYER: Are you ready for this? We've got something new for you. It's Matthew, founder of Healthe Trim. We've now added Healthe Trim raspberry ketone to our unique proprietary blend of Healthe Trim.

It's a breakthrough. It is awesome. I feel fantastic. Healthe Trim raspberry ketone will change your life. You'll lose weight without dieting. You won't believe how fast the fat will start burning off.

I guarantee it. 30-day, no questions asked money back guarantee. You will be as excited as I am with Healthe Trim, now powered by raspberry ketone. It burns the fat, suppresses your appetite, and will boost your energy. It's natural, it's safe and it is so easy. With our 30-day money back guarantee, you have nothing to lose but the weight. . . .

(Exhibit B, 60-second radio ad).

c. ELVIS DURAN: Hi, it's Elvis. You guys have heard about Healthe Trim and their excellent website HealthyTrim.com. Well, the founder of Healthe Trim and our weight loss expert is back with a 30-day money back guarantee. You have nothing to lose but the weight. Go to Healthytrim.com, start losing weight today. Healthytrim.com.

SKEERY JONES: How's it going? It's Skeery Jones. A lot of people have been asking me over the past year about this all-natural supplement I've been taking, which has allowed me to lose a whole bunch of weight and still eat the foods I like when I want them. It's called Healthe Trim at HealthyTrim.com.

Well, I figured to clear a whole lot of rumors up and to answer everyone's question [sic], we'd bring in Matthew Dwyer, the founder of Healthe Trim.

Good morning, Matthew.

MATTHEW DWYER: Skeery, how are you, buddy?

SKEERY JONES: The past year has just been amazing for me.

MATTHEW DWYER: Yeah, see, listen, here's the thing. Healthe Trim's not a diet, you know. It's just an all-natural supplement that you take in the morning and it works. It's not a lifestyle change, and I think that's why we're having so much success with it, because research shows that 95 percent of diets fail because you have to give up the foods that you love. So, you end up gaining the weight back. And that's not the case with Healthe Trim.

SKEERY JONES: Right.

MATTHEW DWYER: Listen, I was a guy that was just desperately trying to lose the weight. So, I started trying all different dietary supplements and they all gave me the crazy jittery feeling until I stumbled upon

Healthe Trim. I lost five pounds the first week; I lost 16 pounds in three weeks; I lost 47 pounds in 100 days.

SKEERY JONES: Oh, my God.

MATTHEW DWYER: It's not important what we weigh, Skeery, but it's the visceral fat around our organs, the belly fat, that causes all the health issues.

SKEERY JONES: And, you know, when I started taking Healthe Trim, I realized I was given more energy in the morning when I started taking the Healthe Trim. And then, throughout the day, the energy was sustained. I can eat what I want, but I don't find myself as hungry as I used to be.

MATTHEW DWYER: I think it's important to know there's 17 all-natural ingredients. I couldn't do the meal plans, I couldn't do the shake plans. What I can do is I can wake up in the morning, take two all-natural supplements, drink water and go about my day. I'm now a 32-inch waist. After three years, I haven't gained a pound back. I feel great. I don't have the crazy jittery feeling.

Dr. Oz does specials all the time about how over two-thirds of the supplements out there are scams because they don't have authentic hoodia in here. Hoodia is the cactus plant that the Africans used to live off way back in the day to go five or six days to hunt their prey without food. We have authentic hoodia in Healthe Trim.

SKEERY JONES: And I know that because I've checked your website and I've looked into it and you guys have the documents to back it up, that this is the real deal hoodia.

MATTHEW DWYER: And by no means is Dr. Oz endorsing Healthe Trim, but he says that all 17

ingredients in Healthe Trim are not only safe, they're very, very healthy for you.

SKEERY JONES: What about this Resveratrol I've been reading about?

MATTHEW DWYER: Yeah, Resveratrol is the grape red wine extract, okay? I encourage your listeners to Google the Harvard study on Resveratrol. There's just so many anti-aging benefits and healthy benefits to Resveratrol. Listen, everything that's in one capsule of Healthe Trim, it's just 17 fruits and vegetables. You get great energy from the green tea. There's 175 milligrams from green tea in one capsule, which is equivalent to about a 16-ounce Dunkin Donuts or Starbucks cup of coffee.

SKEERY JONES: Mm-hmm.

MATTHEW DWYER: Do I know that Healthe Trim is the best all-natural supplement in the world? No, I do not. But here's what I do know, Healthe Trim absolutely works and we have a 30-day no questions asked money back guarantee…

(Exhibit C, radio ad).

d. Healthe Trim
GET HIGH SCHOOL SKINNY!

[…]

A REVOLUTIONARY
THERMO-ENERGY
BOOSTER
LOSE WEIGHT! FEEL GREAT!
Our powerful diet supplements are made of only the finest natural ingredients available. They are formulated to provide energy boosts, surpass[sic] cravings and burn fat. Most importantly, they're EASY to add to your day – just take two in the morning!

[...]

Real **People**, Incredible **Results!**

[…]

Emily York
Phoenix, AZ

Lost 137 pounds!

My name is Emily. I'm a twenty-nine-year-old mother of three. After my first daughter, I gained 60 pounds in a year and learned I had thyroid disease, a condition that not only meant I would gain weight it also meant it would be difficult to lose weight. As the years went by, pounds piled on, and as I tried all the diet plans and pills and shakes with no success, my frustration grew.

Then I heard about healthé trim on the radio and the DJ had thyroid disease like me! I decided it would be my last try and if this didn't work maybe I was meant to stay that way. September 13, 2009, the day after my 29th birthday, I started healthé trim and I have since lost 121 pounds! I lost 19 pounds the first week and felt amazing. I have the energy to exercise that I didn't have before and there were no side effects with my thyroid meds.

Thanks to healthé trim I am high school skinny again. I have myself back, my husband has his wife back, and my kids have the mom they deserve! Thank you healthé trim!!

* The weight loss experienced by these individuals actually occurred. We do not have many facts about the circumstances about how this weight loss was achieved, other than the consuming of HealtheTrim, for either us or you to conclude that this should be a generally expected outcome from the use of HealtheTrim. We encourage a reasonable exercise and healthy diet as an important part of your weight loss

and maintenance program. A clinical study of 60 participants in 2009 reflected an average weight loss of 2.43 pounds in 30 days when those individuals took HealtheTrim exclusive of a diet and exercise program.

[…]

How to Lose Weight Fast

[…]

Natural Weight Loss Supplements

There are a lot of *weight loss supplements* out there, but not all of them are effective at producing real results. Healthé Trim is clinically proven to help you lose weight. Our *weight loss supplement* is made from natural ingredients that curb your appetite, boost energy, and increase your metabolism for *rapid weight loss*.

Fad diets that promise fast results may be dangerous to your health if they require you to consume too few calories. Healthé Trim lets you continue eating the food you enjoy in smaller portions while giving you extra energy for a more active lifestyle. Our natural weight loss supplement has everything your body needs to achieve *quick* weight loss and better overall health.

[…]

Fat Burner

People who want to lose body fat without sacrificing muscle need an effective *fat burner* as part of their *weight loss* strategy. Healthe Trim has developed a successful weight loss trio consisting of appetite suppressants, metabolism boosters and *fat burners* which work together to keep you healthy and help you burn fat without losing muscle.

Burning Fat and Preserving Muscle

Muscles keep us healthy and strong; they can also help both men and women feel more attractive and confident. We use them every day for a number of different tasks, so it is important to ensure they are not diminished by dieting. When trying out a new diet or *weight loss plan*, it is easy to neglect the nutrients you need to preserve your muscles. Fortunately, Healthe Trim provides a safe and natural solution for losing body fat while minimizing the loss of muscle.

Healthe Trim's Successful Weight Loss Trio

Appetite Suppressants

A major ingredient in Healthe Trim is *Hoodia gordonii*. This supplement acts as an appetite suppressant, keeping you focused and reducing the temptation to overeat. The combination of hoodia and our fat burner can result in losing up to 50 pounds by simply adding our *weight loss pill* to your diet.

Metabolism Boosters

Healthe Trim gives your body a metabolism boost which causes an increased amount of calories to be burned more quickly. Less food plus a faster metabolism means your body eats away at the fat reserves in order to keep going at its normal pace, resulting in a slimmer you.

Fat Burners

Healthe Trim includes a fat burner ingredient that targets stores of fat without weakening your muscles. Our balance of natural ingredients will ensure that your body uses stored fat reserves as fuel rather than preventing your muscles from getting the nutrition they need to stay strong and continue building.

Muscles burn more energy than other parts of the body, so losing muscle mass actually slows down your overall metabolism. Maintaining or building muscle is an important part of any weight loss plan. To ensure minimal muscle loss, you need a weight loss supplement to manage the energy that fuels your muscles. Healthe Trim's winning combination of *fat burners*, *appetite suppressants* and metabolism boosters will allow you to meet your weight loss goals using time-tested, all natural ingredients.

(Exhibit D, Healthytrim.com website).

e. […]

DR. WENDY WALSH: …But it all begins with one man, who's worked tirelessly to help hundreds of thousands of people lose millions of pounds. He desperately wanted to lose weight himself, but nothing he tried worked. Then he discovered the formula for Healthe Trim and it changed his life forever.

I'm happy to introduce Mr. Matthew Dwyer! Hi, Matthew.

MATTHEW DWYER: Hey, how are you? Thanks so much for having me.

DR. WENDY WALSH: People are losing weight. Matthew, I need to know what's going on.

MATTHEW DWYER: Hundreds of thousands of people have lost millions of pounds on Healthe Trim and they're keeping it off because Healthe Trim is just so darn easy.

DR. WENDY WALSH: Why do they stick to Healthe Trim?

MATTHEW DWYER: Because all you do is wake up in the morning, take two natural supplements, drink

water and go about your day, and it is just that simple. You'll be less hungry and you'll be less tired.

[On Screen Depiction: Before and after photos of Matthew Dwyer, labeled "Lost 47 pounds"]
You'll have great energy. It will motivate you to move around. It will curb your cravings and you'll lose the weight easy and naturally.

[…]

DR. WENDY WALSH: I'd like to introduce now Ann Hudson. Ann is a popular radio disc jockey and TV host in Austin, Texas. Welcome, Ann.

[On Screen Depiction: "Before" photo of Ann labeled "189 pounds" – subscript, "Lost 54 pounds"]

[…]

ANN HUDSON: Everyone around the office when I came back from maternity leave was taking Healthe Trim. It was all the rage. And I was like, what the heck is this? What's going on? When I started taking it, I felt better. I had a lot more energy. I wanted to do stuff. And after six weeks, the weight just started falling off. It was like five pounds, six pounds, eight pounds. It was a huge transition.

DR. WENDY WALSH: How much did you lose total?

ANN HUDSON: Fifty-four.

DR. WENDY WALSH: Fifty-four pounds.

ANN HUDSON: Yeah.

MATTHEW DWYER: So, you went from a 12 in a dress to a two in a dress.

ANN HUDSON: Now I'm a 2.

Complaint

MATTHEW DWYER: In five months, six months?

ANN HUDSON: Yes.

DR. WENDY WALSH: Five sizes, five months!

[…]

DR. WENDY WALSH: Welcome back. Well, everybody's talking about Healthe Trim and I'm finally beginning to understand why. It's quite simple. It's because Healthe Trim works. There's no extreme dieting, no extreme exercising, no costly meal delivery programs. Just two capsules in the morning and Healthe Trim goes right to work, making you feel less hungry while simultaneously giving you an alert, focused energy. So, you burn more calories than you take in. The result, you lose weight naturally.

MATTHEW DWYER: Most people are out there like me. They're stressed. Jobs, kids, it's difficult to eat a well-balanced meal and it's difficult to watch what you're eating and exercise all the time on a regular basis. It's not very difficult, though, to wake up in the morning, take two natural supplements, drink water and go about your day.

[…]

DR. WENDY WALSH: You've seen and heard great stories about real people just like you who have lost 10 to 20, 40 to 60, even 100 pounds or more with the number one natural weight loss supplement, Healthe Trim. Isn't it finally time for you to take control with Healthe Trim?. . . Just take two capsules a day and you're on your way to a better, healthier, happier life….

(Exhibit E, Healthe Trim infomercial).

Count I
False or Unsubstantiated Efficacy Claims for the Healthe Trim Products

6. In connection with the advertising, promotion, offering for sale, or sale of the Healthe Trim Products, Respondent has represented, directly or indirectly, expressly or by implication, that:

a. The Healthe Trim Products cause substantial weight loss, including as much as 35, 50, 130, and 165 pounds;

b. The Healthe Trim Products cause rapid weight loss, including as much as 19 pounds in the first week, 47 pounds in 100 days, and 54 pounds in five months;

c. The Healthe Trim Products cause weight loss without the need to diet, give up any foods, or make any changes in lifestyle;

d. The Healthe Trim Products burn fat and cause fat loss;

e. The Healthe Trim Products boost metabolism; and

f. The Healthe Trim Products suppress appetite.

7. The representations set forth in Paragraph 6 are false or misleading, or were not substantiated at the time the representations were made.

Count II
False Establishment Claims for the Healthe Trim Products

8. In connection with the advertising, promotion, offering for sale, or sale of the Healthe Trim Products, Respondent has represented, directly or indirectly, expressly or by implication, that scientific studies prove that the Healthe Trim Products cause weight loss.

9. In fact, scientific studies do not prove that the Healthe Trim Products cause weight loss. Among other reasons, two

clinical trials showed no statistically significant differences in weight loss between the test groups taking Healthe Trim Original Formula and test groups taking a placebo. Therefore, the representation set forth in Paragraph 8 is false or misleading.

Violations of Sections 5 and 12

10. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twenty-second day of October, 2014, has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A

EXHIBIT A

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 1223287

TITLE HEALTHY LIFE SCIENCES, LCC

DATE RECORDED: SEPTEMBER 28, 2012
TRANSCRIBED: MARCH 18, 2014

PAGES 1 THROUGH 5

EXHIBIT A - HEALTHY TRIM MATTHEW 60 FALL IS HERE 2995 30 DAYS 092812 - PROMO CODE MONSTERS

Complaint

FEDERAL TRADE COMMISSION

I N D E X

FEDERAL TRADE COMMISSION

In the Matter of:)
) Matter No. 1223287
Healthy Life Sciences, LLC)
---)
September 28, 2012

The following transcript was produced from a digital recording provided to For The Record, Inc. on March 11, 2014.

Complaint

PROCEEDINGS

- - - - -

EXHIBIT A - HEALTHY TRIM MATTHEW 60 FALL IS HERE 2995

30 DAYS 092812 - PROMO CODE MONSTERS

MATTHEW: Fall is here. So it's time for your weight to start falling off. Healthe Trim is the answer to your weight loss struggles. It's a natural supplement that actually works.

Hi, it's Matthew, founder of Healthe Trim, and we've sold over 1.5 million bottles. That should tell you right there that Healthe Trim works. Lose weight easily and quickly today with our limited time offer of $29.95 for a 30-day supply. That's a 50 percent savings.

If you've tried diets, meal plans, clinics, meetings and nothing's worked for you, it doesn't surprise me. You got to give Healthe Trim a try.

Healthe Trim is so easy. Just a couple of capsules in the morning right when you wake up, drink water and go about your day. We guarantee it or your money back.

Make today the day you stop struggling with your weight and give Healthe Trim a try with our amazing $29.95 offer for a 30-day supply. Go to HealthyTrim.com and enter promo code "monsters."

(The commercial was concluded.)

C E R T I F I C A T I O N O F T Y P I S T

MATTER NUMBER: 1223287
CASE TITLE: HEALTHY LIFE SCIENCES, LLC
TAPING DATE: SEPTEMBER 28, 2012
TRANSCRIPTION DATE: MARCH 18, 2014

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the tapes transcribed by me on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: MARCH 18, 2014

ELIZABETH M. FARRELL

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE

Complaint

Exhibit B

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 1223287

TITLE HEALTHY LIFE SCIENCES, LCC

DATE RECORDED: OCTOBER 5, 2012
TRANSCRIBED: MARCH 18, 2014

PAGES 1 THROUGH 5

EXHIBIT B - HEALTHY TRIM MATTHEW 60 BREAKTHROUGH
BUY 1 GET 1 100512

FEDERAL TRADE COMMISSION

I N D E X

Complaint

FEDERAL TRADE COMMISSION

In the Matter of:)
)
) Matter No. 1223287
Healthy Life Sciences, LLC)
)
October 5, 2012

The following transcript was produced from a digital recording provided to For The Record, Inc. on March 11, 2014.

4

P R O C E E D I N G S

- - - - -

EXHIBIT B - HEALTHY TRIM MATTHEW 60 BREAKTHROUGH BUY 1 GET 1 100512

MATTHEW: Are you ready for this? We've got something new for you. It's Matthew, founder of Healthe Trim. We've now added Healthe Trim raspberry ketone to our unique proprietary blend of Healthe Trim.

It's a breakthrough. It is awesome. I feel fantastic. Healthe Trim raspberry ketone will change your life. You'll lose weight without dieting. You won't believe how fast the fat will start burning off.

I guarantee it. 30-day, no questions asked money back guarantee. You will be as excited as I am with Healthe Trim, now powered by raspberry ketone. It burns the fat, suppresses your appetite, and will boost your energy. It's natural, it's safe and it is so easy.

With our 30-day money back guarantee, you have nothing to lose but the weight.

Go to HealthyTrim.com/rk and take advantage of our limited time offer of buy one, get one free. Supplies are limited, so buy now at HealthyTrim.com/rk.

(The commercial was concluded.)

Complaint

C E R T I F I C A T I O N O F T Y P I S T

MATTER NUMBER: 1223287
CASE TITLE: HEALTHY LIFE SCIENCES, LLC
TAPING DATE: OCTOBER 5, 2012
TRANSCRIPTION DATE: MARCH 18, 2014

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DATED: MARCH 18, 2014

ELIZABETH M. FARRELL

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I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE

Complaint

Exhibit C

EXHIBIT C

1

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 1223267

TITLE HEALTHY LIFE SCIENCES, LCC

DATE RECORDED: JANUARY 24

TRANSCRIBED: MARCH 18, 2014

PAGES 1 THROUGH 9

EXHIBIT C - WHTZ HEALTHYTRIM ELVIS AND MATTHEW 1-24

Complaint

FEDERAL TRADE COMMISSION

I N D E X

FEDERAL TRADE COMMISSION

In the Matter of:)
) Matter No. 1223287
Healthy Life Sciences, LLC)
---)
January 24

The following transcript was produced from a digital recording provided to For The Record, Inc. on March 11, 2014.

Complaint

P R O C E E D I N G S

- - - - -

EXHIBIT C - WHTZ HEALTHYTRIM ELVIS AND MATTHEW 1-24

ELVIS: Hi, it's Elvis. You guys have heard about Healthe Trim and their excellent website HealthyTrim.com. Well, the founder of Healthe Trim and our weight loss expert is back with a 30-day money back guarantee. You have nothing to lose but the weight. Go to HealthyTrim.com, start losing weight today. HealthyTrim.com.

SKEERY JONES: How's it going? It's Skeery Jones. A lot of people have been asking me over the past year about this all-natural supplement I've been taking, which has allowed me to lose a whole bunch of weight and still eat the foods I like when I want them. It's called Healthe Trim at HealthyTrim.com.

Well, I figured to clear a whole lot of rumors up and to answer everyone's question, we'd bring in Matthew Dwyer, the founder of Healthe Trim.

Good morning, Matthew.

MATTHEW DWYER: Skeery, how are you, buddy?

SKEERY JONES: The past year has just been amazing for me.

MATTHEW DWYER: Yeah, see, listen, here's the thing. Healthe Trim's not a diet, you know. It's just

5

an all-natural supplement that you take in the morning and it works. It's not a lifestyle change, and I think that's why we're having so much success with it, because research shows that 95 percent of diets fail because you have to give up the foods that you love. So, you end up gaining the weight back. And that's not the case with Healthe Trim.

SKEERY JONES: Right.

MATTHEW DWYER: Listen, I was a guy that was just desperately trying to lose the weight. So, I started trying all different dietary supplements and they all gave me the crazy jittery feeling until I stumbled upon Healthe Trim. I lost five pounds the first week; I lost 16 pounds in three weeks; I lost 47 pounds in 100 days.

SKEERY JONES: Oh, my God.

MATTHEW DWYER: It's not important what we weigh, Skeery, but it's the visceral fat around our organs, the belly fat, that causes all the health issues.

SKEERY JONES: And, you know, when I started taking Healthe Trim, I realized I was given more energy in the morning when I started taking the Healthe Trim. And then, throughout the day, the energy was sustained. I can eat what I want, but I don't find myself as hungry as I used to be.

Complaint

6

MATTHEW DWYER: I think it's important to know there's 17 all-natural ingredients. I couldn't do the meal plans, I couldn't do the shake plans. What I can do is I can wake up in the morning, take two all-natural supplements, drink water and go about my day. I'm now a 32-inch waist. After three years, I haven't gained a pound back. I feel great. I don't have the crazy jittery feeling.

Dr. Oz does specials all the time about how over two-thirds of the supplements out there are scams because they don't have authentic hoodia in here. Hoodia is the cactus plant that the Africans used to live off way back in the day to go five or six days to hunt their prey without food. We have authentic hoodia in Healthe Trim.

SKEERY JONES: And I know that because I've checked your website and I've looked into it and you guys have the documents to back it up, that this is the real deal hoodia.

MATTHEW DWYER: And by no means is Dr. Oz endorsing Healthe Trim, but he says that all 17 ingredients in Healthe Trim are not only safe, they're very, very healthy for you.

SKEERY JONES: What about this Resveratrol I've been reading about?

MATTHEW DWYER: Yeah, Resveratrol is the grape red wine extract, okay? I encourage your listeners to Google the Harvard study on Resveratrol. There's just so many anti-aging benefits and healthy benefits to Resveratrol. Listen, everything that's in one capsule of Healthe Trim, it's just 17 fruits and vegetables. You get great energy from the green tea. There's 175 milligrams from green tea in one capsule, which is equivalent to about a 16-ounce Dunkin Donuts or Starbucks cup of coffee.

SKEERY JONES: Mm-hmm.

MATTHEW DWYER: Do I know that Healthe Trim is the best all-natural supplement in the world? No, I do not. But here's what I do know, Healthe Trim absolutely works and we have a 30-day no questions asked money back guarantee.

SKEERY JONES: So, what's the phone number? How can people get their hands on some Healthe Trim?

MATTHEW DWYER: It's 800-456-TRIM. That's 800-456-8746 or HealthyTrim.com.

SKEERY JONES: So, HealthyTrim.com. And what's that number again?

MATTHEW DWYER: 800-456-TRIM. That's 800-456-8746 or HealthyTrim.com.

SKEERY JONES: Matthew, the phone lines are

Complaint

lighting up. Can you stick around for just a little bit?

MATTHEW DWYER: Yeah, man, I'll stick around.

SKEERY JONES: Cool. All right, we're going to answer some of those questions in just a little while and we have more coming up right after this.

(The commercial was concluded.)

C E R T I F I C A T I O N O F T Y P I S T

MATTER NUMBER: 1223287
CASE TITLE: HEALTHY LIFE SCIENCES, LLC
TAPING DATE: JANUARY 24
TRANSCRIPTION DATE: MARCH 18, 2014

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the tapes transcribed by me on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: MARCH 18, 2014

ELIZABETH M. FARRELL

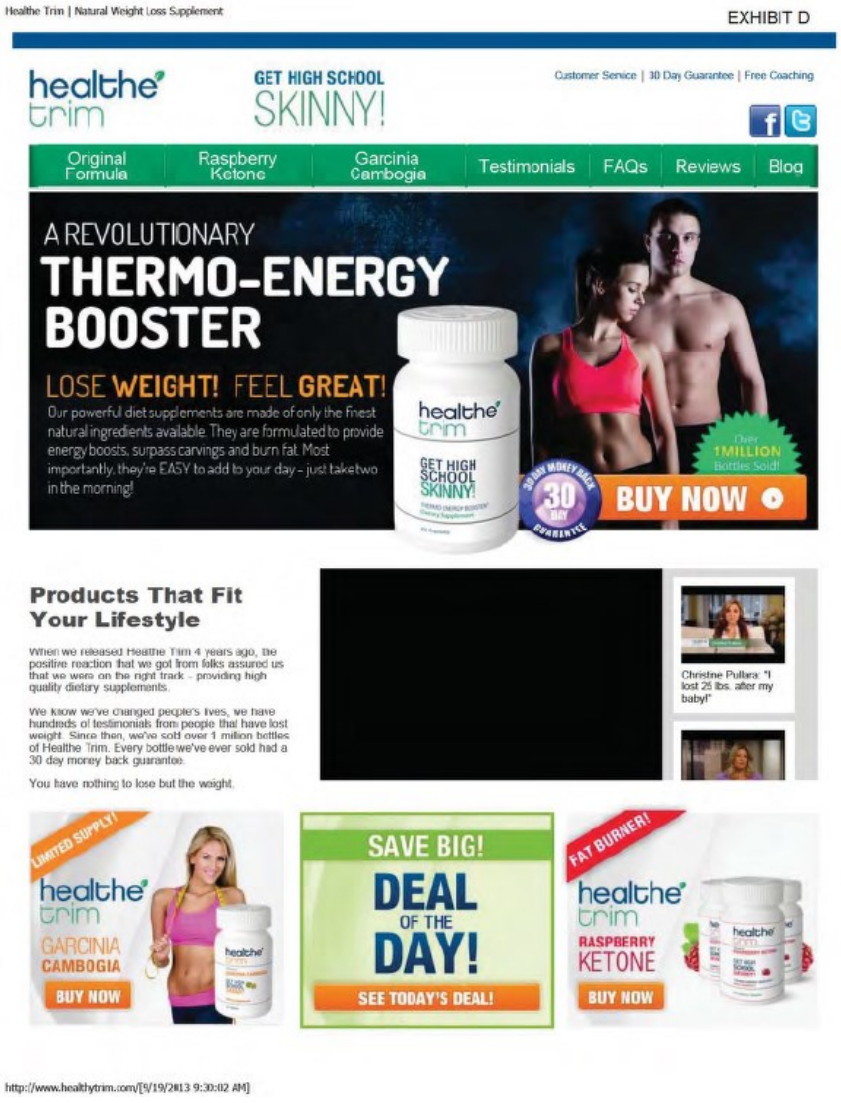
C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE

Complaint

Exhibit D



Healthe Trim | Natural Weight Loss Supplement

EXHIBIT D

Real **People**, Incredible **Results**!

Alicia Hanner
Gilbert, AZ

Since mid-summer I'd begun to pay closer attention to John Jay & Rich talk about healthé trim. They raved about its simplicity. I decided it was time. I was over 210 lbs. and I am only 5'7". I knew I needed change before it started affecting my health. I had to lose some weight—primarily baby weight from having twins in '04* Read More

Victoria Russell
Southborough, MA

My weight loss goal was to lose about 15-20 lbs and I ended up losing 30 lbs in 4 months and a total of 35 lbs in 5 months! I've never been really overweight, but I always had trouble shedding a little extra weight that I wasn't happy with. Since I've been taking Healthé Trim and lost the weight I am just more comfortable and confident with my body.* Read More

Emily York
Phoenix, AZ

My name is Emily. I'm a twenty-nine-year-old mother of three. After my first daughter, I gained 60 pounds in a year and learned I had thyroid disease, a condition that not only meant I would gain weight it also meant it would be difficult to lose weight. As the years went by, pounds piled on, and as I tried all the diet plans and pills and shakes with no success.* Read More

*The weight loss experienced by these individuals actually occurred. We do not have many facts about the circumstances about how this weight loss was achieved, other than the consuming of Healthe Trim, for either us or you to conclude that this should be generally expected outcome from the use of Healthe Trim. We encourage a reasonable exercise and healthy diet as an important part of your weight loss and maintenance program. A clinical study of 60 participants in 2009 reflected an average weight loss of 2.43 pounds in 30 days when those individuals took Healthe Trim exclusive of a diet and exercise program.

Healthe Trim Uses Natural **Ingredients**

healthe trim - ORIGINAL FORMULA

Authentic **Hoodia Gordonii**

Hoodia is a genus of 13 species in the flowering plant family Apocynaceae, under the subfamily Asclepiadoideae. They are stem succulents... read more.

Green Tea **Leaf Extract**

Green tea is tea made solely with the leaves of Camellia sinensis that have undergone minimal oxidation during processing. Green tea... read more.

Garcinia **Cambogia**

Garcinia Cambogia is a natural form of Hydroxycitric Acid (HCA) which can inhibit Citrate Lyase (an enzyme in cells). Citrate Lyase... read more.

Authentic **Resveratrol**

...ed by plants with its highest concentration in grape skins and red wines. This nutrient is working to boost... read more.

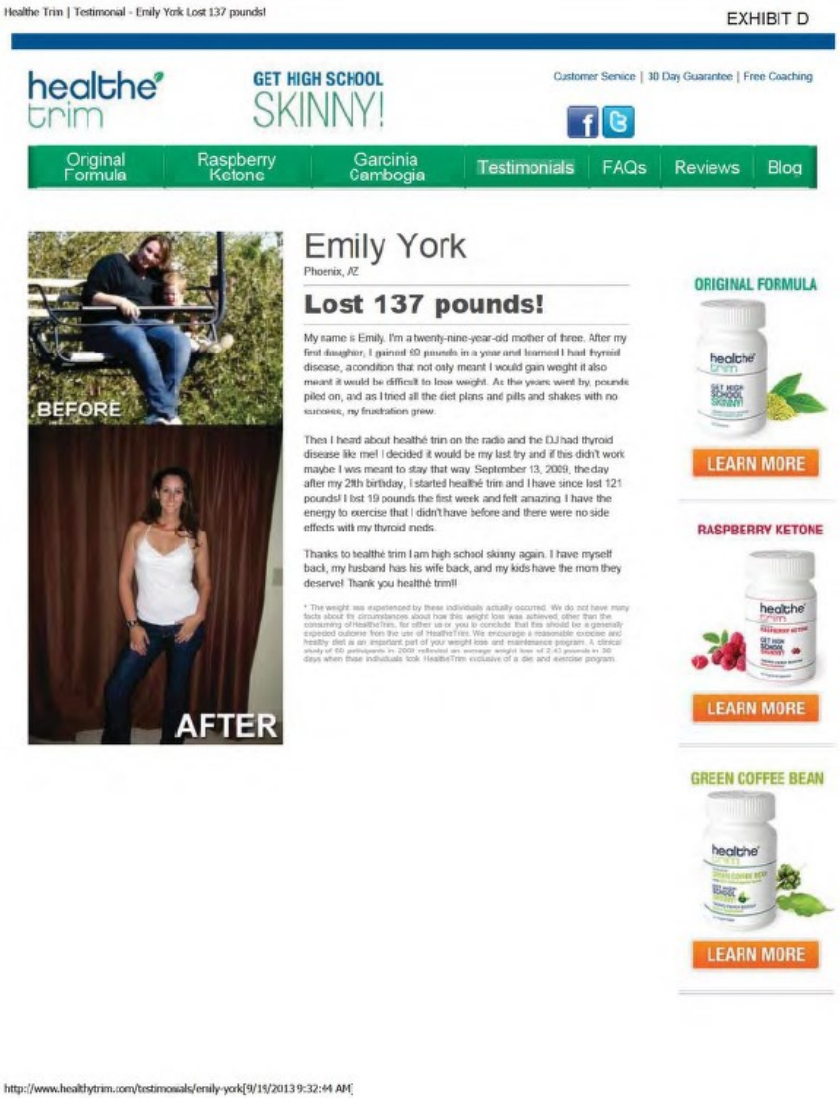
Caralluma **Fimbriata**

...ulent plant in the family Apocynaceae. It has been eaten in rural India for centuries, raw, as a vegetable with... read more.

Coix **Seed**

Coixseed (also known as Job's Tears) is a tall grain-bearing tropical plant of the family Poaceae (grass family) native to East Asia and... read more.

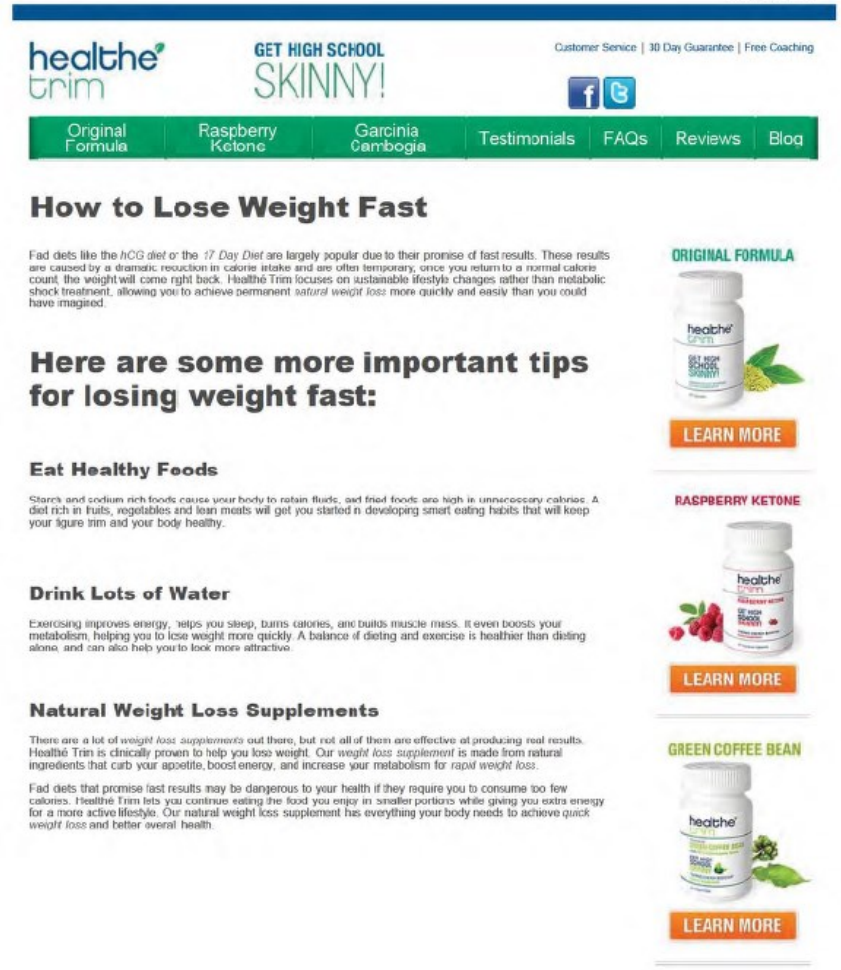
Complaint


Healthe Trim | Testimonial - Emily York Lost 137 pounds!
EXHIBIT D
healthe trim
GET HIGH SCHOOL SKINNY!
Customer Service | 30 Day Guarantee | Free Coaching
Original Formula
Raspberry Ketone
Garcinia Cambogia
Testimonials
FAQs
Reviews
Blog
BEFORE
AFTER
Emily York
Phoenix, AZ
Lost 137 pounds!
My name is Emily. I'm a twenty-nine-year-old mother of three. After my first daughter, I gained 60 pounds in a year and learned I had thyroid disease, a condition that not only meant I would gain weight it also meant it would be difficult to lose weight. As the years went by, pounds piled on, and as I tried all the diet plans and pills and shakes with no success, my frustration grew.
Then I heard about healthé trim on the radio and the DJ had thyroid disease like me! I decided it would be my last try and if this didn't work maybe I was meant to stay that way. September 13, 2009, the day after my 29th birthday, I started healthé trim and I have since lost 121 pounds! I lost 19 pounds the first week and felt amazing. I have the energy to exercise that I didn't have before and there were no side effects with my thyroid meds.
Thanks to healthe trim I am high school skinny again. I have myself back, my husband has his wife back, and my kids have the mom they deserve! Thank you healthé trim!!
* The weight loss experienced by these individuals actually occurred. We do not have many facts about the circumstances about how this weight loss was achieved, other than the consuming of HealtheTrim, for either us or you to conclude that this should be a generally expected outcome from the use of HealtheTrim. We encourage a reasonable exercise and healthy diet as an important part of your weight loss and maintenance program. A clinical study of 60 participants in 2009 reflected an average weight loss of 2.43 pounds in 30 days when these individuals took HealtheTrim exclusive of a diet and exercise program.
ORIGINAL FORMULA
LEARN MORE
RASPBERRY KETONE
LEARN MORE
GREEN COFFEE BEAN
LEARN MORE
http://www.healthytrim.com/testimonials/emily-york[9/19/2013 9:32:44 AM]

Complaint

Lose Weight Fast With Healthe Trim

EXHIBIT D



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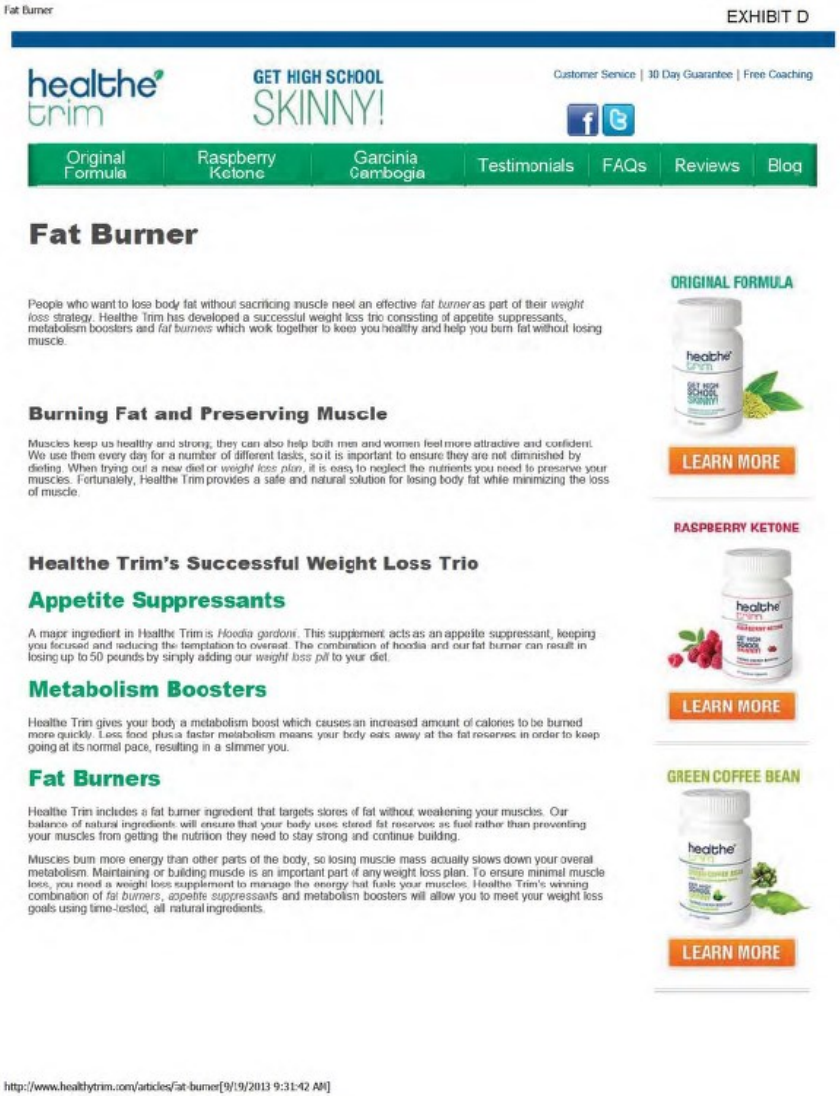
Complaint



Fat Burner

EXHIBIT D

healthe trim

GET HIGH SCHOOL SKINNY!

Customer Service | 30 Day Guarantee | Free Coaching

Original Formula | Raspberry Ketone | Garcinia Cambogia | Testimonials | FAQs | Reviews | Blog

Fat Burner

People who want to lose body fat without sacrificing muscle need an effective *fat burner* as part of their *weight loss* strategy. Healthe Trim has developed a successful weight loss trio consisting of appetite suppressants, metabolism boosters and *fat burners* which work together to keep you healthy and help you burn fat without losing muscle.

Burning Fat and Preserving Muscle

Muscles keep us healthy and strong, they can also help both men and women feel more attractive and confident. We use them every day for a number of different tasks, so it is important to ensure they are not diminished by dieting. When trying out a new diet or *weight loss plan*, it is easy to neglect the nutrients you need to preserve your muscles. Fortunately, Healthe Trim provides a safe and natural solution for losing body fat while minimizing the loss of muscle.

Healthe Trim's Successful Weight Loss Trio

Appetite Suppressants

A major ingredient in Healthe Trim is *Hoodia gardonii*. This supplement acts as an appetite suppressant, keeping you focused and reducing the temptation to overeat. The combination of hoodia and our fat burner can result in losing up to 50 pounds by simply adding our *weight loss pill* to your diet.

Metabolism Boosters

Healthe Trim gives your body a metabolism boost which causes an increased amount of calories to be burned more quickly. Less food plus a faster metabolism means your body eats away at the fat reserves in order to keep going at its normal pace, resulting in a slimmer you.

Fat Burners

Healthe Trim includes a fat burner ingredient that targets stores of fat without weakening your muscles. Our balance of natural ingredients will ensure that your body uses stored fat reserves as fuel rather than preventing your muscles from getting the nutrition they need to stay strong and continue building.

Muscles burn more energy than other parts of the body, so losing muscle mass actually slows down your overall metabolism. Maintaining or building muscle is an important part of any weight loss plan. To ensure minimal muscle loss, you need a weight loss supplement to manage the energy fat fuels your muscles. Healthe Trim's winning combination of *fat burners*, *appetite suppressants* and metabolism boosters will allow you to meet your weight loss goals using time-tested, all natural ingredients.

ORIGINAL FORMULA

LEARN MORE

RASPBERRY KETONE

LEARN MORE

GREEN COFFEE BEAN

LEARN MORE

http://www.healthytrim.com/articles/fat-burner[9/19/2013 9:31:42 AM]

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Exhibit E

EXHIBIT E

1

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 1223287

TITLE HEALTHY LIFE SCIENCES, LLC

DATE RECORDED: JUNE 24, 2012
TRANSCRIBED: FEBRUARY 24, 2014
REVISED: MARCH 13, 2014

PAGES 1 THROUGH 49

HEALTHE TRIM VIDEO

Complaint

FEDERAL TRADE COMMISSION

I N D E X

FEDERAL TRADE COMMISSION

In the Matter of:)
) Matter No. 1223287
Healthy Life Sciences, LLC)
---)

The following transcript was produced from a digital recording provided to For The Record, Inc. on February 3, 2014.

Complaint

P R O C E E D I N G S

- - - - -

HEALTHE TRIM VIDEO

ON SCREEN: The following is a paid program for Healthe Trim.

Sponsored by HealthyLife Sciences, LLC.

ON SCREEN: Dr. Wendy Walsh, PhD

Healthe Trim

DR. WENDY WALSH: The effects on your health of being overweight can be overwhelming and dangerous, both physically and mentally, coronary heart disease, cancer, high blood pressure, depression, anxiety. We eat too much and don't exercise enough. Plain and simply, we've lost control of the part of our brain that tells us when we're full.

ON SCREEN: How Mario helped me

LOSE 30 LBS. IN 5 MONTHS

How did this mother of 3 Get High School Skinny!

Healthe Trim

DR. WENDY WALSH: I've heard about a fast-acting natural supplement that's helping people just like you take back control and lose weight.

ON SCREEN: LOST

307 35 54 50 127

5

User Group average weight loss 10.92 lbs in 30 days

DR. WENDY WALSH: In the next half-hour, you'll hear truly amazing stories of weight loss that are breathtaking.

ON SCREEN: Dr. Wendy Walsh, PhD

Healthe Trim

DR. WENDY WALSH: People like you have started new lives. They're so proud and joyful and their story can be your story.

But it all begins with one man, who's worked tirelessly to help hundreds of thousands of people lose millions of pounds. He desperately wanted to lose weight himself, but nothing he tried worked. Then he discovered the formula for Healthe Trim and it changed his life forever.

I'm happy to introduce Mr. Matthew Dwyer. Hi, Matthew.

MATTHEW DWYER: Hey, how are you? Thanks so much for having me.

DR. WENDY WALSH: People are losing weight. Matthew, I need to know what's going on.

MATTHEW DWYER: Hundreds of thousands of people have lost millions of pounds on Healthe Trim and they're keeping it off because Healthe Trim is just so darn easy.

Complaint

DR. WENDY WALSH: Why do they stick to Healthe Trim?

ON SCREEN: Diet and exercise are necessary to lose weight

MATTHEW DWYER: Because all you do is wake up in the morning, take two natural supplements, drink water and go about your day, and it is just that simple. You'll be less hungry and you'll be less tired.

ON SCREEN: Before and After photos

Lost 47 Pounds

Matthew

Healthe Trim

MATTHEW DWYER: You'll have great energy. It will motivate you to move around. It will curve your cravings and you'll lose the weight easy and naturally.

DR. WENDY WALSH: So, it actually makes you want to move more?

MATTHEW DWYER: It really does. It makes you want to move more.

ON SCREEN: Before 189 Pounds

Lost 54 Pounds

User Group average weight loss 10.92 lbs in 30 days

Healthe Trim

DR. WENDY WALSH: I'd like to introduce now Ann

Hudson. Ann is a popular radio disk jockey and TV host in Austin, Texas. Welcome, Ann.

ANN HUDSON: Yes. Thank you.

DR. WENDY WALSH: I also understand you're a really busy mom of two.

ANN HUDSON: Yes, two boys. Two boys.

DR. WENDY WALSH: That's exhausting. So, DJs are jaded, they're skeptics. They hear about stuff all the time.

ANN HUDSON: Well, yeah, because most of the time, it's crap.

MATTHEW DWYER: I was skeptical, too. I tried 42 dietary supplements before Healthe Trim changed my life. They all failed me. But I'll tell you what, don't take it from me. Just listen to all these people that have lost massive amounts of weight.

ANN HUDSON: Everyone around the office when I came back from maternity leave was taking Healthe Trim. It was all the rage. And I was like, what the heck is this? What's going on? When I started taking it, I felt better. I had a lot more energy. I wanted to do stuff. And after six weeks, the weight just started falling off. It was like five pounds, six pounds, eight pounds. It was a huge transition.

DR. WENDY WALSH: How much did you lose total?

Complaint

ANN HUDSON: Fifty-four.
DR. WENDY WALSH: Fifty-four pounds.
ANN HUDSON: Yeah.
MATTHEW DWYER: So, you went from a 12 in a dress to a two in a dress.
ANN HUDSON: Now I'm a 2.
MATTHEW DWYER: In five months, six months?
ANN HUDSON: Yes.
DR. WENDY WALSH: Five sizes, five months.
ANN HUDSON: The moral of the story really is, if you stick with it, you're going to lose the weight. And that's what I always tell people. And I have people calling me all the time at the radio station talking about their weight loss because it -- it's going to happen for you. Stick with it.
ON SCREEN: FREE TRIAL 30 DAY
$9.95
Shipping and Processing
LOST 35 POUNDS
Victoria
Lost 54 Pounds
Ann
Lost 127 Pounds
Debbie
Lost 130 Pounds

9

Ben

Lost 165 Pounds

Jay

Satisfaction Guarantee 100%

Your results may vary.

1-800-576-6399

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Healthe Trim

MATTHEW DWYER: I want you to lose the weight. I want you to live a better, healthier lifestyle, and that's why I'm here. I know Healthe Trim will work for you because it's worked for me and hundreds of thousands of others. You'll start to see and feel a difference in just seven days. I guarantee it.

ON SCREEN: Before 247 Pounds

Lost 127 Pounds

User Group average weight loss 10.92 lbs in 30 days

Healthe Trim

DR. WENDY WALSH: Right now, we're going to meet another one of Healthe Trim's amazing success stories. Now, she's a really busy mother of four who once thought that weight loss was completely out of the question until Healthe Trim. I want to welcome Debbie White to our show.

Complaint

How much did you lose?

DEBBIE WHITE: I've lost 127 pounds in 13 months.

DR. WENDY WALSH: 127 pounds.

DEBBIE WHITE: Yes, ma'am.

MATTHEW DWYER: Thirteen months. How long ago was that?

DR. WENDY WALSH: You lost half yourself.

DEBBIE WHITE: I did.

DR. WENDY WALSH: When did you start to gain weight?

DEBBIE WHITE: I gained -- started gaining weight when they removed my thyroid.

DR. WENDY WALSH: So, you had a health issue.

MATTHEW DWYER: She was thin all her life until the age of 33.

DR. WENDY WALSH: How was it affecting your marriage?

DEBBIE WHITE: It got very complicated. My -- it's kind of like our, well, sex life stopped.

DR. WENDY WALSH: Mmm.

DEBBIE WHITE: I wouldn't let him see me naked at all. I'd literally tell him, turn off the light, get in bed. And then I'd get in bed and I'd just have all these pajamas on because I just -- I didn't want him

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touching me. I just felt so gross.

DR. WENDY WALSH: Did you worry your husband was going to leave you?

DEBBIE WHITE: I thought, well, you know, if he's getting it, you know, somewhere else, I hope he's happy. I wanted to die. I really -- I just wanted to die. I know that that sounds so selfish about me because, you know, oh, well, it's just weight. I even went into the bathroom one day when they were gone and I filled the tub with water, lit some candles and some music, and I just sat there and I cried and I cried and I cried and I had a bottle of pills with me. And then my phone rang and it was my daughter and I just -- I just threw them away. I just -- she saved me.

DR. WENDY WALSH: Oh. I'm so glad that phone call came.

DEBBIE WHITE: So am I.

DR. WENDY WALSH: And I'm so glad you're here today, because today you have a new story to tell, don't you?

DEBBIE WHITE: Yes, I do.

DR. WENDY WALSH: So, you spent $30,000 on products.

DEBBIE WHITE: Yes.

DR. WENDY WALSH: You had completely given up.

Complaint

DEBBIE WHITE: Yeah.

DR. WENDY WALSH: It was done for you.

DEBBIE WHITE: Yes.

DR. WENDY WALSH: How did you hear about Healthe Trim?

DEBBIE WHITE: You know, people were like, this works, you've got to try this, Debbie, you've just got to try it. I'm like, don't even go there with me, don't, you have no idea. And I tried it and in the first week, I lost five pounds. I kept losing weight.

DR. WENDY WALSH: And this is only days and weeks after beginning.

DEBBIE WHITE: Like a month because I had lost ten pounds in a month.

DR. WENDY WALSH: Wow.

DEBBIE WHITE: Yeah.

DR. WENDY WALSH: So, did this inspire you to keep going?

DEBBIE WHITE: Oh, yeah. Oh, yeah. I was like, okay, give me the bottle.

DR. WENDY WALSH: Right.

DEBBIE WHITE: I need more.

MATTHEW DWYER: Well, you didn't take more.

DEBBIE WHITE: No, I didn't. I just wanted to make sure I didn't run out.

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DR. WENDY WALSH: That's right. So, Debbie, you have lost 127 pounds in 13 months. How do you keep the weight off?

DEBBIE WHITE: I take Healthe Trim, two capsules every morning, and it's easy as that.

DR. WENDY WALSH: So, it's easy for you?

DEBBIE WHITE: It's very easy for me.

DR. WENDY WALSH: Are you feeling deprived?

DEBBIE WHITE: No, not at all.

DR. WENDY WALSH: Not at all?

DEBBIE WHITE: No, I can eat whatever I want. And I just -- I don't sit there and go, oh no, I can't have that, I wish I could. No, I get to order it and I get to eat it and then I take the rest home.

DR. WENDY WALSH: How's it going with the hubby now?

DEBBIE WHITE: I feel so much more in love with him. I mean, it just --

DR. WENDY WALSH: He's courting you.

DEBBIE WHITE: He is, and I'm feeling it and I am loving it.

DR. WENDY WALSH: Things rocking?

DEBBIE WHITE: Things are rocking. I keep the lights on.

MATTHEW DWYER: Oh, geez.

Complaint

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DEBBIE WHITE: I even want to Victoria's Secret and got some sexy stuff.

DR. WENDY WALSH: Whoo, whoo. She's shopping at Victoria's Secret. You know what that means.

DEBBIE WHITE: My honey's a keeper. He was always there to support me and he's not going anywhere. Not now.

DR. WENDY WALSH: Now he's getting satisfied, not the Healthe Trim satisfied. Actually, that is what the Healthe Trim satisfaction is, isn't it?

MATTHEW DWYER: Yep, pretty much it is.

DR. WENDY WALSH: Everyone benefits.

DEBBIE WHITE: Everyone. And many times over.

MATTHEW DWYER: Oh, gosh.

DR. WENDY WALSH: Matthew's like, I don't know what I've started here. I want to see it. Stand up there and give me a little twirl, would you? Look at that. And you're in like a size four jean there?

DEBBIE WHITE: Two.

DR. WENDY WALSH: Size two skinny jean. You hear that? Don't tell me, those were your shorts.

DEBBIE WHITE: These were my shorts 14 months ago.

DR. WENDY WALSH: You could make a skirt out of one leg.

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DEBBIE WHITE: I know, I could, huh.
DR. WENDY WALSH: You could make a great little pencil skirt there.
MATTHEW DWYER: Fourteen months?
DEBBIE WHITE: Yeah, 14 months ago.
DR. WENDY WALSH: That's amazing. All because of Healthe Trim.
DEBBIE WHITE: I'm 47 years old and I feel like a hot mama and I cannot wait to be that hot grandma, seriously.
DR. WENDY WALSH: Oooh.
DEBBIE WHITE: Because I'm going to keep this figure. I'm keeping it for the rest of my days.
MATTHEW DWYER: Healthe Trim works and it's easy. That's the beautiful thing.
ON SCREEN: Before and After photos
Lost 47 Pounds
Diet and exercise are necessary to lose weight.
Matthew
Healthe Trim
MATTHEW DWYER: And it's no lifestyle change. You don't have to change your lifestyle. You can still do whatever you want and still eat the foods that you love.

Complaint

16

ON SCREEN: Before 247 Pounds
Lost 127 Pounds
Healthe Trim
MATTHEW DWYER: You're just going to eat less portions and feel content and feel happy pushing that plate away.
ON SCREEN: Based on advertising dollars 2010-2011 on Clear Channel
Healthe Trim
DR. WENDY WALSH: You know, Healthe Trim is the number one natural weight loss supplement and for good reason. It works. People from every walk of life have taken control of their weight and lost 10 to 20, 40 to 60, even 100 pounds and more, and the best part is they did it without dieting and without depriving themselves of the foods they love.
Isn't it time you joined them?
ON SCREEN: Dr. Wendy Walsh, PhD
Health Trim
DR. WENDY WALSH: Stay tuned to find out how you can get Healthe Trim delivered right to your door through a special limited time introductory offer.
ON SCREEN: Dr. Wendy Walsh, PhD
You are watching a paid advertisement for Healthe Trim, brought to you by HealthyLife Sciences,

17

LLC.

Health Trim

DR. WENDY WALSH: Take control of your health and your weight today with Healthe Trim.

ON SCREEN: WEIGHT LOSS PROGRAM (STOP)

GYM MEMBERSHIP (STOP)

EXTREME EXERCISE (STOP)

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Satisfaction Guarantee 100%

TRYHEALTHETRIM.COM

Healthe Trim

DR. WENDY WALSH: You know you can pay hundreds of dollars a month for weight loss programs, gym memberships and extreme exercise routines --

ON SCREEN: FREE TRIAL 30 DAY

CALL NOW

Satisfaction Guarantee 100%

1-800-576-6399

TRYHEALTHETRIM.COM

DR. WENDY WALSH: -- but if you call the number on your screen or go online to TryHealtheTrim.com today, you won't pay $100, you won't pay $75 or $50 or even $30, because your first month of Healthe Trim is only $9.95.

ON SCREEN: FREE TRIAL 30 DAY

$9.95

Complaint

Shipping & Processing
CALL NOW
Satisfaction Guarantee 100%
1-800-576-6399
TRYHEALTHETRIM.COM

DR. WENDY WALSH: You heard me right. Call or go online now and your first month of Healthe Trim is only $9.95. And to make sure you're getting results fast, you'll get two lifestyle guides, Everyday Meals and Everyday Fitness, both for free.

MATTHEW DWYER: Plus, to get you maximum results with Healthe Trim, I'm also going to include for free access to our Healthe Trim weight loss coaching program. Our coaches are there to answer your questions, to give you tips and make sure you lose the weight you want and they'll do it for free.

DR. WENDY WALSH: To really jumpstart your weight loss, you'll get a 30-day supply of the amazing detox formula, Healthy Cleanse, and that's free, too.

ON SCREEN: FREE TRIAL 30 DAY
$9.95
Shipping and Processing
LOST 35 POUNDS
Victoria
Lost 54 Pounds

19

Ann
Lost 127 Pounds
Debbie
Lost 130 Pounds
Ben
Lost 165 Pounds
Jay
Satisfaction Guarantee 100%
Your results may vary.
1-800-576-6399
TRYHEALTHETRIM.COM
Healthe Trim

MATTHEW DWYER: Healthe Trim works. It's so easy. It's natural. You'll feel great. You'll lose weight that first week. Healthe Trim will change your life, I guarantee it.

DR. WENDY WALSH: Try Healthe Trim for 30 days. If you don't lose weight, if you aren't 100 percent satisfied, just send it back and keep the meal plan and fitness guide as a gift. It is that easy.

ON SCREEN: FREE TRIAL 30 DAY
$9.95
Shipping and Processing
Satisfaction Guarantee 100%
Your results may vary.

Complaint

1-800-576-6399

TRYHEALTHETRIM.COM

Healthe Trim

ANNOUNCER: It's never too late to lose the weight. Pick up the phone and get fit and slim with Healthe Trim. Call 1-800-576-6399. That's 1-800-576-6399. Or go online to TryHealtheTrim.com.

DR. WENDY WALSH: Welcome back. I'm here with Healthe Trim founder, Matthew Dwyer, and we're talking about the number one weight loss supplement in the country, Healthe Trim. There have been so many supplements on the market that all promise these kinds of early results and great results. But why is it that Healthe Trim works when all these other ones have failed?

MATTHEW DWYER: Ninety-five percent of all diets fail because you have to give up the foods that you love and people end up gaining the weight back. That's not the case with Healthe Trim. You can still eat the foods that you love; you're just going to eat less portions and feel content and feel happy and you won't feel like you're depriving yourself of anything.

ON SCREEN: Before and After photos

Lost 47 Pounds

Matthew

Healthe Trim

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MATTHEW DWYER: When people first start taking Healthe Trim, they're going to be less hungry and they're going to have this alert, focused energy and they're going to start losing weight the first week. And probably what's going to happen is after three weeks of taking Healthe Trim, they're going to be so happy because they're going to be out buying a smaller dress.

DR. WENDY WALSH: Wow.

MATTHEW DWYER: Yes.

DR. WENDY WALSH: That's really exciting.

MATTHEW DWYER: I know it, because I get emails about that every week.

ON SCREEN: Before 165 Pounds

Lost 35 Pounds

User Group average weight loss 10.92 lbs in 30 days

Healthe Trim

DR. WENDY WALSH: Right now, we're going to hear from Victoria Russell. Now, Victoria, you were a college lacrosse player.

VICTORIA RUSSELL: Yeah.

DR. WENDY WALSH: But after you graduated, something changed. What happened?

VICTORIA RUSSELL: I was sitting at an office desk all day, you know, so my lifestyle really changed.

Complaint

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And I was still eating pretty much the same amount as I was eating when I was working out four or five hours a day.

DR. WENDY WALSH: Whoa, that's a problem.

VICTORIA RUSSELL: And I ended up gaining about 30 pounds the first year after I graduated.

DR. WENDY WALSH: So, how did you hear about Healthe Trim?

VICTORIA RUSSELL: It was amazing. The first week I lost probably about seven pounds, so --

DR. WENDY WALSH: Seven pounds in the first week?

VICTORIA RUSSELL: Yeah, mm-hmm. I mean, I'm all about instant gratification. So, that was great for me. I was like, if I'm going to lose this weight, you know, in a week, then I got to keep going.

DR. WENDY WALSH: You lost a total of how many pounds?

VICTORIA RUSSELL: Thirty-five pounds.

DR. WENDY WALSH: Wow.

VICTORIA RUSSELL: Yeah.

DR. WENDY WALSH: Congratulations. You have another issue in that your mom loves to cook, right?

VICTORIA RUSSELL: Oh, yes. Sunday family dinner at my house is chicken parm with as much cheese as

you can possibly think of, homemade pizza. We have pasta with gravy, not sauce, Italian gravy.

DR. WENDY WALSH: And during that year when you were packing on those pounds, were you chowing down on this?

VICTORIA RUSSELL: Oh, absolutely. I mean, my mom's whole theory is if you clean your plate, it means you want more. So, she'd put more on it.

MATTHEW DWYER: So, what about Sunday nights now?

VICTORIA RUSSELL: Well, Sunday nights now, you know, she'll fill my plate and I'll probably eat about half of what I normally would have eaten.

DR. WENDY WALSH: And you don't feel hungry?

VICTORIA RUSSELL: No. Well, that's the thing. I mean, my mom sits there and she kind of gives me crap about it, but I'm like, okay, I'm not going to force myself to eat anymore.

DR. WENDY WALSH: So, it just naturally helped you feel fuller?

VICTORIA RUSSELL: What ended up happening after I started taking Healthe Trim was that I realized, okay, I ate this much and I'm full. So, I wasn't really giving up anything that I really liked eating, but I was just eating everything in smaller portions.

Complaint

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MATTHEW DWYER: It's the proprietary blend of natural ingredients in Healthe Trim that makes you feel full faster, and that's the beautiful thing about Healthe Trim. She can still eat what she wants. She can still eat her pastas, but she's not going to eat the whole plate. She's going to eat less portions and feel content and feel full faster.

DR. WENDY WALSH: Tell me about your energy level. Are you back to exercising?

VICTORIA RUSSELL: Yeah, absolutely. I mean, the first year in the workforce, it was a complete change for me, you know. I would come home drained and everything, didn't want to work out at all. Now, you know, I take Healthe Trim before I go home and then I go for a run and I feel great afterwards. It's awesome.

ON SCREEN: FREE TRIAL 30 DAY

$9.95

Shipping and Processing

LOST 35 POUNDS

Victoria

Lost 54 Pounds

Ann

Lost 127 Pounds

Debbie

Lost 130 Pounds

25

Ben
Lost 165 Pounds
Jay
Satisfaction Guarantee 100%
Your results may vary.
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Healthe Trim
MATTHEW DWYER: You need to lose weight. You need to feel better about yourself and you need to do something today. How do I know? Because I was just like you four years ago. Healthe Trim worked for me. It changed my life and I know it will work for you.
ON SCREEN: Before 400 Pounds
Lost 130 Pounds
User Group average weight loss 10.92 lbs in 30 days
Healthe Trim
DR. WENDY WALSH: I want to introduce a pair of friends who've had some incredible results with Healthe Trim, Megan Gail Moore and Ben Ernest (phonetic). So, how much weight have you lost in what amount of time?
BEN ERNEST: 130 pounds in just about 12 months.
DR. WENDY WALSH: Whoa, wow, 130 pounds.

Complaint

ON SCREEN: Before 180 Pounds
Lost 50 Pounds
Healthe Trim
DR. WENDY WALSH: You saw him after a period of time of not seeing him and what happened?
MEGAN GAIL MOORE: Yeah, it was about six months since I had seen Ben. And I was trying to lose weight myself, ran into Ben, had dinner and went, oh, my God, what are you doing? Please tell me whatever it is, I will do as long as it didn't cost you thousands of dollars.
DR. WENDY WALSH: So, how much weight did you lose?
MEGAN GAIL MOORE: Fifty pounds.
DR. WENDY WALSH: Wow, 50 pounds. Had you tried other forms of weight loss before?
MEGAN GAIL MOORE: I joined clubs, I joined gyms, I read books, I took every supplement on the shelf of the drugstore that you go in from, you know, the $5 bottle behind the counter to the one they have locked up. None of them worked. You know, working out two hours a day, like there's no way that you can do it when you're working and raising a kid.
DR. WENDY WALSH: How easy was Healthe Trim?
MEGAN GAIL MOORE: It's like drinking water.

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DR. WENDY WALSH: That's pretty easy.

BEN ERNEST: It's that easy, yeah.

MEGAN GAIL MOORE: It really is.

MATTHEW DWYER: That's why I quit my job to go spread the word because it is just that easy. If it could work on me, I knew it could work on anybody. And they're living proof. And this makes me so proud.

ON SCREEN: Before 400 Pounds

Lost 130 Pounds

Healthe Trim

DR. WENDY WALSH: Now, when you first started taking Healthe Trim, what did you experience?

BEN ERNEST: At 400 pounds -- that was my heaviest was 400 pounds, and the energy level is so low, you know, it just takes so much effort to get kind of anything going and the very first day I took it, it was that instant kind of feeling of, okay, I'm alive now, I can attack the world and really -- and kind of take on the day. I probably lost 40 pounds in two months --

MATTHEW DWYER: Wow.

BEN ERNEST: -- with doing nothing different. With really just paying attention to what my body was telling me. And without going to the gym five days a week for five hours a day and eating like a bird. You know, I'm a big guy, still a big guy. I like food, I

Complaint

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like --

MATTHEW DWYER: Drinking, too.

BEN ERNEST: -- life.

MATTHEW DWYER: Healthe Trim makes you feel full faster.

DR. WENDY WALSH: I want to see this beautiful body. Stand up, young man. 130 pounds gone.

MATTHEW DWYER: Nice work.

DR. WENDY WALSH: Oh, my.

BEN ERNEST: And this is a size 50. This is just in-your-face visual proof of how much success I've had with Healthe Trim.

Megan, how much do you weigh?

MEGAN GAIL MOORE: 130 pounds.

BEN ERNEST: Okay, I've lost 130 pounds.

DR. WENDY WALSH: He's carried around 130 pounds for years.

BEN ERNEST: So, for six years, I gained about 130 pounds. I carried it for four years. And in my job, I would carry all of this -- all of my beautiful friend, Megan, and bags of concrete, shovels, ladders. It made my life very, very, very difficult.

DR. WENDY WALSH: And has your dramatic weight loss inspired anybody?

ON SCREEN: Before 180 Pounds

29

Lost 50 Pounds
Healthe Trim
MEGAN GAIL MOORE: Yes. As a matter of fact, my boyfriend just started taking it.
DR. WENDY WALSH: Has he seen any weight loss yet?
MEGAN GAIL MOORE: Yeah, seven pounds in a week.
DR. WENDY WALSH: Seven pounds.
MATTHEW DWYER: Seven pounds in one week, that's great.
MEGAN GAIL MOORE: Yeah.
DR. WENDY WALSH: Seven pounds in a week.
BEN ERNEST: That's great.
MEGAN GAIL MOORE: I'm a little jealous, I'm not going to lie. Seven pounds in a week.
DR. WENDY WALSH: How much weight did you lose?
ON SCREEN: Before 400 Pounds
Before and After photos
Lost 47 Pounds
Matthew
Lost 130 Pounds
Healthe Trim
MATTHEW DWYER: I lost 47 pounds and 100 (inaudible) and it's been four years and three months and

Complaint

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I haven't gained a pound back.

DR. WENDY WALSH: Ben, how much did you lose?

ON SCREEN: Before 400 Pounds

Lost 130 Pounds

Healthe Trim

BEN ERNEST: I lost 130 pounds in just about 12 months actually.

DR. WENDY WALSH: That's amazing. How much did you lose, Megan?

MEGAN GAIL MOORE: Fifty pounds.

DR. WENDY WALSH: So, this is the kind of movement that's sweeping across America. It starts with DJs and listeners to radio stations hearing Matthew and then they try it out. They inspire the people around them like with you.

MATTHEW DWYER: And now everybody is clamoring, where can I get Healthe Trim?

ON SCREEN: Dr. Wendy Walsh, PhD

Healthe Trim

DR. WENDY WALSH: If you're ready to take control, if you're ready to lose the weight that's keeping you from living a healthy, happy life, then you're ready for Healthe Trim. Just two capsules a day are all it takes to get you started on the road to a whole new you. So, whether you need to lose 10 to 20, 40

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to 60 or 100 pounds or more, now you can and without depriving yourself of the foods you love.

DR. WENDY WALSH: Stay tuned to find out how you can get started with Healthe Trim today.

ON SCREEN: Dr. Wendy Walsh, PhD

You are watching a paid advertisement for Healthe Trim, brought to you by HealthyLife Sciences, LLC.

Health Trim

ON SCREEN: WEIGHT LOSS PROGRAM (STOP)

GYM MEMBERSHIP (STOP)

EXTREME EXERCISE (STOP)

1-800-576-6399

Satisfaction Guarantee 100%

TRYHEALTHETRIM.COM

Healthe Trim

DR. WENDY WALSH: You know you can pay hundreds of dollars a month for weight loss programs, gym memberships and extreme exercise routines --

ON SCREEN: FREE TRIAL 30 DAY

CALL NOW

Satisfaction Guarantee 100%

1-800-576-6399

TRYHEALTHETRIM.COM

DR. WENDY WALSH: -- but if you call the number

Complaint

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on your screen or go online to TryHealtheTrim.com today, you won't pay $100, you won't pay $75 or $50 or even $30, because your first month of Healthe Trim is only $9.95.

ON SCREEN: FREE TRIAL 30 DAY
$9.95
Shipping & Processing
CALL NOW
Satisfaction Guarantee 100%
1-800-576-6399
TRYHEALTHETRIM.COM

DR. WENDY WALSH: You heard me right. Call or go online now and your first month of Healthe Trim is only $9.95. And to make sure you're getting results fast, you'll get two lifestyle guides, Everyday Meals and Everyday Fitness, both for free.

MATTHEW DWYER: Plus, to get you maximum results with Healthe Trim, I'm also going to include for free access to our Healthe Trim weight loss coaching program. Our coaches are there to answer your questions, to give you tips and make sure you lose the weight you want and they'll do it for free.

DR. WENDY WALSH: To really jumpstart your weight loss, you'll get a 30-day supply of the amazing detox formula, Healthy Cleanse, and that's free, too.

ON SCREEN: FREE TRIAL 30 DAY

33

$9.95
Shipping and Processing
LOST 35 POUNDS
Victoria
Lost 54 Pounds
Ann
Lost 127 Pounds
Debbie
Lost 130 Pounds
Ben
Lost 165 Pounds
Jay
Satisfaction Guarantee 100%
Your results may vary.
1-800-576-6399
TRYHEALTHETRIM.COM
Healthe Trim

MATTHEW DWYER: Healthe Trim works. It's so easy. It's natural. You'll feel great. You'll lose weight that first week. Healthe Trim will change your life, I guarantee it.

DR. WENDY WALSH: Try Healthe Trim for 30 days. If you don't lose weight, if you aren't 100 percent satisfied, just send it back and keep the meal plan and fitness guide as a gift. It is that easy.

Complaint

34

ON SCREEN: FREE TRIAL 30 DAY
$9.95
Shipping and Processing
Satisfaction Guarantee 100%
Your results may vary.
1-800-576-6399
TRYHEALTHETRIM.COM
Healthe Trim

ANNOUNCER: It's never too late to lose the weight. Pick up the phone and get fit and slim with Healthe Trim. Call 1-800-576-6399. That's 1-800-576-6399. Or go online to TryHealtheTrim.com.

DR. WENDY WALSH: Welcome back. Well, everybody's talking about Healthe Trim and I'm finally beginning to understand why. It's quite simple. It's because Healthe Trim works. There's no extreme dieting, no extreme exercising, no costly meal delivery programs. Just two capsules in the morning and Healthe Trim goes right to work --

ON SCREEN: Diet and exercise are necessary to lose weight
Healthe Trim

DR. WENDY WALSH: -- making you feel less hungry while simultaneously giving you an alert, focused energy. So, you burn more calories than you take in.

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The result, you lose weight naturally.

MATTHEW DWYER: Most people are out there like me. They're stressed. Jobs, kids, it's difficult to eat a well-balanced meal and it's difficult to watch what you're eating and exercise all the time on a regular basis.

ON SCREEN: Before and After photos

Lost 47 Pounds

Matthew

Healthe Trim

MATTHEW DWYER: It's not very difficult, though, to wake up in the morning, take two natural supplements, drink water and go about your day.

DR. WENDY WALSH: Let me ask you, how safe is Healthe Trim?

MATTHEW DWYER: It's extremely safe, and let me tell you why. We've done over 50 Get High School Skinny promotions on the radio and each one had 10 contestants. All 10 had to get doctor's approval before taking Healthe Trim.

DR. WENDY WALSH: So, let me do the math here. Are you saying that 500 people got their doctor's approval?

MATTHEW DWYER: I think it's over 500. The answer is yes.

Complaint

DR. WENDY WALSH: So, 500 doctors said this is safe?

MATTHEW DWYER: That's correct.

DR. WENDY WALSH: How many actually lost weight?

MATTHEW DWYER: All of them.

ON SCREEN: Before 196 Pounds

Lost 54 Pounds

User Group average weight loss 10.92 lbs in 30 days

Healthe Trim

DR. WENDY WALSH: Joining me now is Kate Hagen (phonetic). Kate has a really wonderful story.

KATE HAGEN: I lost six pounds in the first week. I lost 11 pounds in the first month. And I just continued to melt the weight away.

DR. WENDY WALSH: Those are amazing results.

KATE HAGEN: I had a little boy and I've been a single mom since he was born. He has some special needs. He is on the autism spectrum and is deaf. I just didn't have time to go to the gym and prepare food and do all of those things you're supposed to do to lose weight after you have a baby. So, I kept my baby weight. You know, really I got fat through a window. I got all of my breakfasts and lunch through a window and ate fast food

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every day and --

DR. WENDY WALSH: How much weight did you gain?

KATE HAGEN: 196 was just absolutely the turning point that, you know, I'm a hamburger away from 200 pounds. I had to get up so early before work because I'd spend a good hour-and-a-half in front of the mirror putting on everything I owned, just crying hysterically because I couldn't wear anything that I had and I was fat.

DR. WENDY WALSH: When you first starting taking Healthe Trim, what did you notice first?

KATE HAGEN: At first I noticed that I had energy and I wasn't hungry. I started losing weight by not changing anything other than adding two pills in the morning to my day and that was all I changed. And I've lost 54 pounds.

DR. WENDY WALSH: Fifty-four pounds. Whoo.

MATTHEW DWYER: How long -- that was three years ago, right?

KATE HAGEN: Three years ago, yes.

DR. WENDY WALSH: You look fabulous.

KATE HAGEN: Thank you.

MATTHEW DWYER: She went to a size 14 to what size dress are you now?

KATE HAGEN: A 14-ish plus to a 4.

Complaint

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MATTHEW DWYER: Awesome.

DR. WENDY WALSH: Might have been a 16 or an 18, okay? Down to a four.

MATTHEW DWYER: That's awesome.

DR. WENDY WALSH: Science has proven many times over that there's a direct correlation between losing weight and lowering your blood pressure. With this in mind, Matthew met with a noted physician and the doctor agreed to use Healthe Trim to help some of his patients who needed to lose weight. At the same time, he also monitored the patients' blood pressure. Of those patients who used Healthe Trim, not only did they lose weight, but over 90 percent of them also lowered their blood pressure.

ON SCREEN: Before 395 Pounds

Lost 165 Pounds

User Group average weight loss 10.92 lbs in 30 days

Healthe Trim

DR. WENDY WALSH: One of these is a man by the name of Jay Gilhouse. You've been on blood pressure medication for how long?

JAY GILHOUSE: Twenty-eight years. I started when I was 19.

DR. WENDY WALSH: After taking Healthe Trim for

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just a couple months, you were able to lower your blood pressure?

JAY GILHOUSE: Yes, and I haven't been on blood pressure medicine for over two years.

DR. WENDY WALSH: All because of Healthe Trim.

JAY GILHOUSE: All because of Healthe Trim.

DR. WENDY WALSH: How much did you weigh when you started taking Healthe Trim?

JAY GILHOUSE: About 395.

DR. WENDY WALSH: Besides lowering your blood pressure, you also lost a lot of weight.

JAY GILHOUSE: 165 pounds.

DR. WENDY WALSH: You lost 165 pounds and you're off blood pressure medication that you've been on for 28 years. What's the best thing that has come of all of this?

JAY GILHOUSE: Later on this year, I'm getting married.

DR. WENDY WALSH: Oooh, that's wonderful.

JAY GILHOUSE: All I can -- hold on a second, sorry.

DR. WENDY WALSH: It's okay. That's what we're here for.

JAY GILHOUSE: Okay. But, anyway, Matthew, you saved my life. You gave me a chance to get my life back.

Complaint

So, not only have I gotten my life back, I got my health back. I'm more healthier than I was in my 30s. I'm more healthier now than I was in my 20s and now I'm getting married. I would have never thought I was going to do that. I never would have thought it.

DR. WENDY WALSH: Healthe Trim changed your life.

JAY GILHOUSE: Saved my life. Big difference.

ON SCREEN: Before and after photos

Lost 47 Pounds

Matthew

Healthe Trim

MATTHEW DWYER: I know everybody out there watching, if you were like me four years ago and you're depressed and you don't like looking at yourself in the mirror and you don't feel good about yourself, Healthe Trim is your answer.

ON SCREEN: FREE TRIAL 30 DAY

$9.95

Shipping and Processing

LOST 35 POUNDS

Victoria

Lost 54 Pounds

Ann

Lost 127 Pounds

41

Debbie

Lost 130 Pounds

Ben

Lost 165 Pounds

Jay

Satisfaction Guarantee 100%

Your results may vary.

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Healthe Trim

MATTHEW DWYER: I know it. I guarantee it. Trust me. Give me one week of your life and you'll feel it as well.

ON SCREEN: User Group average weight loss 10.92 lbs in 30 days.

Healthe Trim

DR. WENDY WALSH: It's so great to see everybody here gathered together now and seeing all the enthusiasm and excitement for Healthe Trim. What's the number one thing that Healthe Trim's done for you?

VICTORIA RUSSELL: It gave me my confidence back. I got rid of my belly. I got rid of my double chin. I feel, you know, comfortable in my own skin again. I feel great.

DR. WENDY WALSH: What's the best thing it did

Complaint

for you?

MEGAN GAIL MOORE: It put me back in a bikini.

BEN ERNEST: It's definitely a confidence booster. I feel fearless now, like I can do anything, you know.

DR. WENDY WALSH: Fearless.

KATE HAGEN: No more tears when I'm getting dressed.

DR. WENDY WALSH: Donnie, what did Healthe Trim do for you?

DONNIE: Well, it gave me the energy and the focus that I was looking for and then the byproduct of that was the weight loss.

JAY GILHOUSE: It got me off of the blood pressure medication and it gave me enough courage to ask my future wife out.

BEN ERNEST: Congratulations. That's great. That's great.

DR. WENDY WALSH: And, Debbie, what did Healthe Trim do for you?

DEBBIE WHITE: Healthe Trim just saved my life, saved my marriage, and just made me feel so good and sexy. My husband gets jealous when other men look at me now.

BEN ERNEST: Nice.

DR. WENDY WALSH: I want to know where you keep your Healthe Trim?

KATE HAGEN: I keep a bottle in my cupboard. I keep my bottle in my bag. I keep a bottle in my car.

BEN ERNEST: Oh, yeah, it's spread around.

KATE HAGEN: Everywhere. I mean, there's nowhere I could possibly go that I don't have it.

BEN ERNEST: I mean, yeah, you don't want to be caught without it somewhere.

UNIDENTIFIED FEMALE: Just in case.

UNIDENTIFIED FEMALE: Yeah, absolutely.

KATE HAGEN: I was out the other day and was telling a friend about it because his wife wanted to lose weight, and I pulled a bottle out of my purse and I said, here, take this, give it to your wife. And, you know, I have it on hand. No worries. I've got more.

DR. WENDY WALSH: Can't be without it anywhere. What's the very best thing about Healthe Trim?

MEGAN GAIL MOORE: It's easy.

UNIDENTIFIED FEMALE: Yeah, it's really easy.

BEN ERNEST: Yeah, yeah.

UNIDENTIFIED FEMALE: It's easy.

BEN ERNEST: Absolutely.

UNIDENTIFIED FEMALE: It's very easy.

UNIDENTIFIED FEMALE: 100 percent.

Complaint

DR. WENDY WALSH: How easy?

ANN HUDSON: Within five minutes of my alarm going off, because I take one right by my bed when my alarm goes off, I'm awake and I'm ready to go at the day. It's 4:00 a.m. and I'm like, let's go.

BEN ERNEST: Yeah.

MEGAN GAIL MOORE: It's energy without calories.

DONNIE: I think the only way it could be easier is if somebody was opening up the bottle for me.

ON SCREEN: Dr. Wendy Walsh, PhD

You are watching a paid advertisement for Healthe Trim brought to you by HealthyLife Sciences, LLC

Healthe Trim

DR. WENDY WALSH: You've seen and heard great stories about real people just like you who have lost 10 to 20, 40 to 60, even 100 pounds or more with the number one natural weight loss supplement, Healthe Trim. Isn't it finally time for you to take control with Healthe Trim. Do it for your health. Do it for your family. And, most importantly, get started with Healthe Trim just for you. Just take two capsules a day and you're on your way to a better, healthier, happier life.

ON SCREEN: WEIGHT LOSS PROGRAM (STOP)

GYM MEMBERSHIP (STOP)

45

EXTREME EXERCISE (STOP)
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Satisfaction Guarantee 100%
TRYHEALTHETRIM.COM
Healthe Trim
DR. WENDY WALSH: You know you can pay hundreds of dollars a month for weight loss programs, gym memberships and extreme exercise routines --
ON SCREEN: FREE TRIAL 30 DAY
CALL NOW
Satisfaction Guarantee 100%
1-800-576-6399
TRYHEALTHETRIM.COM
DR. WENDY WALSH: -- but if you call the number on your screen or go online to TryHealtheTrim.com today, you won't pay $100, you won't pay $75 or $50 or even $30, because your first month of Healthe Trim is only $9.95.
ON SCREEN: FREE TRIAL 30 DAY
$9.95
Shipping & Processing
CALL NOW
Satisfaction Guarantee 100%
1-800-576-6399
TRYHEALTHETRIM.COM
DR. WENDY WALSH: You heard me right. Call or

Complaint

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go online now and your first month of Healthe Trim is only $9.95. And to make sure you're getting results fast, you'll get two lifestyle guides, Everyday Meals and Everyday Fitness, both for free.

MATTHEW DWYER: Plus, to get you maximum results with Healthe Trim, I'm also going to include for free access to our Healthe Trim weight loss coaching program. Our coaches are there to answer your questions, to give you tips and make sure you lose the weight you want and they'll do it for free.

DR. WENDY WALSH: To really jumpstart your weight loss, you'll get a 30-day supply of the amazing detox formula, Healthy Cleanse, and that's free, too.

ON SCREEN: FREE TRIAL 30 DAY

$9.95

Shipping and Processing

LOST 35 POUNDS

Victoria

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47

Jay
Satisfaction Guarantee 100%
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TRYHEALTHETRIM.COM
Healthe Trim
MATTHEW DWYER: Healthe Trim works. It's so easy. It's natural. You'll feel great. You'll lose weight that first week. Healthe Trim will change your life, I guarantee it.
DR. WENDY WALSH: Try Healthe Trim for 30 days. If you don't lose weight, if you aren't 100 percent satisfied, just send it back and keep the meal plan and fitness guide as a gift. It is that easy.
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TRYHEALTHETRIM.COM
Healthe Trim
ANNOUNCER: It's never too late to lose the weight. Pick up the phone and get fit and slim with Healthe Trim. Call 1-800-576-6399. That's 1-800-576-

Complaint

6399. Or go online to TryHealtheTrim.com.

ON SCREEN: The proceeding [sic] was a paid program for Healthe Trim.

Sponsored by HealthyLife Sciences, LLC.

(The recording was concluded.)

C E R T I F I C A T I O N O F T Y P I S T

MATTER NUMBER: 1223287

CASE TITLE: HEALTHY LIFE SCIENCES, LLC

TAPING DATE: JUNE 24, 2012

TRANSCRIPTION DATE: FEBRUARY 24, 2014

REVISION DATE: MARCH 13, 2014

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the tapes transcribed by me on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: MARCH 13, 2014

ELIZABETH M. FARRELL

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE

DECISION AND ORDER

The Federal Trade Commission ("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 complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order ("consent agreement"), which includes: a statement by the respondent that he neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the consent agreement, and only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent John Matthew Dwyer III, a/k/a Matthew Dwyer ("Dwyer"), is the co-founder of HealthyLife Sciences, LLC, a Georgia limited liability company. He was the company's chief executive officer until September 2011 and company co-owner until 2013. Individually, or in concert with others, he formulated, directed, controlled, or participated in the policies, acts, or practices of the company.

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

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "respondent" means John Matthew Dwyer III.

B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

C. "Covered Product" shall mean any Dietary Supplement, Food, or Drug.

D. "Dietary Supplement" means:

1. Any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or

2. Any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or more ingredients that is a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above, that is intended to be ingested, and is not represented to be used as a conventional food or as a sole item of a meal or the diet.

E. "Food" and "Drug" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

F. "Reliably Reported," for a human clinical test or study ("test"), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

G. The term "including" in this Order shall mean "without limitation."

H. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that respondent is permanently restrained and enjoined from manufacturing, labeling, advertising, marketing, promoting, offering for sale, selling, or distributing, or assisting others in manufacturing, labeling, advertising, marketing, promoting, offering for sale, selling, or distributing, any weight-loss product or program.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, licensee, affiliate, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, other than representations covered under Part I of this Order, in any manner, expressly or by implication, including through the use of product name, endorsement, depiction, illustration, trademark, or trade name, about the health benefits, performance, or efficacy of any Covered Product, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when

considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as described in Part V must be available for inspection and production to the Commission.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, licensee, affiliate, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or

B. That the efficacy of such product has been clinically or scientifically proven.

IV.

IT IS FURTHER ORDERED that:

A. Nothing in this Order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Nothing in this Order shall prohibit respondent from making any representation for any product specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997.

V.

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which respondent relies to substantiate any claim covered by this Order, respondent shall secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;

B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;

C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;

D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or

between-group analysis performed on any test data; and

E. All documents referring or relating to the sponsorship of the test, including all communications and contracts between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part (1) by respondent, or by any person or entity affiliated with or acting on behalf of respondent, including, agents, representatives, and employees, or by any other person or entity in active concert or participation with respondent ("respondent's affiliates"), (2) by the supplier or manufacturer of the product at issue, or (3) by a supplier to respondent, to respondent's affiliates, or to the product's manufacturer of any ingredient contained in such product.

For any test conducted, controlled, or sponsored, in whole or in part, by respondent, or by any business for which respondent is the majority owner, or directly or indirectly controls, respondent or such business must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to such business's size and complexity, the nature and scope of such business's activities, and the sensitivity of the personal information collected from or about the participants.

VI.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this Order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this Order to all current and future principals, officers, directors, and other employees having managerial responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Delivery shall occur to current personnel within thirty (30) days after date of service of this Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

IT IS FURTHER ORDERED that respondent, for a period of seven (7) years after the date of issuance of this Order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment, within 14 days of such change occurring. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent, within sixty (60) days after the date of service of this Order, shall file with the

Commission a true and accurate report, in writing, setting forth in detail the manner and form of his compliance with this Order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate reports.

X.

This Order will terminate on October 22, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this Order that terminates in less than twenty (20) years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from John Matthew Dwyer III, a/k/a Matthew Dwyer ("Dwyer").

The proposed consent order ("proposed order") has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves advertising for HealthyLife Sciences, LLC's Healthe Trim line of weight loss dietary supplements ("Healthe Trim"). The complaint alleges that Dwyer, a co-founder of HealthyLife Sciences, LLC, and former chief executive officer and spokesman for Healthe Trim, violated Sections 5(a) and 12 of the Federal Trade Commission Act by making false or unsubstantiated representations that Healthe Trim would cause rapid and substantial weight loss, including as much as 35, 130, and 165 pounds. Dwyer also claimed that users would lose weight without dieting, and that Healthe Trim would burn fat, increase metabolism, and suppress appetite. The complaint also alleges that Dwyer violated Sections 5(a) and 12 by falsely representing that Healthe Trim is clinically proven to cause weight loss.

The proposed order includes injunctive relief that prohibits these alleged violations and fences in similar and related violations. For purposes of the order, "Covered Product" means any dietary supplement, food, or drug.

Part I of the proposed order bans Dwyer from manufacturing, marketing, or distributing any weight-loss product or program, or assisting others in any of the foregoing.

Part II of the proposed order prohibits any representation about the health benefits, performance, or efficacy of any Covered

Product, unless it is non-misleading and supported by competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence is defined as tests, analyses, research, or studies that have been conducted by qualified persons in an objective manner and are generally accepted in the profession to yield accurate and reliable results. When that evidence consists of human clinical tests or studies, Dwyer must maintain all underlying or supporting data and documents that experts in the field generally would accept as relevant to an assessment of such testing.

Part III of the proposed order prohibits Dwyer from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research in connection with the manufacturing, labeling, advertising, promotion, offering for sale, and sale or distribution of any Covered Product.

Part IV provides a safe harbor for representations permitted under any tentative final or final standard promulgated by the Food and Drug Administration ("FDA"), any new drug application approved by the FDA, or FDA regulations pursuant to the Nutrition Labeling and Education Act of 1990 or the FDA Modernization Act of 1997.

Triggered when the human clinical testing requirement in Part II applies, **Part V** of the proposed order requires Dwyer to secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, such as protocols, instructions, participant-specific data, statistical analyses, and contracts with the test's researchers. There is an exception for a "Reliably Reported" test, defined as a test published in a peer-reviewed journal that was not conducted, controlled, or sponsored by Dwyer, his affiliates, or others in the manufacturing or supply chain. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Analysis to Aid Public Comment

Parts VI through IX of the proposed order require Dwyer to: deliver a copy of the order to principals, officers, directors, and other employees having responsibilities with respect to the subject matter of the order; notify the Commission of changes in employment that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part X provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

HEALTHYLIFE SCIENCES, LLC

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

Docket No. C-4493; File No. 122 3287
Complaint, October 22, 2014 – Decision, October 22, 2014

This consent order addresses HealthyLife Sciences, LLC's ("HLS") advertising for its Healthe Trim line of weight-loss dietary supplements ("Healthe Trim"). The complaint alleges that the company violated Sections 5(a) and 12 of the Federal Trade Commission Act by making false or unsubstantiated representations that Healthe Trim would cause rapid and substantial weight loss, including as much as 35, 130, and 165 pounds. The consent order bans HLS from making any of the seven "gut check" weight loss claims that the Commission has publicly advised are always false, specifically that any dietary supplement, over-the-counter drug, or patch, cream, wrap, or other product worn on the body or rubbed into the skin: 1) causes weight loss of two pounds or more a week for a month or more without dieting or exercise; 2) causes substantial weight loss no matter what or how much the user eats; 3) causes permanent weight loss; 4) blocks the absorption of fat or calories to enable users to lose substantial weight; 5) safely enables users to lose more than three pounds per week for more than four weeks; 6) causes substantial weight loss for all users; or 7) causes substantial weight loss by wearing a product on the body or rubbing it into the skin.

Participants

For the *Commission*: *Christine DeLorme* and *Elizabeth Nach.*

For the *Respondent*: *Curt Friedberg, Partner.*

COMPLAINT

The Federal Trade Commission, having reason to believe HealthyLife Sciences, LLC, a limited liability company ("Respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent HealthyLife Sciences, LLC ("HealthyLife Sciences"), is a Georgia limited liability company with its

principal office or place of business at 8601 Dunwoody Place, Suite 418, Atlanta, Georgia 30350.

2. Respondent has advertised, offered for sale, sold, and distributed the Healthe Trim line of weight-loss dietary supplements to consumers, including Healthe Trim Original Formula, Healthe Trim Powered by Raspberry Ketone, Healthe Trim Powered by Green Coffee Bean, and Healthe Trim Garcinia Cambogia (collectively, "the Healthe Trim Products"). These products are "foods" and/or "drugs," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

Healthe Trim Weight-Loss Products

4. Respondent has marketed Healthe Trim Original Formula since 2009, introducing Healthe Trim Powered by Raspberry Ketone in September 2012, Healthe Trim Powered by Green Coffee Bean in February 2013, and Healthe Trim Garcinia Cambogia in June 2013. The Healthe Trim Products were sold by Respondent primarily through its website www.healthytrim.com, and Original Formula was also available in retail stores including CVS, GNC, and Walgreens. The price for a one-month supply of the Healthe Trim Products ranged from approximately $49.95 to $64.95. Through the end of 2013, gross sales minus refunds of the Healthe Trim Products exceeded $76 million.

5. Respondent participated in the dissemination of or caused to be disseminated advertising, packaging, and promotional materials for the Healthe Trim Products, including, but not necessarily limited to, the attached Exhibits A through E. These materials contain the following statements:

a. MATTHEW DWYER: Fall is here. So it's time for your weight to start falling off. Healthe Trim is the answer to your weight loss struggles. It's a natural supplement that actually works.

Hi, it's Matthew, founder of Healthe Trim, and we've sold over 1.5 million bottles. That should tell you right there that Healthe Trim works. Lose weight easily and quickly today . . . .

***

If you've tried diets, meal plans, clinics, meetings and nothing's worked for you, it doesn't surprise me. You got to give Healthe Trim a try.

Healthe Trim is so easy. Just a couple of capsules in the morning right when you wake up, drink water and go about your day. We guarantee it or your money back.

Make today the day you stop struggling with your weight and give Healthe Trim a try . . . .

(Exhibit A, 60-second radio ad).

b. MATTHEW DWYER: Are you ready for this? We've got something new for you. It's Matthew, founder of Healthe Trim. We've now added Healthe Trim raspberry ketone to our unique proprietary blend of Healthe Trim.

It's a breakthrough. It is awesome. I feel fantastic. Healthe Trim raspberry ketone will change your life. You'll lose weight without dieting. You won't believe how fast the fat will start burning off.

I guarantee it. 30-day, no questions asked money back guarantee. You will be as excited as I am with Healthe Trim, now powered by raspberry ketone. It burns the fat, suppresses your appetite, and will boost your energy. It's natural, it's safe and it is so easy. With our 30-day money back guarantee, you have nothing to lose but the weight. . . .

(Exhibit B, 60-second radio ad).

c. ELVIS DURAN: Hi, it's Elvis. You guys have heard about Healthe Trim and their excellent website HealthyTrim.com. Well, the founder of Healthe Trim and our weight loss expert is back with a 30-day money back guarantee. You have nothing to lose but the weight. Go to Healthytrim.com, start losing weight today. Healthytrim.com.

SKEERY JONES: How's it going? It's Skeery Jones. A lot of people have been asking me over the past year about this all-natural supplement I've been taking, which has allowed me to lose a whole bunch of weight and still eat the foods I like when I want them. It's called Healthe Trim at HealthyTrim.com.

Well, I figured to clear a whole lot of rumors up and to answer everyone's question [sic], we'd bring in Matthew Dwyer, the founder of Healthe Trim.

Good morning, Matthew.

MATTHEW DWYER: Skeery, how are you buddy?

SKEERY JONES: The past year has just been amazing for me.

MATTHEW DWYER: Yeah, see, listen, here's the thing. Healthe Trim's not a diet, you know. It's just an all-natural supplement that you take in the morning and it works. It's not a lifestyle change, and I think that's why we're having so much success with it, because research shows that 95 percent of diets fail because you have to give up the foods that you love. So, you end up gaining the weight back. And that's not the case with Healthe Trim.

SKEERY JONES: Right.

MATTHEW DWYER: Listen, I was a guy that was just desperately trying to lose the weight. So, I started trying all different dietary supplements and they all gave me the crazy jittery feeling until I stumbled upon

Healthe Trim. I lost five pounds the first week; I lost 16 pounds in three weeks; I lost 47 pounds in 100 days.

SKEERY JONES: Oh, my God.

MATTHEW DWYER: It's not important what we weigh, Skeery, but it's the visceral fat around our organs, the belly fat, that causes all the health issues.

SKEERY JONES: And, you know, when I started taking Healthe Trim, I realized I was given more energy in the morning when I started taking the Healthe Trim. And then, throughout the day, the energy was sustained. I can eat what I want, but I don't find myself as hungry as I used to be.

MATTHEW DWYER: I think it's important to know there's 17 all-natural ingredients. I couldn't do the meal plans, I couldn't do the shake plans. What I can do is I can wake up in the morning, take two all-natural supplements, drink water and go about my day. I'm now a 32-inch waist. After three years, I haven't gained a pound back. I feel great. I don't have the crazy jittery feeling.

Dr. Oz does specials all the time about how over two-thirds of the supplements out there are scams because they don't have authentic hoodia in here. Hoodia is the cactus plant that the Africans used to live off way back in the day to go five or six days to hunt their prey without food. We have authentic hoodia in Healthe Trim.

SKEERY JONES: And I know that because I've checked your website and I've looked into it and you guys have the documents to back it up, that this is the real deal hoodia.

MATTHEW DWYER: And by no means is Dr. Oz endorsing Healthe Trim, but he says that all 17

ingredients in Healthe Trim are not only safe, they're very, very healthy for you.

SKEERY JONES: What about this Resveratrol I've been reading about?

MATTHEW DWYER: Yeah, Resveratrol is the grape red wine extract, okay? I encourage your listeners to Google the Harvard study on Resveratrol. There's just so many anti-aging benefits and healthy benefits to Resveratrol. Listen, everything that's in one capsule of Healthe Trim, it's just 17 fruits and vegetables. You get great energy from the green tea. There's 175 milligrams from green tea in one capsule, which is equivalent to about a 16-ounce Dunkin Donuts or Starbucks cup of coffee.

SKEERY JONES: Mm-hmm.

MATTHEW DWYER: Do I know that Healthe Trim is the best all-natural supplement in the world? No, I do not. But here's what I do know, Healthe Trim absolutely works and we have a 30-day no questions asked money back guarantee…

(Exhibit C, radio ad).

d. Healthe Trim
GET HIGH SCHOOL SKINNY!

[…]

A REVOLUTIONARY
THERMO-ENERGY
BOOSTER
LOSE WEIGHT! FEEL GREAT!
Our powerful diet supplements are made of only the finest natural ingredients available. They are formulated to provide energy boosts, surpass[sic] cravings and burn fat. Most importantly, they're EASY to add to your day – just take two in the morning!

[...]

Real **People**, Incredible **Results!**

[…]

Emily York
Phoenix, AZ

Lost 137 pounds!

My name is Emily. I'm a twenty-nine-year-old mother of three. After my first daughter, I gained 60 pounds in a year and learned I had thyroid disease, a condition that not only meant I would gain weight it also meant it would be difficult to lose weight. As the years went by, pounds piled on, and as I tried all the diet plans and pills and shakes with no success, my frustration grew.

Then I heard about healthé trim on the radio and the DJ had thyroid disease like me! I decided it would be my last try and if this didn't work maybe I was meant to stay that way. September 13, 2009, the day after my 29th birthday, I started healthé trim and I have since lost 121 pounds! I lost 19 pounds the first week and felt amazing. I have the energy to exercise that I didn't have before and there were no side effects with my thyroid meds.

Thanks to healthé trim I am high school skinny again. I have myself back, my husband has his wife back, and my kids have the mom they deserve! Thank you healthé trim!!

* The weight loss experienced by these individuals actually occurred. We do not have many facts about the circumstances about how this weight loss was achieved, other than the consuming of HealtheTrim, for either us or you to conclude that this should be a generally expected outcome from the use of HealtheTrim. We encourage a reasonable exercise and healthy diet as an important part of your weight loss

and maintenance program. A clinical study of 60 participants in 2009 reflected an average weight loss of 2.43 pounds in 30 days when those individuals took HealtheTrim exclusive of a diet and exercise program.

[…]

How to Lose Weight Fast

[…]

Natural Weight Loss Supplements

There are a lot of *weight loss supplements* out there, but not all of them are effective at producing real results. Healthé Trim is clinically proven to help you lose weight. Our *weight loss supplement* is made from natural ingredients that curb your appetite, boost energy, and increase your metabolism for *rapid weight loss*.

Fad diets that promise fast results may be dangerous to your health if they require you to consume too few calories. Healthé Trim lets you continue eating the food you enjoy in smaller portions while giving you extra energy for a more active lifestyle. Our natural weight loss supplement has everything your body needs to achieve *quick* weight loss and better overall health.

[…]

Fat Burner

People who want to lose body fat without sacrificing muscle need an effective *fat burner* as part of their *weight loss* strategy. Healthe Trim has developed a successful weight loss trio consisting of appetite suppressants, metabolism boosters and *fat burners* which work together to keep you healthy and help you burn fat without losing muscle.

Burning Fat and Preserving Muscle

Muscles keep us healthy and strong; they can also help both men and women feel more attractive and confident. We use them every day for a number of different tasks, so it is important to ensure they are not diminished by dieting. When trying out a new diet or *weight loss plan*, it is easy to neglect the nutrients you need to preserve your muscles. Fortunately, Healthe Trim provides a safe and natural solution for losing body fat while minimizing the loss of muscle.

Healthe Trim's Successful Weight Loss Trio

Appetite Suppressants

A major ingredient in Healthe Trim is *Hoodia gordonii*. This supplement acts as an appetite suppressant, keeping you focused and reducing the temptation to overeat. The combination of hoodia and our fat burner can result in losing up to 50 pounds by simply adding our *weight loss pill* to your diet.

Metabolism Boosters

Healthe Trim gives your body a metabolism boost which causes an increased amount of calories to be burned more quickly. Less food plus a faster metabolism means your body eats away at the fat reserves in order to keep going at its normal pace, resulting in a slimmer you.

Fat Burners

Healthe Trim includes a fat burner ingredient that targets stores of fat without weakening your muscles. Our balance of natural ingredients will ensure that your body uses stored fat reserves as fuel rather than preventing your muscles from getting the nutrition they need to stay strong and continue building.

Muscles burn more energy than other parts of the body, so losing muscle mass actually slows down your overall metabolism. Maintaining or building muscle is an important part of any weight loss plan. To ensure minimal muscle loss, you need a weight loss supplement to manage the energy that fuels your muscles. Healthe Trim's winning combination of *fat burners*, *appetite suppressants* and metabolism boosters will allow you to meet your weight loss goals using time-tested, all natural ingredients.

(Exhibit D, Healthytrim.com website).

e. […]

DR. WENDY WALSH: …But it all begins with one man, who's worked tirelessly to help hundreds of thousands of people lose millions of pounds. He desperately wanted to lose weight himself, but nothing he tried worked. Then he discovered the formula for Healthe Trim and it changed his life forever.

I'm happy to introduce Mr. Matthew Dwyer! Hi, Matthew.

MATTHEW DWYER: Hey, how are you? Thanks so much for having me.

DR. WENDY WALSH: People are losing weight. Matthew, I need to know what's going on.

MATTHEW DWYER: Hundreds of thousands of people have lost millions of pounds on Healthe Trim and they're keeping it off because Healthe Trim is just so darn easy.

DR. WENDY WALSH: Why do they stick to Healthe Trim?

MATTHEW DWYER: Because all you do is wake up in the morning, take two natural supplements, drink

water and go about your day, and it is just that simple. You'll be less hungry and you'll be less tired.

[On Screen Depiction: Before and after photos of Matthew Dwyer, labeled "Lost 47 pounds"] You'll have great energy. It will motivate you to move around. It will curb your cravings and you'll lose the weight easy and naturally.

[…]

DR. WENDY WALSH: I'd like to introduce now Ann Hudson. Ann is a popular radio disc jockey and TV host in Austin, Texas. Welcome, Ann.

[On Screen Depiction: "Before" photo of Ann labeled "189 pounds" – subscript, "Lost 54 pounds"]

[…]

ANN HUDSON: Everyone around the office when I came back from maternity leave was taking Healthe Trim. It was all the rage. And I was like, what the heck is this? What's going on? When I started taking it, I felt better. I had a lot more energy. I wanted to do stuff. And after six weeks, the weight just started falling off. It was like five pounds, six pounds, eight pounds. It was a huge transition.

DR. WENDY WALSH: How much did you lose total?

ANN HUDSON: Fifty-four.

DR. WENDY WALSH: Fifty-four pounds.

ANN HUDSON: Yeah.

MATTHEW DWYER: So, you went from a 12 in a dress to a two in a dress.

ANN HUDSON: Now I'm a 2.

MATTHEW DWYER: In five months, six months?

ANN HUDSON: Yes.

DR. WENDY WALSH: Five sizes, five months!

[…]

DR. WENDY WALSH: Welcome back. Well, everybody's talking about Healthe Trim and I'm finally beginning to understand why. It's quite simple. It's because Healthe Trim works. There's no extreme dieting, no extreme exercising, no costly meal delivery programs. Just two capsules in the morning and Healthe Trim goes right to work, making you feel less hungry while simultaneously giving you an alert, focused energy. So, you burn more calories than you take in. The result, you lose weight naturally.

MATTHEW DWYER: Most people are out there like me. They're stressed. Jobs, kids, it's difficult to eat a well-balanced meal and it's difficult to watch what you're eating and exercise all the time on a regular basis. It's not very difficult, though, to wake up in the morning, take two natural supplements, drink water and go about your day.

[…]

DR. WENDY WALSH: You've seen and heard great stories about real people just like you who have lost 10 to 20, 40 to 60, even 100 pounds or more with the number one natural weight loss supplement, Healthe Trim. Isn't it finally time for you to take control with Healthe Trim?. . . Just take two capsules a day and you're on your way to a better, healthier, happier life….

(Exhibit E, Healthe Trim infomercial).

Count I
False or Unsubstantiated Efficacy Claims for the Healthe Trim Products

6. In connection with the advertising, promotion, offering for sale, or sale of the Healthe Trim Products, Respondent has represented, directly or indirectly, expressly or by implication, that:

a. The Healthe Trim Products cause substantial weight loss, including as much as 35, 50, 130, and 165 pounds;

b. The Healthe Trim Products cause rapid weight loss, including as much as 19 pounds in the first week, 47 pounds in 100 days, and 54 pounds in five months;

c. The Healthe Trim Products cause weight loss without the need to diet, give up any foods, or make any changes in lifestyle;

d. The Healthe Trim Products burn fat and cause fat loss;

e. The Healthe Trim Products boost metabolism; and

f. The Healthe Trim Products suppress appetite.

7. The representations set forth in Paragraph 6 are false or misleading, or were not substantiated at the time the representations were made.

Count II
False Establishment Claims for the Healthe Trim Products

8. In connection with the advertising, promotion, offering for sale, or sale of the Healthe Trim Products, Respondent has represented, directly or indirectly, expressly or by implication, that scientific studies prove that the Healthe Trim Products cause weight loss.

9. In fact, scientific studies do not prove that the Healthe Trim Products cause weight loss. Among other reasons, two

clinical trials showed no statistically significant differences in weight loss between the test groups taking Healthe Trim Original Formula and test groups taking a placebo. Therefore, the representation set forth in Paragraph 8 is false or misleading.

Violations of Sections 5 and 12

11. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twenty-second day of October, 2014, has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A

EXHIBIT A

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 1223267

TITLE HEALTHY LIFE SCIENCES, LCC

DATE RECORDED: SEPTEMBER 28, 2012
TRANSCRIBED: MARCH 18, 2014

PAGES 1 THROUGH 5

EXHIBIT A - HEALTHY TRIM MATTHEW 60 FALL IS HERE 2995 30 DAYS 092812 - PROMO CODE MONSTERS

Complaint

FEDERAL TRADE COMMISSION

I N D E X

FEDERAL TRADE COMMISSION

In the Matter of:)
) Matter No. 1223287
Healthy Life Sciences, LLC)
---)
September 28, 2012

The following transcript was produced from a digital recording provided to For The Record, Inc. on March 11, 2014.

Complaint

P R O C E E D I N G S

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EXHIBIT A - HEALTHY TRIM MATTHEW 60 FALL IS HERE 2995 30 DAYS 092812 - PROMO CODE MONSTERS

MATTHEW: Fall is here. So it's time for your weight to start falling off. Healthe Trim is the answer to your weight loss struggles. It's a natural supplement that actually works.

Hi, it's Matthew, founder of Healthe Trim, and we've sold over 1.5 million bottles. That should tell you right there that Healthe Trim works. Lose weight easily and quickly today with our limited time offer of $29.95 for a 30-day supply. That's a 50 percent savings.

If you've tried diets, meal plans, clinics, meetings and nothing's worked for you, it doesn't surprise me. You got to give Healthe Trim a try.

Healthe Trim is so easy. Just a couple of capsules in the morning right when you wake up, drink water and go about your day. We guarantee it or your money back.

Make today the day you stop struggling with your weight and give Healthe Trim a try with our amazing $29.95 offer for a 30-day supply. Go to HealthyTrim.com and enter promo code "monsters."

(The commercial was concluded.)

C E R T I F I C A T I O N O F T Y P I S T

MATTER NUMBER: 1223287
CASE TITLE: HEALTHY LIFE SCIENCES, LLC
TAPING DATE: SEPTEMBER 28, 2012
TRANSCRIPTION DATE: MARCH 18, 2014

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the tapes transcribed by me on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: MARCH 18, 2014

ELIZABETH M. FARRELL

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE

Complaint

Exhibit B

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 1223287

TITLE HEALTHY LIFE SCIENCES, LCC

DATE RECORDED: OCTOBER 5, 2012
TRANSCRIBED: MARCH 18, 2014

PAGES 1 THROUGH 5

EXHIBIT B - HEALTHY TRIM MATTHEW 60 BREAKTHROUGH
BUY 1 GET 1 100512

FEDERAL TRADE COMMISSION

I N D E X

Complaint

FEDERAL TRADE COMMISSION

In the Matter of:)
)
) Matter No. 1223287
Healthy Life Sciences, LLC)
---)
October 5, 2012

The following transcript was produced from a digital recording provided to For The Record, Inc. on March 11, 2014.

4

P R O C E E D I N G S

- - - - -

EXHIBIT B - HEALTHY TRIM MATTHEW 60 BREAKTHROUGH BUY 1 GET 1 100512

MATTHEW: Are you ready for this? We've got something new for you. It's Matthew, founder of Healthe Trim. We've now added Healthe Trim raspberry ketone to our unique proprietary blend of Healthe Trim.

It's a breakthrough. It is awesome. I feel fantastic. Healthe Trim raspberry ketone will change your life. You'll lose weight without dieting. You won't believe how fast the fat will start burning off.

I guarantee it. 30-day, no questions asked money back guarantee. You will be as excited as I am with Healthe Trim, now powered by raspberry ketone. It burns the fat, suppresses your appetite, and will boost your energy. It's natural, it's safe and it is so easy.

With our 30-day money back guarantee, you have nothing to lose but the weight.

Go to HealthyTrim.com/rk and take advantage of our limited time offer of buy one, get one free. Supplies are limited, so buy now at HealthyTrim.com/rk.

(The commercial was concluded.)

Complaint

C E R T I F I C A T I O N O F T Y P I S T

MATTER NUMBER: 1223287
CASE TITLE: HEALTHY LIFE SCIENCES, LLC
TAPING DATE: OCTOBER 5, 2012
TRANSCRIPTION DATE: MARCH 18, 2014

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the tapes transcribed by me on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: MARCH 18, 2014

ELIZABETH M. FARRELL

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE

Complaint

Exhibit C

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 1223267

TITLE HEALTHY LIFE SCIENCES, LCC

DATE RECORDED: JANUARY 24
TRANSCRIBED: MARCH 18, 2014

PAGES 1 THROUGH 9

EXHIBIT C - WHTZ HEALTHYTRIM ELVIS AND MATTHEW 1-24

Complaint

FEDERAL TRADE COMMISSION

I N D E X

FEDERAL TRADE COMMISSION

In the Matter of:)
) Matter No. 1223287
Healthy Life Sciences, LLC)
---)
January 24

The following transcript was produced from a digital recording provided to For The Record, Inc. on March 11, 2014.

Complaint

P R O C E E D I N G S

- - - - -

EXHIBIT C - WHTZ HEALTHYTRIM ELVIS AND MATTHEW 1-24

ELVIS: Hi, it's Elvis. You guys have heard about Healthe Trim and their excellent website HealthyTrim.com. Well, the founder of Healthe Trim and our weight loss expert is back with a 30-day money back guarantee. You have nothing to lose but the weight. Go to HealthyTrim.com, start losing weight today. HealthyTrim.com.

SKEERY JONES: How's it going? It's Skeery Jones. A lot of people have been asking me over the past year about this all-natural supplement I've been taking, which has allowed me to lose a whole bunch of weight and still eat the foods I like when I want them. It's called Healthe Trim at HealthyTrim.com.

Well, I figured to clear a whole lot of rumors up and to answer everyone's question, we'd bring in Matthew Dwyer, the founder of Healthe Trim.

Good morning, Matthew.

MATTHEW DWYER: Skeery, how are you, buddy?

SKEERY JONES: The past year has just been amazing for me.

MATTHEW DWYER: Yeah, see, listen, here's the thing. Healthe Trim's not a diet, you know. It's just

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an all-natural supplement that you take in the morning and it works. It's not a lifestyle change, and I think that's why we're having so much success with it, because research shows that 95 percent of diets fail because you have to give up the foods that you love. So, you end up gaining the weight back. And that's not the case with Healthe Trim.

SKEERY JONES: Right.

MATTHEW DWYER: Listen, I was a guy that was just desperately trying to lose the weight. So, I started trying all different dietary supplements and they all gave me the crazy jittery feeling until I stumbled upon Healthe Trim. I lost five pounds the first week; I lost 16 pounds in three weeks; I lost 47 pounds in 100 days.

SKEERY JONES: Oh, my God.

MATTHEW DWYER: It's not important what we weigh, Skeery, but it's the visceral fat around our organs, the belly fat, that causes all the health issues.

SKEERY JONES: And, you know, when I started taking Healthe Trim, I realized I was given more energy in the morning when I started taking the Healthe Trim. And then, throughout the day, the energy was sustained. I can eat what I want, but I don't find myself as hungry as I used to be.

Complaint

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MATTHEW DWYER: I think it's important to know there's 17 all-natural ingredients. I couldn't do the meal plans, I couldn't do the shake plans. What I can do is I can wake up in the morning, take two all-natural supplements, drink water and go about my day. I'm now a 32-inch waist. After three years, I haven't gained a pound back. I feel great. I don't have the crazy jittery feeling.

Dr. Oz does specials all the time about how over two-thirds of the supplements out there are scams because they don't have authentic hoodia in here. Hoodia is the cactus plant that the Africans used to live off way back in the day to go five or six days to hunt their prey without food. We have authentic hoodia in Healthe Trim.

SKEERY JONES: And I know that because I've checked your website and I've looked into it and you guys have the documents to back it up, that this is the real deal hoodia.

MATTHEW DWYER: And by no means is Dr. Oz endorsing Healthe Trim, but he says that all 17 ingredients in Healthe Trim are not only safe, they're very, very healthy for you.

SKEERY JONES: What about this Resveratrol I've been reading about?

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MATTHEW DWYER: Yeah, Resveratrol is the grape red wine extract, okay? I encourage your listeners to Google the Harvard study on Resveratrol. There's just so many anti-aging benefits and healthy benefits to Resveratrol. Listen, everything that's in one capsule of Healthe Trim, it's just 17 fruits and vegetables. You get great energy from the green tea. There's 175 milligrams from green tea in one capsule, which is equivalent to about a 16-ounce Dunkin Donuts or Starbucks cup of coffee.

SKEERY JONES: Mm-hmm.

MATTHEW DWYER: Do I know that Healthe Trim is the best all-natural supplement in the world? No, I do not. But here's what I do know, Healthe Trim absolutely works and we have a 30-day no questions asked money back guarantee.

SKEERY JONES: So, what's the phone number? How can people get their hands on some Healthe Trim?

MATTHEW DWYER: It's 800-456-TRIM. That's 800-456-8746 or HealthyTrim.com.

SKEERY JONES: So, HealthyTrim.com. And what's that number again?

MATTHEW DWYER: 800-456-TRIM. That's 800-456-8746 or HealthyTrim.com.

SKEERY JONES: Matthew, the phone lines are

Complaint

lighting up. Can you stick around for just a little bit?

MATTHEW DWYER: Yeah, man, I'll stick around.

SKEERY JONES: Cool. All right, we're going to answer some of those questions in just a little while and we have more coming up right after this.

(The commercial was concluded.)

C E R T I F I C A T I O N O F T Y P I S T

MATTER NUMBER: 1223287
CASE TITLE: HEALTHY LIFE SCIENCES, LLC
TAPING DATE: JANUARY 24
TRANSCRIPTION DATE: MARCH 18, 2014

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the tapes transcribed by me on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: MARCH 18, 2014

ELIZABETH M. FARRELL

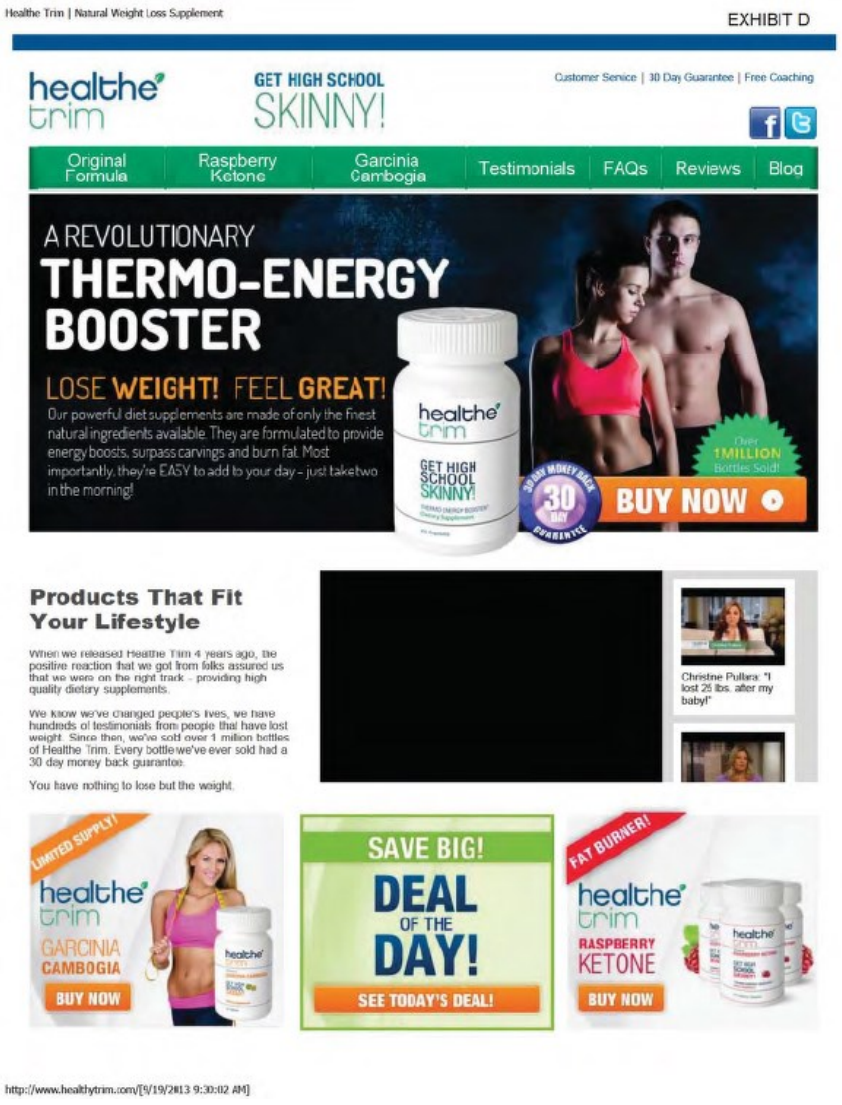
C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE

Complaint

Exhibit D



Healthe Trim | Natural Weight Loss Supplement

EXHIBIT D

Real **People**, Incredible **Results**!

Alicia Hanner
Gilbert, AZ

Since mid-summer I'd begun to pay closer attention to John Jay & Rich ta k about healthé trim. They raved about its simplicity. I decided it was time. I was over 210 lbs. and I am only 5'7". I knew I needed change before it started affecting my health. I had to lose some weight—primarily baby weight from having twins in '04* Read More

Victoria Russell
Southborough, MA

My weight loss goal was to lose about 15-20 lbs and I ended up losing 30 lbs in 4 months and a total of 35 lbs in 5 months! I've never been really overweight, but I always had trouble shedding a little extra weight that I wasn't happy with. Since I've been taking Healthé Trim and lost the weight I am just more comfortable and confident with my body.* Read More

Emily York
Phoenix, AZ

My name is Emily. I'm a twenty-nine-year-old mother of three. After my first daughter, I gained 60 pounds in a year and learned I had thyroid disease, a condition that not only meant I would gain weight it also meant it would be difficult to lose weight. As the years went by, pounds piled on, and as I tried all the diet plans and pills and shakes with no success.* Read More

*The weight loss experienced by these individuals actually occurred. We do not have many facts about the circumstances about how this weight loss was achieved, other than the consuming of Healthe Trim, for either us or you to conclude that this should be generally expected outcome from the use of Healthe Trim. We encourage a reasonable exercise and healthy diet as an important part of your weight loss and maintenance program. A clinical study of 60 participants in 2009 reflected an average weight loss of 2.43 pounds in 30 days when those individuals took Healthe Trim exclusive of a diet and exercise program.

Healthe Trim Uses Natural **Ingredients**

healthe trim - ORIGINAL FORMULA

Authentic **Hoodia Gordonii**

Hoodia is a genus of 13 species in the flowering plant family Apocynaceae, under the subfamily Asclepiadoideae. They are stem succulents... read more.

Green Tea **Leaf Extract**

Green tea is tea made solely with the leaves of Camellia sinensis that have undergone minimal oxidation during processing. Green tea... read more.

Garcinia **Cambogia**

Garcinia Cambogia is a natural form of Hydroxycitric Acid (HCA) which can inhibit Citrate Lyase (an enzyme in cells). Citrate Lyase... read more.

Authentic **Resveratrol**

...ed by plants with its highest concentration in grape skins and red wines. This nutrient is working to boost... read more.

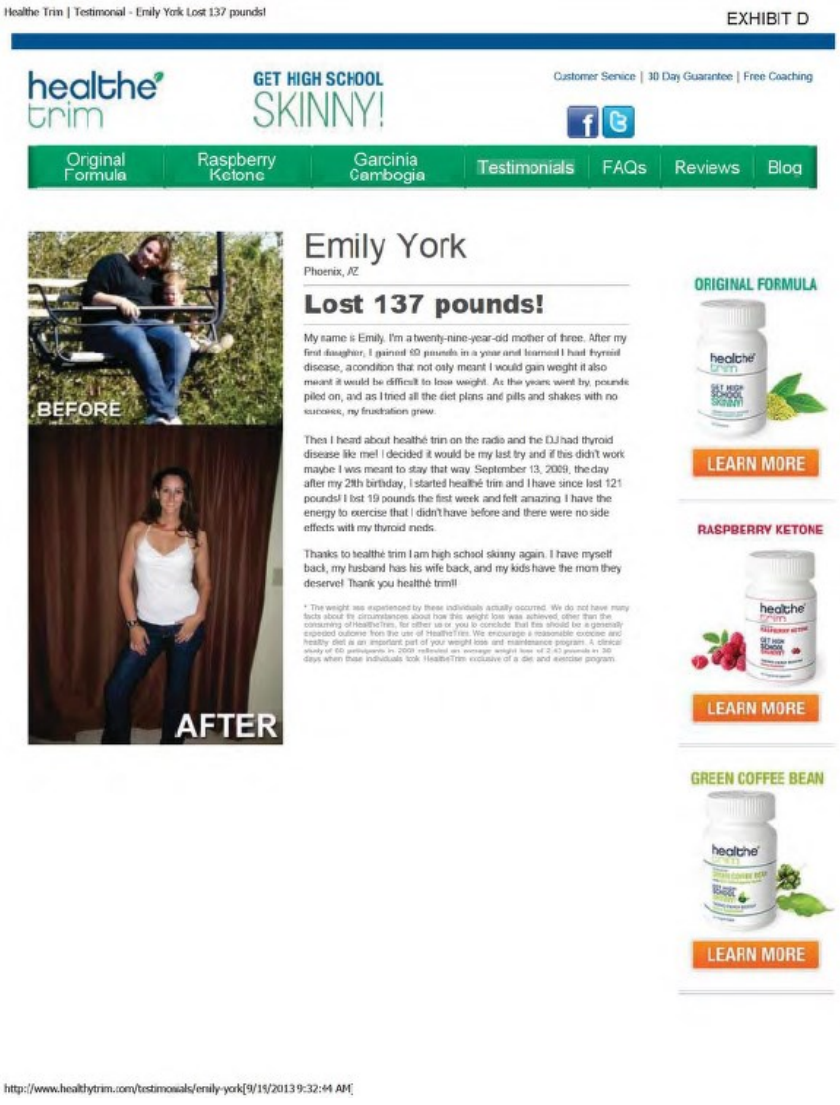
Caralluma **Fimbriata**

...ulent plant in the family Apocynaceae. It has been eaten in rural India for centuries, raw, as a vegetable with... read more.

Coix **Seed**

Coixseed (also known as Job's Tears) is a tall grain-bearing tropical plant of the family Poaceae (grass family) native to East Asia and... read more.

Complaint


Healthe Trim | Testimonial - Emily York Lost 137 pounds!
EXHIBIT D
healthe trim
GET HIGH SCHOOL SKINNY!
Customer Service | 30 Day Guarantee | Free Coaching
Original Formula
Raspberry Ketone
Garcinia Cambogia
Testimonials
FAQs
Reviews
Blog
BEFORE
AFTER
Emily York
Phoenix, AZ
Lost 137 pounds!
My name is Emily. I'm a twenty-nine-year-old mother of three. After my first daughter, I gained 60 pounds in a year and learned I had thyroid disease, a condition that not only meant I would gain weight it also meant it would be difficult to lose weight. As the years went by, pounds piled on, and as I tried all the diet plans and pills and shakes with no success, my frustration grew.
Then I heard about healthé trim on the radio and the DJ had thyroid disease like me! I decided it would be my last try and if this didn't work maybe I was meant to stay that way. September 13, 2009, the day after my 29th birthday, I started healthé trim and I have since lost 121 pounds! I lost 19 pounds the first week and felt amazing. I have the energy to exercise that I didn't have before and there were no side effects with my thyroid meds.
Thanks to healthe trim I am high school skinny again. I have myself back, my husband has his wife back, and my kids have the mom they deserve! Thank you healthé trim!!
* The weight loss experienced by these individuals actually occurred. We do not have many facts about the circumstances about how this weight loss was achieved, other than the consuming of HealtheTrim, for either us or you to conclude that this should be a generally expected outcome from the use of HealtheTrim. We encourage a reasonable exercise and healthy diet as an important part of your weight loss and maintenance program. A clinical study of 60 participants in 2009 reflected an average weight loss of 2.43 pounds in 30 days when these individuals took HealtheTrim exclusive of a diet and exercise program.
ORIGINAL FORMULA
LEARN MORE
RASPBERRY KETONE
LEARN MORE
GREEN COFFEE BEAN
LEARN MORE
http://www.healthytrim.com/testimonials/emily-york[9/19/2013 9:32:44 AM]

Lose Weight Fast With Healthe Trim

EXHIBIT D

healthe trim

GET HIGH SCHOOL SKINNY!

Customer Service | 30 Day Guarantee | Free Coaching

Original Formula | Raspberry Ketone | Garcinia Cambogia | Testimonials | FAQs | Reviews | Blog

How to Lose Weight Fast

Fad diets like the *hCG diet* or the *17 Day Diet* are largely popular due to their promise of fast results. These results are caused by a dramatic reduction in calorie intake and are often temporary, once you return to a normal calorie count, the weight will come right back. Healthé Trim focuses on sustainable lifestyle changes rather than metabolic shock treatment, allowing you to achieve permanent *natural weight loss* more quickly and easily than you could have imagined.

Here are some more important tips for losing weight fast:

Eat Healthy Foods

Starch and sodium rich foods cause your body to retain fluids, and fried foods are high in unnecessary calories. A diet rich in fruits, vegetables and lean meats will get you started in developing smart eating habits that will keep your figure trim and your body healthy.

Drink Lots of Water

Exercising improves energy, helps you sleep, burns calories, and builds muscle mass. It even boosts your metabolism, helping you to lose weight more quickly. A balance of dieting and exercise is healthier than dieting alone, and can also help you to look more attractive.

Natural Weight Loss Supplements

There are a lot of *weight loss supplements* out there, but not all of them are effective at producing real results. Healthé Trim is clinically proven to help you lose weight. Our *weight loss supplement* is made from natural ingredients that curb your appetite, boost energy, and increase your metabolism for *rapid weight loss*.

Fad diets that promise fast results may be dangerous to your health if they require you to consume too few calories. Healthé Trim lets you continue eating the food you enjoy in smaller portions while giving you extra energy for a more active lifestyle. Our natural weight loss supplement has everything your body needs to achieve *quick weight loss* and better overal health.

ORIGINAL FORMULA

LEARN MORE

RASPBERRY KETONE

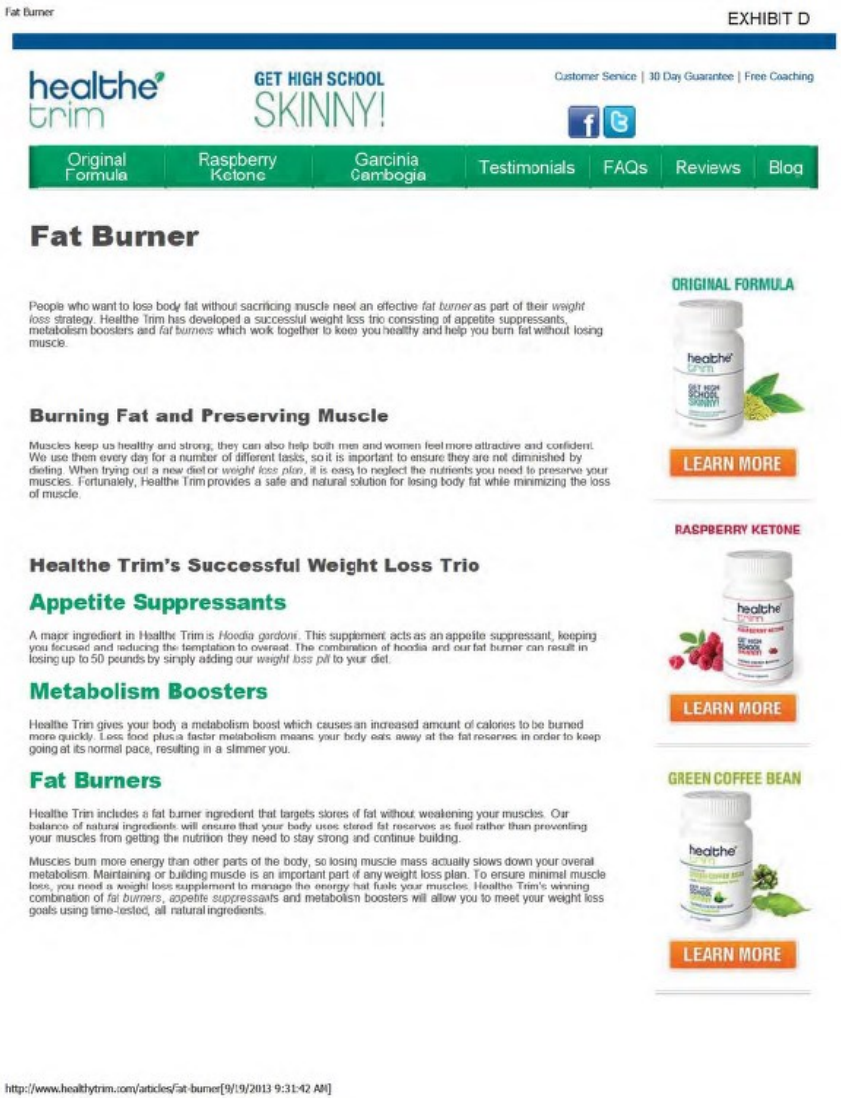
LEARN MORE

GREEN COFFEE BEAN

LEARN MORE

http://www.healthytrim.com/articles/ose-weight-fast[9/19/2013 9:31:36 AM]

Complaint



Fat Burner

EXHIBIT D

healthe trim

GET HIGH SCHOOL SKINNY!

Customer Service | 30 Day Guarantee | Free Coaching

Original Formula | Raspberry Ketone | Garcinia Cambogia | Testimonials | FAQs | Reviews | Blog

Fat Burner

People who want to lose body fat without sacrificing muscle need an effective *fat burner* as part of their *weight loss* strategy. Healthe Trim has developed a successful weight loss trio consisting of appetite suppressants, metabolism boosters and *fat burners* which work together to keep you healthy and help you burn fat without losing muscle.

Burning Fat and Preserving Muscle

Muscles keep us healthy and strong, they can also help both men and women feel more attractive and confident. We use them every day for a number of different tasks, so it is important to ensure they are not diminished by dieting. When trying out a new diet or *weight loss plan*, it is easy to neglect the nutrients you need to preserve your muscles. Fortunately, Healthe Trim provides a safe and natural solution for losing body fat while minimizing the loss of muscle.

Healthe Trim's Successful Weight Loss Trio

Appetite Suppressants

A major ingredient in Healthe Trim is *Hoodia gardonii*. This supplement acts as an appetite suppressant, keeping you focused and reducing the temptation to overeat. The combination of hoodia and our fat burner can result in losing up to 50 pounds by simply adding our *weight loss pill* to your diet.

Metabolism Boosters

Healthe Trim gives your body a metabolism boost which causes an increased amount of calories to be burned more quickly. Less food plus a faster metabolism means your body eats away at the fat reserves in order to keep going at its normal pace, resulting in a slimmer you.

Fat Burners

Healthe Trim includes a fat burner ingredient that targets stores of fat without weakening your muscles. Our balance of natural ingredients will ensure that your body uses stored fat reserves as fuel rather than preventing your muscles from getting the nutrition they need to stay strong and continue building.

Muscles burn more energy than other parts of the body, so losing muscle mass actually slows down your overall metabolism. Maintaining or building muscle is an important part of any weight loss plan. To ensure minimal muscle loss, you need a weight loss supplement to manage the energy fat fuels your muscles. Healthe Trim's winning combination of *fat burners*, *appetite suppressants* and metabolism boosters will allow you to meet your weight loss goals using time-tested, all natural ingredients.

ORIGINAL FORMULA

LEARN MORE

RASPBERRY KETONE

LEARN MORE

GREEN COFFEE BEAN

LEARN MORE

http://www.healthytrim.com/articles/fat-burner[9/19/2013 9:31:42 AM]

Complaint

Exhibit E

EXHIBIT E

1

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 1223287

TITLE HEALTHY LIFE SCIENCES, LLC

DATE RECORDED: JUNE 24, 2012
TRANSCRIBED: FEBRUARY 24, 2014
REVISED: MARCH 13, 2014

PAGES 1 THROUGH 49

HEALTHE TRIM VIDEO

Complaint

FEDERAL TRADE COMMISSION

I N D E X

FEDERAL TRADE COMMISSION

In the Matter of:) Matter No. 1223287
Healthy Life Sciences, LLC)

The following transcript was produced from a digital recording provided to For The Record, Inc. on February 3, 2014.

Complaint

P R O C E E D I N G S

- - - - -

HEALTHE TRIM VIDEO

ON SCREEN: The following is a paid program for Healthe Trim.

Sponsored by HealthyLife Sciences, LLC.

ON SCREEN: Dr. Wendy Walsh, PhD

Healthe Trim

DR. WENDY WALSH: The effects on your health of being overweight can be overwhelming and dangerous, both physically and mentally, coronary heart disease, cancer, high blood pressure, depression, anxiety. We eat too much and don't exercise enough. Plain and simply, we've lost control of the part of our brain that tells us when we're full.

ON SCREEN: How Mario helped me

LOSE 30 LBS. IN 5 MONTHS

How did this mother of 3 Get High School Skinny!

Healthe Trim

DR. WENDY WALSH: I've heard about a fast-acting natural supplement that's helping people just like you take back control and lose weight.

ON SCREEN: LOST

307 35 54 50 127

5

User Group average weight loss 10.92 lbs in 30 days

DR. WENDY WALSH: In the next half-hour, you'll hear truly amazing stories of weight loss that are breathtaking.

ON SCREEN: Dr. Wendy Walsh, PhD

Healthe Trim

DR. WENDY WALSH: People like you have started new lives. They're so proud and joyful and their story can be your story.

But it all begins with one man, who's worked tirelessly to help hundreds of thousands of people lose millions of pounds. He desperately wanted to lose weight himself, but nothing he tried worked. Then he discovered the formula for Healthe Trim and it changed his life forever.

I'm happy to introduce Mr. Matthew Dwyer. Hi, Matthew.

MATTHEW DWYER: Hey, how are you? Thanks so much for having me.

DR. WENDY WALSH: People are losing weight. Matthew, I need to know what's going on.

MATTHEW DWYER: Hundreds of thousands of people have lost millions of pounds on Healthe Trim and they're keeping it off because Healthe Trim is just so darn easy.

Complaint

DR. WENDY WALSH: Why do they stick to Healthe Trim?

ON SCREEN: Diet and exercise are necessary to lose weight

MATTHEW DWYER: Because all you do is wake up in the morning, take two natural supplements, drink water and go about your day, and it is just that simple. You'll be less hungry and you'll be less tired.

ON SCREEN: Before and After photos

Lost 47 Pounds

Matthew

Healthe Trim

MATTHEW DWYER: You'll have great energy. It will motivate you to move around. It will curve your cravings and you'll lose the weight easy and naturally.

DR. WENDY WALSH: So, it actually makes you want to move more?

MATTHEW DWYER: It really does. It makes you want to move more.

ON SCREEN: Before 189 Pounds

Lost 54 Pounds

User Group average weight loss 10.92 lbs in 30 days

Healthe Trim

DR. WENDY WALSH: I'd like to introduce now Ann

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Hudson. Ann is a popular radio disk jockey and TV host in Austin, Texas. Welcome, Ann.

ANN HUDSON: Yes. Thank you.

DR. WENDY WALSH: I also understand you're a really busy mom of two.

ANN HUDSON: Yes, two boys. Two boys.

DR. WENDY WALSH: That's exhausting. So, DJs are jaded, they're skeptics. They hear about stuff all the time.

ANN HUDSON: Well, yeah, because most of the time, it's crap.

MATTHEW DWYER: I was skeptical, too. I tried 42 dietary supplements before Healthe Trim changed my life. They all failed me. But I'll tell you what, don't take it from me. Just listen to all these people that have lost massive amounts of weight.

ANN HUDSON: Everyone around the office when I came back from maternity leave was taking Healthe Trim. It was all the rage. And I was like, what the heck is this? What's going on? When I started taking it, I felt better. I had a lot more energy. I wanted to do stuff. And after six weeks, the weight just started falling off. It was like five pounds, six pounds, eight pounds. It was a huge transition.

DR. WENDY WALSH: How much did you lose total?

Complaint

ANN HUDSON: Fifty-four.
DR. WENDY WALSH: Fifty-four pounds.
ANN HUDSON: Yeah.
MATTHEW DWYER: So, you went from a 12 in a dress to a two in a dress.
ANN HUDSON: Now I'm a 2.
MATTHEW DWYER: In five months, six months?
ANN HUDSON: Yes.
DR. WENDY WALSH: Five sizes, five months.
ANN HUDSON: The moral of the story really is, if you stick with it, you're going to lose the weight. And that's what I always tell people. And I have people calling me all the time at the radio station talking about their weight loss because it -- it's going to happen for you. Stick with it.
ON SCREEN: FREE TRIAL 30 DAY
$9.95
Shipping and Processing
LOST 35 POUNDS
Victoria
Lost 54 Pounds
Ann
Lost 127 Pounds
Debbie
Lost 130 Pounds

9

Ben
Lost 165 Pounds
Jay
Satisfaction Guarantee 100%
Your results may vary.
1-800-576-6399
TRYHEALTHETRIM.COM
Healthe Trim
MATTHEW DWYER: I want you to lose the weight. I want you to live a better, healthier lifestyle, and that's why I'm here. I know Healthe Trim will work for you because it's worked for me and hundreds of thousands of others. You'll start to see and feel a difference in just seven days. I guarantee it.
ON SCREEN: Before 247 Pounds
Lost 127 Pounds
User Group average weight loss 10.92 lbs in 30 days
Healthe Trim
DR. WENDY WALSH: Right now, we're going to meet another one of Healthe Trim's amazing success stories. Now, she's a really busy mother of four who once thought that weight loss was completely out of the question until Healthe Trim. I want to welcome Debbie White to our show.

Complaint

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How much did you lose?

DEBBIE WHITE: I've lost 127 pounds in 13 months.

DR. WENDY WALSH: 127 pounds.

DEBBIE WHITE: Yes, ma'am.

MATTHEW DWYER: Thirteen months. How long ago was that?

DR. WENDY WALSH: You lost half yourself.

DEBBIE WHITE: I did.

DR. WENDY WALSH: When did you start to gain weight?

DEBBIE WHITE: I gained -- started gaining weight when they removed my thyroid.

DR. WENDY WALSH: So, you had a health issue.

MATTHEW DWYER: She was thin all her life until the age of 33.

DR. WENDY WALSH: How was it affecting your marriage?

DEBBIE WHITE: It got very complicated. My -- it's kind of like our, well, sex life stopped.

DR. WENDY WALSH: Mmm.

DEBBIE WHITE: I wouldn't let him see me naked at all. I'd literally tell him, turn off the light, get in bed. And then I'd get in bed and I'd just have all these pajamas on because I just -- I didn't want him

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touching me. I just felt so gross.

DR. WENDY WALSH: Did you worry your husband was going to leave you?

DEBBIE WHITE: I thought, well, you know, if he's getting it, you know, somewhere else, I hope he's happy. I wanted to die. I really -- I just wanted to die. I know that that sounds so selfish about me because, you know, oh, well, it's just weight. I even went into the bathroom one day when they were gone and I filled the tub with water, lit some candles and some music, and I just sat there and I cried and I cried and I cried and I had a bottle of pills with me. And then my phone rang and it was my daughter and I just -- I just threw them away. I just -- she saved me.

DR. WENDY WALSH: Oh. I'm so glad that phone call came.

DEBBIE WHITE: So am I.

DR. WENDY WALSH: And I'm so glad you're here today, because today you have a new story to tell, don't you?

DEBBIE WHITE: Yes, I do.

DR. WENDY WALSH: So, you spent $30,000 on products.

DEBBIE WHITE: Yes.

DR. WENDY WALSH: You had completely given up.

Complaint

12

DEBBIE WHITE: Yeah.

DR. WENDY WALSH: It was done for you.

DEBBIE WHITE: Yes.

DR. WENDY WALSH: How did you hear about Healthe Trim?

DEBBIE WHITE: You know, people were like, this works, you've got to try this, Debbie, you've just got to try it. I'm like, don't even go there with me, don't, you have no idea. And I tried it and in the first week, I lost five pounds. I kept losing weight.

DR. WENDY WALSH: And this is only days and weeks after beginning.

DEBBIE WHITE: Like a month because I had lost ten pounds in a month.

DR. WENDY WALSH: Wow.

DEBBIE WHITE: Yeah.

DR. WENDY WALSH: So, did this inspire you to keep going?

DEBBIE WHITE: Oh, yeah. Oh, yeah. I was like, okay, give me the bottle.

DR. WENDY WALSH: Right.

DEBBIE WHITE: I need more.

MATTHEW DWYER: Well, you didn't take more.

DEBBIE WHITE: No, I didn't. I just wanted to make sure I didn't run out.

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DR. WENDY WALSH: That's right. So, Debbie, you have lost 127 pounds in 13 months. How do you keep the weight off?

DEBBIE WHITE: I take Healthe Trim, two capsules every morning, and it's easy as that.

DR. WENDY WALSH: So, it's easy for you?

DEBBIE WHITE: It's very easy for me.

DR. WENDY WALSH: Are you feeling deprived?

DEBBIE WHITE: No, not at all.

DR. WENDY WALSH: Not at all?

DEBBIE WHITE: No, I can eat whatever I want. And I just -- I don't sit there and go, oh no, I can't have that, I wish I could. No, I get to order it and I get to eat it and then I take the rest home.

DR. WENDY WALSH: How's it going with the hubby now?

DEBBIE WHITE: I feel so much more in love with him. I mean, it just --

DR. WENDY WALSH: He's courting you.

DEBBIE WHITE: He is, and I'm feeling it and I am loving it.

DR. WENDY WALSH: Things rocking?

DEBBIE WHITE: Things are rocking. I keep the lights on.

MATTHEW DWYER: Oh, geez.

Complaint

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DEBBIE WHITE: I even want to Victoria's Secret and got some sexy stuff.

DR. WENDY WALSH: Whoo, whoo. She's shopping at Victoria's Secret. You know what that means.

DEBBIE WHITE: My honey's a keeper. He was always there to support me and he's not going anywhere. Not now.

DR. WENDY WALSH: Now he's getting satisfied, not the Healthe Trim satisfied. Actually, that is what the Healthe Trim satisfaction is, isn't it?

MATTHEW DWYER: Yep, pretty much it is.

DR. WENDY WALSH: Everyone benefits.

DEBBIE WHITE: Everyone. And many times over.

MATTHEW DWYER: Oh, gosh.

DR. WENDY WALSH: Matthew's like, I don't know what I've started here. I want to see it. Stand up there and give me a little twirl, would you? Look at that. And you're in like a size four jean there?

DEBBIE WHITE: Two.

DR. WENDY WALSH: Size two skinny jean. You hear that? Don't tell me, those were your shorts.

DEBBIE WHITE: These were my shorts 14 months ago.

DR. WENDY WALSH: You could make a skirt out of one leg.

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DEBBIE WHITE: I know, I could, huh.
DR. WENDY WALSH: You could make a great little pencil skirt there.
MATTHEW DWYER: Fourteen months?
DEBBIE WHITE: Yeah, 14 months ago.
DR. WENDY WALSH: That's amazing. All because of Healthe Trim.
DEBBIE WHITE: I'm 47 years old and I feel like a hot mama and I cannot wait to be that hot grandma, seriously.
DR. WENDY WALSH: Oooh.
DEBBIE WHITE: Because I'm going to keep this figure. I'm keeping it for the rest of my days.
MATTHEW DWYER: Healthe Trim works and it's easy. That's the beautiful thing.
ON SCREEN: Before and After photos
Lost 47 Pounds
Diet and exercise are necessary to lose weight.
Matthew
Healthe Trim
MATTHEW DWYER: And it's no lifestyle change. You don't have to change your lifestyle. You can still do whatever you want and still eat the foods that you love.

Complaint

16

ON SCREEN: Before 247 Pounds
Lost 127 Pounds
Healthe Trim
MATTHEW DWYER: You're just going to eat less portions and feel content and feel happy pushing that plate away.
ON SCREEN: Based on advertising dollars 2010-2011 on Clear Channel
Healthe Trim
DR. WENDY WALSH: You know, Healthe Trim is the number one natural weight loss supplement and for good reason. It works. People from every walk of life have taken control of their weight and lost 10 to 20, 40 to 60, even 100 pounds and more, and the best part is they did it without dieting and without depriving themselves of the foods they love.
Isn't it time you joined them?
ON SCREEN: Dr. Wendy Walsh, PhD
Health Trim
DR. WENDY WALSH: Stay tuned to find out how you can get Healthe Trim delivered right to your door through a special limited time introductory offer.
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GYM MEMBERSHIP (STOP)

EXTREME EXERCISE (STOP)

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DR. WENDY WALSH: You know you can pay hundreds of dollars a month for weight loss programs, gym memberships and extreme exercise routines --

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CALL NOW

Satisfaction Guarantee 100%

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DR. WENDY WALSH: -- but if you call the number on your screen or go online to TryHealtheTrim.com today, you won't pay $100, you won't pay $75 or $50 or even $30, because your first month of Healthe Trim is only $9.95.

ON SCREEN: FREE TRIAL 30 DAY

$9.95

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Shipping & Processing
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TRYHEALTHETRIM.COM

DR. WENDY WALSH: You heard me right. Call or go online now and your first month of Healthe Trim is only $9.95. And to make sure you're getting results fast, you'll get two lifestyle guides, Everyday Meals and Everyday Fitness, both for free.

MATTHEW DWYER: Plus, to get you maximum results with Healthe Trim, I'm also going to include for free access to our Healthe Trim weight loss coaching program. Our coaches are there to answer your questions, to give you tips and make sure you lose the weight you want and they'll do it for free.

DR. WENDY WALSH: To really jumpstart your weight loss, you'll get a 30-day supply of the amazing detox formula, Healthy Cleanse, and that's free, too.

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LOST 35 POUNDS
Victoria
Lost 54 Pounds

19

Ann
Lost 127 Pounds
Debbie
Lost 130 Pounds
Ben
Lost 165 Pounds
Jay
Satisfaction Guarantee 100%
Your results may vary.
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MATTHEW DWYER: Healthe Trim works. It's so easy. It's natural. You'll feel great. You'll lose weight that first week. Healthe Trim will change your life, I guarantee it.

DR. WENDY WALSH: Try Healthe Trim for 30 days. If you don't lose weight, if you aren't 100 percent satisfied, just send it back and keep the meal plan and fitness guide as a gift. It is that easy.

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Complaint

20

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Healthe Trim

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DR. WENDY WALSH: Welcome back. I'm here with Healthe Trim founder, Matthew Dwyer, and we're talking about the number one weight loss supplement in the country, Healthe Trim. There have been so many supplements on the market that all promise these kinds of early results and great results. But why is it that Healthe Trim works when all these other ones have failed?

MATTHEW DWYER: Ninety-five percent of all diets fail because you have to give up the foods that you love and people end up gaining the weight back. That's not the case with Healthe Trim. You can still eat the foods that you love; you're just going to eat less portions and feel content and feel happy and you won't feel like you're depriving yourself of anything.

ON SCREEN: Before and After photos

Lost 47 Pounds

Matthew

Healthe Trim

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MATTHEW DWYER: When people first start taking Healthe Trim, they're going to be less hungry and they're going to have this alert, focused energy and they're going to start losing weight the first week. And probably what's going to happen is after three weeks of taking Healthe Trim, they're going to be so happy because they're going to be out buying a smaller dress.

DR. WENDY WALSH: Wow.

MATTHEW DWYER: Yes.

DR. WENDY WALSH: That's really exciting.

MATTHEW DWYER: I know it, because I get emails about that every week.

ON SCREEN: Before 165 Pounds

Lost 35 Pounds

User Group average weight loss 10.92 lbs in 30 days

Healthe Trim

DR. WENDY WALSH: Right now, we're going to hear from Victoria Russell. Now, Victoria, you were a college lacrosse player.

VICTORIA RUSSELL: Yeah.

DR. WENDY WALSH: But after you graduated, something changed. What happened?

VICTORIA RUSSELL: I was sitting at an office desk all day, you know, so my lifestyle really changed.

Complaint

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And I was still eating pretty much the same amount as I was eating when I was working out four or five hours a day.

DR. WENDY WALSH: Whoa, that's a problem.

VICTORIA RUSSELL: And I ended up gaining about 30 pounds the first year after I graduated.

DR. WENDY WALSH: So, how did you hear about Healthe Trim?

VICTORIA RUSSELL: It was amazing. The first week I lost probably about seven pounds, so --

DR. WENDY WALSH: Seven pounds in the first week?

VICTORIA RUSSELL: Yeah, mm-hmm. I mean, I'm all about instant gratification. So, that was great for me. I was like, if I'm going to lose this weight, you know, in a week, then I got to keep going.

DR. WENDY WALSH: You lost a total of how many pounds?

VICTORIA RUSSELL: Thirty-five pounds.

DR. WENDY WALSH: Wow.

VICTORIA RUSSELL: Yeah.

DR. WENDY WALSH: Congratulations. You have another issue in that your mom loves to cook, right?

VICTORIA RUSSELL: Oh, yes. Sunday family dinner at my house is chicken parm with as much cheese as

you can possibly think of, homemade pizza. We have pasta with gravy, not sauce, Italian gravy.

DR. WENDY WALSH: And during that year when you were packing on those pounds, were you chowing down on this?

VICTORIA RUSSELL: Oh, absolutely. I mean, my mom's whole theory is if you clean your plate, it means you want more. So, she'd put more on it.

MATTHEW DWYER: So, what about Sunday nights now?

VICTORIA RUSSELL: Well, Sunday nights now, you know, she'll fill my plate and I'll probably eat about half of what I normally would have eaten.

DR. WENDY WALSH: And you don't feel hungry?

VICTORIA RUSSELL: No. Well, that's the thing. I mean, my mom sits there and she kind of gives me crap about it, but I'm like, okay, I'm not going to force myself to eat anymore.

DR. WENDY WALSH: So, it just naturally helped you feel fuller?

VICTORIA RUSSELL: What ended up happening after I started taking Healthe Trim was that I realized, okay, I ate this much and I'm full. So, I wasn't really giving up anything that I really liked eating, but I was just eating everything in smaller portions.

Complaint

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MATTHEW DWYER: It's the proprietary blend of natural ingredients in Healthe Trim that makes you feel full faster, and that's the beautiful thing about Healthe Trim. She can still eat what she wants. She can still eat her pastas, but she's not going to eat the whole plate. She's going to eat less portions and feel content and feel full faster.

DR. WENDY WALSH: Tell me about your energy level. Are you back to exercising?

VICTORIA RUSSELL: Yeah, absolutely. I mean, the first year in the workforce, it was a complete change for me, you know. I would come home drained and everything, didn't want to work out at all. Now, you know, I take Healthe Trim before I go home and then I go for a run and I feel great afterwards. It's awesome.

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LOST 35 POUNDS

Victoria

Lost 54 Pounds

Ann

Lost 127 Pounds

Debbie

Lost 130 Pounds

25

Ben
Lost 165 Pounds
Jay
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MATTHEW DWYER: You need to lose weight. You need to feel better about yourself and you need to do something today. How do I know? Because I was just like you four years ago. Healthe Trim worked for me. It changed my life and I know it will work for you.
ON SCREEN: Before 400 Pounds
Lost 130 Pounds
User Group average weight loss 10.92 lbs in 30 days
Healthe Trim
DR. WENDY WALSH: I want to introduce a pair of friends who've had some incredible results with Healthe Trim, Megan Gail Moore and Ben Ernest (phonetic). So, how much weight have you lost in what amount of time?
BEN ERNEST: 130 pounds in just about 12 months.
DR. WENDY WALSH: Whoa, wow, 130 pounds.

Complaint

ON SCREEN: Before 180 Pounds
Lost 50 Pounds
Healthe Trim
DR. WENDY WALSH: You saw him after a period of time of not seeing him and what happened?
MEGAN GAIL MOORE: Yeah, it was about six months since I had seen Ben. And I was trying to lose weight myself, ran into Ben, had dinner and went, oh, my God, what are you doing? Please tell me whatever it is, I will do as long as it didn't cost you thousands of dollars.
DR. WENDY WALSH: So, how much weight did you lose?
MEGAN GAIL MOORE: Fifty pounds.
DR. WENDY WALSH: Wow, 50 pounds. Had you tried other forms of weight loss before?
MEGAN GAIL MOORE: I joined clubs, I joined gyms, I read books, I took every supplement on the shelf of the drugstore that you go in from, you know, the $5 bottle behind the counter to the one they have locked up. None of them worked. You know, working out two hours a day, like there's no way that you can do it when you're working and raising a kid.
DR. WENDY WALSH: How easy was Healthe Trim?
MEGAN GAIL MOORE: It's like drinking water.

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DR. WENDY WALSH: That's pretty easy.

BEN ERNEST: It's that easy, yeah.

MEGAN GAIL MOORE: It really is.

MATTHEW DWYER: That's why I quit my job to go spread the word because it is just that easy. If it could work on me, I knew it could work on anybody. And they're living proof. And this makes me so proud.

ON SCREEN: Before 400 Pounds

Lost 130 Pounds

Healthe Trim

DR. WENDY WALSH: Now, when you first started taking Healthe Trim, what did you experience?

BEN ERNEST: At 400 pounds -- that was my heaviest was 400 pounds, and the energy level is so low, you know, it just takes so much effort to get kind of anything going and the very first day I took it, it was that instant kind of feeling of, okay, I'm alive now, I can attack the world and really -- and kind of take on the day. I probably lost 40 pounds in two months --

MATTHEW DWYER: Wow.

BEN ERNEST: -- with doing nothing different. With really just paying attention to what my body was telling me. And without going to the gym five days a week for five hours a day and eating like a bird. You know, I'm a big guy, still a big guy. I like food, I

Complaint

like --

MATTHEW DWYER: Drinking, too.

BEN ERNEST: -- life.

MATTHEW DWYER: Healthe Trim makes you feel full faster.

DR. WENDY WALSH: I want to see this beautiful body. Stand up, young man. 130 pounds gone.

MATTHEW DWYER: Nice work.

DR. WENDY WALSH: Oh, my.

BEN ERNEST: And this is a size 50. This is just in-your-face visual proof of how much success I've had with Healthe Trim.

Megan, how much do you weigh?

MEGAN GAIL MOORE: 130 pounds.

BEN ERNEST: Okay, I've lost 130 pounds.

DR. WENDY WALSH: He's carried around 130 pounds for years.

BEN ERNEST: So, for six years, I gained about 130 pounds. I carried it for four years. And in my job, I would carry all of this -- all of my beautiful friend, Megan, and bags of concrete, shovels, ladders. It made my life very, very, very difficult.

DR. WENDY WALSH: And has your dramatic weight loss inspired anybody?

ON SCREEN: Before 180 Pounds

29

Lost 50 Pounds
Healthe Trim
MEGAN GAIL MOORE: Yes. As a matter of fact, my boyfriend just started taking it.
DR. WENDY WALSH: Has he seen any weight loss yet?
MEGAN GAIL MOORE: Yeah, seven pounds in a week.
DR. WENDY WALSH: Seven pounds.
MATTHEW DWYER: Seven pounds in one week, that's great.
MEGAN GAIL MOORE: Yeah.
DR. WENDY WALSH: Seven pounds in a week.
BEN ERNEST: That's great.
MEGAN GAIL MOORE: I'm a little jealous, I'm not going to lie. Seven pounds in a week.
DR. WENDY WALSH: How much weight did you lose?
ON SCREEN: Before 400 Pounds
Before and After photos
Lost 47 Pounds
Matthew
Lost 130 Pounds
Healthe Trim
MATTHEW DWYER: I lost 47 pounds and 100 (inaudible) and it's been four years and three months and

Complaint

30

I haven't gained a pound back.

DR. WENDY WALSH: Ben, how much did you lose?

ON SCREEN: Before 400 Pounds

Lost 130 Pounds

Healthe Trim

BEN ERNEST: I lost 130 pounds in just about 12 months actually.

DR. WENDY WALSH: That's amazing. How much did you lose, Megan?

MEGAN GAIL MOORE: Fifty pounds.

DR. WENDY WALSH: So, this is the kind of movement that's sweeping across America. It starts with DJs and listeners to radio stations hearing Matthew and then they try it out. They inspire the people around them like with you.

MATTHEW DWYER: And now everybody is clamoring, where can I get Healthe Trim?

ON SCREEN: Dr. Wendy Walsh, PhD

Healthe Trim

DR. WENDY WALSH: If you're ready to take control, if you're ready to lose the weight that's keeping you from living a healthy, happy life, then you're ready for Healthe Trim. Just two capsules a day are all it takes to get you started on the road to a whole new you. So, whether you need to lose 10 to 20, 40

31

to 60 or 100 pounds or more, now you can and without depriving yourself of the foods you love.

DR. WENDY WALSH: Stay tuned to find out how you can get started with Healthe Trim today.

ON SCREEN: Dr. Wendy Walsh, PhD

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DR. WENDY WALSH: -- but if you call the number

Complaint

32

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DR. WENDY WALSH: You heard me right. Call or go online now and your first month of Healthe Trim is only $9.95. And to make sure you're getting results fast, you'll get two lifestyle guides, Everyday Meals and Everyday Fitness, both for free.

MATTHEW DWYER: Plus, to get you maximum results with Healthe Trim, I'm also going to include for free access to our Healthe Trim weight loss coaching program. Our coaches are there to answer your questions, to give you tips and make sure you lose the weight you want and they'll do it for free.

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DR. WENDY WALSH: Welcome back. Well, everybody's talking about Healthe Trim and I'm finally beginning to understand why. It's quite simple. It's because Healthe Trim works. There's no extreme dieting, no extreme exercising, no costly meal delivery programs. Just two capsules in the morning and Healthe Trim goes right to work --

ON SCREEN: Diet and exercise are necessary to lose weight
Healthe Trim

DR. WENDY WALSH: -- making you feel less hungry while simultaneously giving you an alert, focused energy. So, you burn more calories than you take in.

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The result, you lose weight naturally.

MATTHEW DWYER: Most people are out there like me. They're stressed. Jobs, kids, it's difficult to eat a well-balanced meal and it's difficult to watch what you're eating and exercise all the time on a regular basis.

ON SCREEN: Before and After photos

Lost 47 Pounds

Matthew

Healthe Trim

MATTHEW DWYER: It's not very difficult, though, to wake up in the morning, take two natural supplements, drink water and go about your day.

DR. WENDY WALSH: Let me ask you, how safe is Healthe Trim?

MATTHEW DWYER: It's extremely safe, and let me tell you why. We've done over 50 Get High School Skinny promotions on the radio and each one had 10 contestants. All 10 had to get doctor's approval before taking Healthe Trim.

DR. WENDY WALSH: So, let me do the math here. Are you saying that 500 people got their doctor's approval?

MATTHEW DWYER: I think it's over 500. The answer is yes.

Complaint

DR. WENDY WALSH: So, 500 doctors said this is safe?

MATTHEW DWYER: That's correct.

DR. WENDY WALSH: How many actually lost weight?

MATTHEW DWYER: All of them.

ON SCREEN: Before 196 Pounds

Lost 54 Pounds

User Group average weight loss 10.92 lbs in 30 days

Healthe Trim

DR. WENDY WALSH: Joining me now is Kate Hagen (phonetic). Kate has a really wonderful story.

KATE HAGEN: I lost six pounds in the first week. I lost 11 pounds in the first month. And I just continued to melt the weight away.

DR. WENDY WALSH: Those are amazing results.

KATE HAGEN: I had a little boy and I've been a single mom since he was born. He has some special needs. He is on the autism spectrum and is deaf. I just didn't have time to go to the gym and prepare food and do all of those things you're supposed to do to lose weight after you have a baby. So, I kept my baby weight. You know, really I got fat through a window. I got all of my breakfasts and lunch through a window and ate fast food

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every day and --

DR. WENDY WALSH: How much weight did you gain?

KATE HAGEN: 196 was just absolutely the turning point that, you know, I'm a hamburger away from 200 pounds. I had to get up so early before work because I'd spend a good hour-and-a-half in front of the mirror putting on everything I owned, just crying hysterically because I couldn't wear anything that I had and I was fat.

DR. WENDY WALSH: When you first starting taking Healthe Trim, what did you notice first?

KATE HAGEN: At first I noticed that I had energy and I wasn't hungry. I started losing weight by not changing anything other than adding two pills in the morning to my day and that was all I changed. And I've lost 54 pounds.

DR. WENDY WALSH: Fifty-four pounds. Whoo.

MATTHEW DWYER: How long -- that was three years ago, right?

KATE HAGEN: Three years ago, yes.

DR. WENDY WALSH: You look fabulous.

KATE HAGEN: Thank you.

MATTHEW DWYER: She went to a size 14 to what size dress are you now?

KATE HAGEN: A 14-ish plus to a 4.

Complaint

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MATTHEW DWYER: Awesome.

DR. WENDY WALSH: Might have been a 16 or an 18, okay? Down to a four.

MATTHEW DWYER: That's awesome.

DR. WENDY WALSH: Science has proven many times over that there's a direct correlation between losing weight and lowering your blood pressure. With this in mind, Matthew met with a noted physician and the doctor agreed to use Healthe Trim to help some of his patients who needed to lose weight. At the same time, he also monitored the patients' blood pressure. Of those patients who used Healthe Trim, not only did they lose weight, but over 90 percent of them also lowered their blood pressure.

ON SCREEN: Before 395 Pounds

Lost 165 Pounds

User Group average weight loss 10.92 lbs in 30 days

Healthe Trim

DR. WENDY WALSH: One of these is a man by the name of Jay Gilhouse. You've been on blood pressure medication for how long?

JAY GILHOUSE: Twenty-eight years. I started when I was 19.

DR. WENDY WALSH: After taking Healthe Trim for

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just a couple months, you were able to lower your blood pressure?

JAY GILHOUSE: Yes, and I haven't been on blood pressure medicine for over two years.

DR. WENDY WALSH: All because of Healthe Trim.

JAY GILHOUSE: All because of Healthe Trim.

DR. WENDY WALSH: How much did you weigh when you started taking Healthe Trim?

JAY GILHOUSE: About 395.

DR. WENDY WALSH: Besides lowering your blood pressure, you also lost a lot of weight.

JAY GILHOUSE: 165 pounds.

DR. WENDY WALSH: You lost 165 pounds and you're off blood pressure medication that you've been on for 28 years. What's the best thing that has come of all of this?

JAY GILHOUSE: Later on this year, I'm getting married.

DR. WENDY WALSH: Oooh, that's wonderful.

JAY GILHOUSE: All I can -- hold on a second, sorry.

DR. WENDY WALSH: It's okay. That's what we're here for.

JAY GILHOUSE: Okay. But, anyway, Matthew, you saved my life. You gave me a chance to get my life back.

Complaint

So, not only have I gotten my life back, I got my health back. I'm more healthier than I was in my 30s. I'm more healthier now than I was in my 20s and now I'm getting married. I would have never thought I was going to do that. I never would have thought it.

DR. WENDY WALSH: Healthe Trim changed your life.

JAY GILHOUSE: Saved my life. Big difference.

ON SCREEN: Before and after photos

Lost 47 Pounds

Matthew

Healthe Trim

MATTHEW DWYER: I know everybody out there watching, if you were like me four years ago and you're depressed and you don't like looking at yourself in the mirror and you don't feel good about yourself, Healthe Trim is your answer.

ON SCREEN: FREE TRIAL 30 DAY

$9.95

Shipping and Processing

LOST 35 POUNDS

Victoria

Lost 54 Pounds

Ann

Lost 127 Pounds

41

Debbie
Lost 130 Pounds
Ben
Lost 165 Pounds
Jay
Satisfaction Guarantee 100%
Your results may vary.
1-800-576-6399
TRYHEALTHETRIM.COM
Healthe Trim

MATTHEW DWYER: I know it. I guarantee it. Trust me. Give me one week of your life and you'll feel it as well.

ON SCREEN: User Group average weight loss 10.92 lbs in 30 days.

Healthe Trim

DR. WENDY WALSH: It's so great to see everybody here gathered together now and seeing all the enthusiasm and excitement for Healthe Trim. What's the number one thing that Healthe Trim's done for you?

VICTORIA RUSSELL: It gave me my confidence back. I got rid of my belly. I got rid of my double chin. I feel, you know, comfortable in my own skin again. I feel great.

DR. WENDY WALSH: What's the best thing it did

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for you?

MEGAN GAIL MOORE: It put me back in a bikini.

BEN ERNEST: It's definitely a confidence booster. I feel fearless now, like I can do anything, you know.

DR. WENDY WALSH: Fearless.

KATE HAGEN: No more tears when I'm getting dressed.

DR. WENDY WALSH: Donnie, what did Healthe Trim do for you?

DONNIE: Well, it gave me the energy and the focus that I was looking for and then the byproduct of that was the weight loss.

JAY GILHOUSE: It got me off of the blood pressure medication and it gave me enough courage to ask my future wife out.

BEN ERNEST: Congratulations. That's great. That's great.

DR. WENDY WALSH: And, Debbie, what did Healthe Trim do for you?

DEBBIE WHITE: Healthe Trim just saved my life, saved my marriage, and just made me feel so good and sexy. My husband gets jealous when other men look at me now.

BEN ERNEST: Nice.

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DR. WENDY WALSH: I want to know where you keep your Healthe Trim?

KATE HAGEN: I keep a bottle in my cupboard. I keep my bottle in my bag. I keep a bottle in my car.

BEN ERNEST: Oh, yeah, it's spread around.

KATE HAGEN: Everywhere. I mean, there's nowhere I could possibly go that I don't have it.

BEN ERNEST: I mean, yeah, you don't want to be caught without it somewhere.

UNIDENTIFIED FEMALE: Just in case.

UNIDENTIFIED FEMALE: Yeah, absolutely.

KATE HAGEN: I was out the other day and was telling a friend about it because his wife wanted to lose weight, and I pulled a bottle out of my purse and I said, here, take this, give it to your wife. And, you know, I have it on hand. No worries. I've got more.

DR. WENDY WALSH: Can't be without it anywhere. What's the very best thing about Healthe Trim?

MEGAN GAIL MOORE: It's easy.

UNIDENTIFIED FEMALE: Yeah, it's really easy.

BEN ERNEST: Yeah, yeah.

UNIDENTIFIED FEMALE: It's easy.

BEN ERNEST: Absolutely.

UNIDENTIFIED FEMALE: It's very easy.

UNIDENTIFIED FEMALE: 100 percent.

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DR. WENDY WALSH: How easy?

ANN HUDSON: Within five minutes of my alarm going off, because I take one right by my bed when my alarm goes off, I'm awake and I'm ready to go at the day. It's 4:00 a.m. and I'm like, let's go.

BEN ERNEST: Yeah.

MEGAN GAIL MOORE: It's energy without calories.

DONNIE: I think the only way it could be easier is if somebody was opening up the bottle for me.

ON SCREEN: Dr. Wendy Walsh, PhD

You are watching a paid advertisement for Healthe Trim brought to you by HealthyLife Sciences, LLC

Healthe Trim

DR. WENDY WALSH: You've seen and heard great stories about real people just like you who have lost 10 to 20, 40 to 60, even 100 pounds or more with the number one natural weight loss supplement, Healthe Trim. Isn't it finally time for you to take control with Healthe Trim. Do it for your health. Do it for your family. And, most importantly, get started with Healthe Trim just for you. Just take two capsules a day and you're on your way to a better, healthier, happier life.

ON SCREEN: WEIGHT LOSS PROGRAM (STOP)

GYM MEMBERSHIP (STOP)

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EXTREME EXERCISE (STOP)
1-800-576-6399
Satisfaction Guarantee 100%
TRYHEALTHETRIM.COM
Healthe Trim
DR. WENDY WALSH: You know you can pay hundreds of dollars a month for weight loss programs, gym memberships and extreme exercise routines --
ON SCREEN: FREE TRIAL 30 DAY
CALL NOW
Satisfaction Guarantee 100%
1-800-576-6399
TRYHEALTHETRIM.COM
DR. WENDY WALSH: -- but if you call the number on your screen or go online to TryHealtheTrim.com today, you won't pay $100, you won't pay $75 or $50 or even $30, because your first month of Healthe Trim is only $9.95.
ON SCREEN: FREE TRIAL 30 DAY
$9.95
Shipping & Processing
CALL NOW
Satisfaction Guarantee 100%
1-800-576-6399
TRYHEALTHETRIM.COM
DR. WENDY WALSH: You heard me right. Call or

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go online now and your first month of Healthe Trim is only $9.95. And to make sure you're getting results fast, you'll get two lifestyle guides, Everyday Meals and Everyday Fitness, both for free.

MATTHEW DWYER: Plus, to get you maximum results with Healthe Trim, I'm also going to include for free access to our Healthe Trim weight loss coaching program. Our coaches are there to answer your questions, to give you tips and make sure you lose the weight you want and they'll do it for free.

DR. WENDY WALSH: To really jumpstart your weight loss, you'll get a 30-day supply of the amazing detox formula, Healthy Cleanse, and that's free, too.

ON SCREEN: FREE TRIAL 30 DAY

$9.95

Shipping and Processing

LOST 35 POUNDS

Victoria

Lost 54 Pounds

Ann

Lost 127 Pounds

Debbie

Lost 130 Pounds

Ben

Lost 165 Pounds

47

Jay

Satisfaction Guarantee 100%

Your results may vary.

1-800-576-6399

TRYHEALTHETRIM.COM

Healthe Trim

MATTHEW DWYER: Healthe Trim works. It's so easy. It's natural. You'll feel great. You'll lose weight that first week. Healthe Trim will change your life, I guarantee it.

DR. WENDY WALSH: Try Healthe Trim for 30 days. If you don't lose weight, if you aren't 100 percent satisfied, just send it back and keep the meal plan and fitness guide as a gift. It is that easy.

ON SCREEN: FREE TRIAL 30 DAY

$9.95

Shipping and Processing

Satisfaction Guarantee 100%

Your results may vary.

1-800-576-6399

TRYHEALTHETRIM.COM

Healthe Trim

ANNOUNCER: It's never too late to lose the weight. Pick up the phone and get fit and slim with Healthe Trim. Call 1-800-576-6399. That's 1-800-576-

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6399. Or go online to TryHealtheTrim.com.

ON SCREEN: The proceeding [sic] was a paid program for Healthe Trim.

Sponsored by HealthyLife Sciences, LLC.

(The recording was concluded.)

C E R T I F I C A T I O N O F T Y P I S T

MATTER NUMBER: 1223287

CASE TITLE: HEALTHY LIFE SCIENCES, LLC

TAPING DATE: JUNE 24, 2012

TRANSCRIPTION DATE: FEBRUARY 24, 2014

REVISION DATE: MARCH 13, 2014

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the tapes transcribed by me on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: MARCH 13, 2014

ELIZABETH M. FARRELL

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE

DECISION AND ORDER

The Federal Trade Commission ("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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order ("consent agreement") that includes: a statement that the agreement is for settlement purposes only and does not constitute an admission that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true; 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 has reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent HealthyLife Sciences, LLC is a Georgia limited liability company with its principal office or place of business at 8601 Dunwoody Place, Suite 418, Atlanta, Georgia 30350.

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

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "respondent" shall mean HealthyLife Sciences, LLC, its successors and assigns, and officers, and their agents, representatives, and employees.

B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

C. "Covered Product" shall mean any Dietary Supplement, Food, or Drug.

D. "Dietary Supplement" means:

1. Any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or

2. Any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or more ingredients that is a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above, that is intended to be ingested, and is not represented to be used as a conventional food or as a sole item of a meal or the diet.

E. "Essentially Equivalent Product" shall mean a product that contains the identical ingredients, except for inactive ingredients (*e.g.*, binders, colors, fillers, excipients), in the same form and dosage, and with the same route of administration (*e.g.*, orally, sublingually), as the Covered Product; *provided that* the Covered Product may contain additional

ingredients if reliable scientific evidence generally accepted by experts in the relevant field indicates that the amount and combination of additional ingredients is unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

F. "Food" and "Drug" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

G. "Reliably Reported," for a human clinical test or study ("test"), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

H. The term "including" in this Order shall mean "without limitation."

I. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Dietary Supplement, over-the-counter Drug, or patch, cream, wrap, or other product worn on the body or rubbed into the skin, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of product name, endorsement, illustration, trademark, or trade name, that such product:

A. Causes weight loss of two pounds or more a week for a month or more without dieting or exercise;

B. Causes substantial weight loss no matter what or how much the user eats;

C. Causes permanent weight loss;

D. Blocks the absorption of fat or calories to enable users to lose substantial weight;

E. Safely enables users to lose more than three pounds per week for more than four weeks;

F. Causes substantial weight loss for all users; or

G. Causes substantial weight loss by wearing a product on the body or rubbing it into the skin.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, other than representations banned under Part I of this Order, in any manner, expressly or by implication, including through the use of product name, endorsement, illustration, trademark, or trade name, that such product:

A. Causes weight loss;

B. Cause substantial weight loss;

C. Causes rapid weight loss;

D. Causes weight loss without the need to diet, give up any foods, or make any changes in lifestyle;

E. Causes users to burn fat or lose fat;

F. Increases users' metabolism; or

G. Causes suppression of appetite;

unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon

competent and reliable scientific evidence that substantiates that the representation is true.

For purposes of this Part, competent and reliable scientific evidence shall consist of at least two adequate and well-controlled human clinical studies of the Covered Product, or of an Essentially Equivalent Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true. Respondent shall have the burden of proving that a product satisfies the definition of an Essentially Equivalent Product.

For purposes of this Part, "adequate and well-controlled human clinical study" means a human clinical study (1) that is randomized, double-blind, and placebo-controlled; (2) that is conducted by persons qualified by training and experience to conduct such a study; and (3) as to which, all underlying or supporting data and documents generally accepted by experts in weight loss research as relevant to an assessment of such testing as described in Part VI must be available for inspection and production to the Commission.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, other than representations covered under Parts I and II of this Order, in any manner, expressly or by implication, including through the use of product name, endorsement, illustration, trademark, or trade name, about the health benefits, performance, or efficacy of any Covered Product, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of

relevant and reliable scientific evidence, to substantiate that the representation is true.

For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as described in Part VI must be available for inspection and production to the Commission.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or

B. That the efficacy of such product has been clinically or scientifically proven.

V.

IT IS FURTHER ORDERED that:

A. Nothing in this Order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Nothing in this Order shall prohibit respondent from making any representation for any product specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997.

VI.

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which respondent relies to substantiate any claim covered by this Order, respondent shall secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;

B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;

C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;

D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or

between-group analysis performed on any test data; and

E. All documents referring or relating to the sponsorship of the test, including all communications and contracts between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part (1) by respondent, or by any person or entity affiliated with or acting on behalf of respondent, including officers, agents, representatives, and employees, or by any other person or entity in active concert or participation with respondent ("respondent's affiliates"), (2) by the supplier or manufacturer of the product at issue, or (3) by a supplier to respondent, to respondent's affiliates, or to the product's manufacturer of any ingredient contained in such product.

For any test conducted, controlled, or sponsored, in whole or in part, by respondent, respondent must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about the participants.

VII.

IT IS FURTHER ORDERED that respondent and its successors and assigns, for five (5) years after the last date of dissemination of any representation covered by this Order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall deliver a copy of this Order to all current and future principals, officers, directors, and other employees having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Respondent shall deliver this Order to current personnel within thirty (30) days after date of service of this Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the company, that may affect compliance obligations arising under this Order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC

20580. The subject line must begin: HealthyLife Sciences, LLC, FTC File No. 122-3287.

X.

IT IS FURTHER ORDERED that respondent and its successors and assigns, within sixty (60) days after the date of service of this Order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this Order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate reports.

XI.

This Order will terminate on October 22, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this Order that terminates in less than twenty (20) years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from HealthyLife Sciences, LLC ("HealthyLife Sciences").

The proposed consent order ("proposed order") has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves HealthyLife Science's advertising for its Healthe Trim line of weight-loss dietary supplements ("Healthe Trim"). The complaint alleges that the company violated Sections 5(a) and 12 of the Federal Trade Commission Act by making false or unsubstantiated representations that Healthe Trim would cause rapid and substantial weight loss, including as much as 35, 130, and 165 pounds. It also claimed that users would lose weight without dieting, and that Healthe Trim would burn fat, increase metabolism, and suppress appetite. The complaint also alleges that HealthyLife Sciences violated Sections 5(a) and 12 by falsely representing that Healthe Trim is clinically proven to cause weight loss.

The proposed order includes injunctive relief that prohibits these alleged violations and fences in similar and related violations. For purposes of the order, "Covered Product" means any dietary supplement, food, or drug.

Part I of the proposed order bans HLS from making any of the seven "gut check" weight loss claims that the Commission has publicly advised are always false, specifically that any dietary supplement, over-the-counter drug, or patch, cream, wrap, or other product worn on the body or rubbed into the skin: 1) causes weight loss of two pounds or more a week for a month or more without dieting or exercise; 2) causes substantial weight

loss no matter what or how much the user eats; 3) causes permanent weight loss; 4) blocks the absorption of fat or calories to enable users to lose substantial weight; 5) safely enables users to lose more than three pounds per week for more than four weeks; 6) causes substantial weight loss for all users; or 7) causes substantial weight loss by wearing a product on the body or rubbing it into the skin.

Part II of the proposed order prohibits HLS from making claims that any Covered Product causes weight loss, causes substantial or rapid weight loss, causes weight loss without the need to diet or make lifestyle changes, burns fat or causes fat loss, boosts metabolism, or suppresses appetite, unless it possesses and relies upon competent and reliable scientific evidence, defined as at least two adequate and well-controlled human clinical studies. The studies must have been conducted by qualified persons, and have been randomized, double-blinded, and placebo-controlled. In addition, the company must maintain all underlying or supporting data that experts in weight-loss research generally would accept as relevant to an assessment of such testing.

Part III of the proposed order prohibits any representation about the health benefits, performance, or efficacy of any Covered Product, unless it is non-misleading and supported by competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence is defined as tests, analyses, research, or studies that have been conducted by qualified persons in an objective manner and are generally accepted in the profession to yield accurate and reliable results. When that evidence consists of human clinical tests or studies, HLS must maintain all underlying or supporting data and documents that experts in the field generally would accept as relevant to an assessment of such testing.

Part IV of the proposed order prohibits HLS from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research in

connection with the manufacturing, labeling, advertising, promotion, offering for sale, and sale or distribution of any Covered Product.

Part V provides a safe harbor for representations permitted under any tentative final or final standard promulgated by the Food and Drug Administration ("FDA"), any new drug application approved by the FDA, or FDA regulations pursuant to the Nutrition Labeling and Education Act of 1990 or the FDA Modernization Act of 1997.

Triggered when the human clinical testing requirement in Part II or III applies, **Part VI** of the proposed order requires HLS to secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the human clinical test or study, such as protocols, instructions, participant-specific data, statistical analyses, and contracts with the test's researchers. There is an exception for a "Reliably Reported" test, defined as a test published in a peer-reviewed journal that was not conducted, controlled, or sponsored by HLS, its affiliates, or others in the manufacturing and supply chain. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Parts VII through X of the proposed order require HLS to: deliver a copy of the order to principals, officers, directors and other employees having responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part XI provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

NORM THOMPSON OUTFITTERS, INC.

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

Docket No. C-4495; File No. 132 3094
Complaint, November 6, 2014 – Decision, November 6, 2014

This consent order addresses Norm Thompson Outfitters, Inc.'s advertising, marketing, and sale of women's undergarments infused with microencapsulated caffeine and other ingredients. The complaint alleges that respondent represented that wearing the garments eight hours a day for 30 days eliminates or substantially reduces cellulite; causes a reduction of up to two inches in the wearer's hip measurements and up to one inch in the wearer's thigh measurements in one month or less; and that the reduction in thigh and hip measurements can be achieved without effort. The consent order requires respondent to pay two hundred thirty thousand dollars ($230,000) to the Commission to be used for equitable relief, including restitution. The order also prohibits respondent from claiming that any garment that contains any drug or cosmetic or any drug or cosmetic causes substantial weight or fat loss or a substantial reduction in body size.

Participants

For the *Commission*: *Eric Edmondson* and *David M. Newman.*

For the *Respondent*: *Bruce Hoffman and Mel Orlans, Hunton & Williams.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Norm Thompson Outfitters, Inc. ("Respondent") has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is an Oregon corporation with its principal office or place of business at 3188 NW Aloclek Drive, Hillsboro, Oregon 97124. Respondent has done business under the names Norm Thompson Outfitters, Sahalie, Solutions, Body Essentials and Body*Belle.

2. Respondent advertises, offers for sale, sells and distributes women's undergarments under the brand name Lytess®, including bike shorts, tights and leggings (collectively the "Garments"), which incorporate microcapsules containing caffeine and other ingredients into the fabric. The Garments are "devices" and the encapsulated caffeine and other ingredients are a "drug" and/or "cosmetic" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. The retail price of the Garments ranges from $49 to $79, depending on the style. Respondent promotes the Garments as able to slim the body and reduce cellulite.

5. Beginning not later than early 2012, Respondent has disseminated or has caused the dissemination of promotional materials for the Garments, including, but not limited to, online and mail order catalogs excerpted in the attached Exhibits A to H. These promotional materials contain the following statements and depictions:

a. (Exhibit A – Body Essentials catalog; Exhibit B – Solutions catalog)

> Lose 2" off hips and 1" off thighs in less than a month. The secret? Lytess® cellulite-slimming shorts.
>
> Dr. Oz loves these. They're made of patented Lytess®, a unique fabric infused with micronized active ingredients. Caffeine metabolizes and dehydrates fat cells. . . . In less than a month, you'll be visibly slimmer and firmer.
>
> Recommended by Dr. Oz for fighting cellulite.

b. (Exhibit C – Solutions online catalog)

Lose 2" off hips and 1" off thighs in less than a month….without effort. The secret? Lytess® cellulite-slimming shorts.

No diets or pills. Lose inches just by wearing these cellulite-slimming Lytess® leggings. The unique fabric is infused with caffeine to metabolize fat.

. . . In less than a month, you'll be visibly slimmer and firmer.

c. (Exhibit D – Norm Thompson online catalog)

Look slimmer while becoming trimmer in our Women's Slimming Leggings! Take up to 2" off hips and 1" off thighs in just weeks. The shapewear's secret? Caffeine. Super stretchy, seamless knit nylon/spandex is infused with a microencapsulated formula that stimulates the breakdown of fats. . . .

- Caffeine helps break down fat; botanicals flush out toxins
- Slimming and firming results are visible in under a month

d. (Exhibit E – Body*Belle catalog)

Caffeinated slimmers take 2" off hips and 1" off thighs in just weeks

Made of a micromassaging fabric that holds a microencapsulated formula of powerful natural ingredients, these slimmers work wonders. As it is massaged into skin, caffeine metabolizes fat cells. . . . In under a month, you'll be visibly slimmer and firmer.

"Say goodbye to the cellulite and the sag." – Dr. Oz

e. (Exhibit F – Norm Thompson catalog)

Instant curve appeal

Caffeine + botanicals are proven to take off inches now and later!

Take inches off hips, thighs and waist in just weeks…the secret is caffeine.

This is no ordinary shapewear! A unique, seamless knit fabric massages a skin-perfecting microencapsulated formula into skin. Caffeine breaks down fats….In under a month, you'll be visibly slimmer and firmer. For maximum benefit, wear 5 days a week, 8 hours a day for 28 days….

Lose 2" off hips and 1" off thighs.

f. (Exhibit G – Body*Belle catalog)

Effortless slimming cellulite blaster

Innovative fabric is infused with caffeine

Instant trimming when you wear them, plus take 2" off hips and 1" of thighs in 30 days.

Enhanced blood circulation flushes toxins while the active ingredients break down fat. In under a month, you'll be visibly slimmer and firmer.

g. (Exhibit H – Norm Thompson catalog)

Goodbye cellulite! Lose up to 2" off hips and 1" off thighs in 30 days.

We love these shorts and leggings! They're made of innovative Lytess® fabric infused with micronized active ingredients – caffeine metabolizes and dehydrates fat cells. . . . In less than a month, you'll be visibly slimmer and firmer.

Efficacy Claims

6. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

a. the Garments contain caffeine, which causes a two-inch reduction in a wearer's hip size and a one-inch reduction in a wearer's thigh size in one month or less;

b. the reductions in hip and thigh size can be achieved without effort;

c. the Garments eliminate or substantially reduce cellulite.

7. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made.

8. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

Establishment Claims

9. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

a. scientific tests prove that the Garments substantially reduce a wearer's hip and thigh size; and

b. scientific tests prove that wearing the Garments for five days a week, eight hours a day for twenty-eight days will trim two inches from the wearer's hips and one inch from the wearer's thighs.

10. In truth and in fact,

a. scientific tests do not prove that the Garments substantially reduce a wearer's hip and thigh size; and

b. scientific tests do not prove that wearing the Garments for five days a week, eight hours a day for twenty-eight days will trim two inches from the user's hips and one inch from the user's thighs.

Among other things, the evidence relied on by Respondent for its representations concerning the Garments consisted primarily of results from two studies, one of which was unblinded and uncontrolled, and both of which contained significant methodological flaws. Moreover, Respondent exaggerated the results of the studies: the average reported reduction in hip circumference across both studies after 28 days of wearing the products was less than one-sixth of an inch and the average reported reduction in thigh measurement was about one-eighth of an inch. Only one participant out of the 55 in the two tests was reported to have achieved a reduction in hip measurement of two inches and only one participant in the two tests was reported to have achieved a reduction in thigh measurement of one inch. Therefore, the representations set forth in Paragraph 9 were, and are, false and misleading.

Endorsement Claims

11. In many instances, including but not limited to the promotional materials shown in Exhibits A, B and E, Respondent has prominently represented that the Garments are recommended by Dr. Oz.

12. In truth and in fact, the Garments are not recommended by Dr. Oz.

13. Therefore, the representation set forth in Paragraph 11 was, and is, false and misleading.

14. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in

violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this sixth day of November, 2014, has issued this complaint against Respondent.

By the Commission.

Complaint

Exhibit A

Complaint

Exhibit B

Complaint

Exhibit C

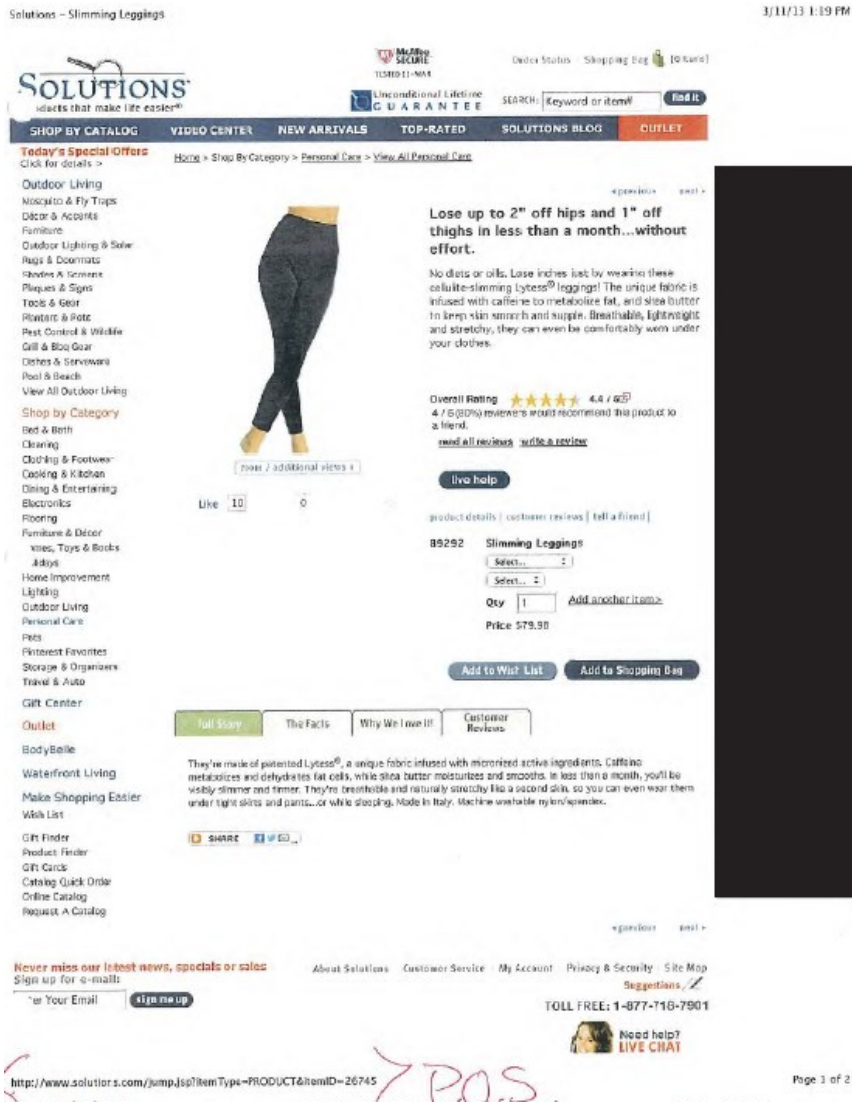
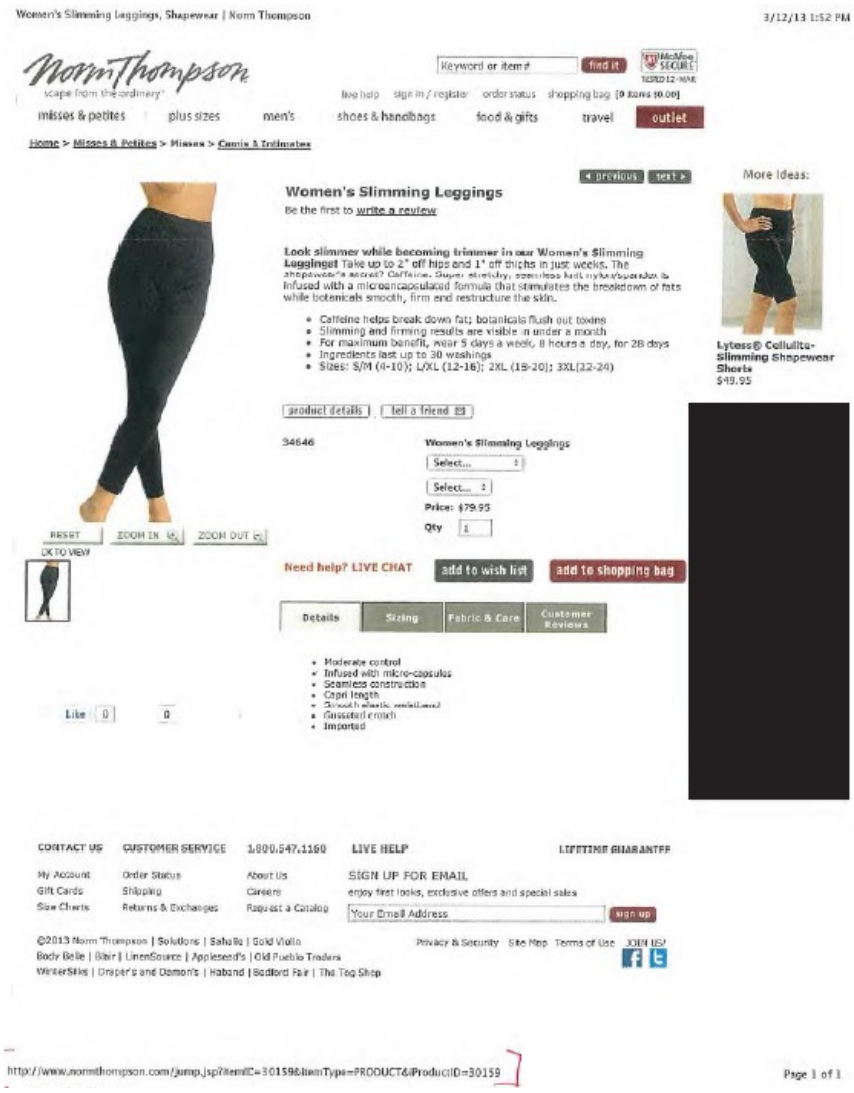


Exhibit D


Women's Slimming Leggings, Shapewear | Norm Thompson
3/12/13 1:52 PM
misses & petites
plus sizes
men's
shoes & handbags
food & gifts
travel
outlet
Women's Slimming Leggings
Be the first to write a review
Look slimmer while becoming trimmer in our Women's Slimming Leggings! Take up to 2" off hips and 1" off thighs in just weeks. The shapewear's secret? Caffeine. Super stretchy, seamless knit nylon/spandex is infused with a microencapsulated formula that stimulates the breakdown of fats while botanicals smooth, firm and restructure the skin.
Caffeine helps break down fat; botanicals flush out toxins
Slimming and firming results are visible in under a month
For maximum benefit, wear 5 days a week, 8 hours a day, for 28 days
Ingredients last up to 30 washings
Sizes: S/M (4-10); L/XL (12-16); 2XL (18-20); 3XL(22-24)
product details
tell a friend
34646
Women's Slimming Leggings
Price: $79.95
Qty
Need help? LIVE CHAT
add to wish list
add to shopping bag
Details
Sizing
Fabric & Care
Customer Reviews
Moderate control
Infused with micro-capsules
Seamless construction
Capri length
Gusseted crotch
Imported
More Ideas:
Lytess® Cellulite-Slimming Shapewear Shorts
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http://www.normthompson.com/jump.jsp?itemID=30159&itemType=PRODUCT&ProductID=30159
Page 1 of 1

Complaint

Exhibit E

Complaint

Exhibit F

Complaint

Exhibit G

Exhibit H

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of Norm Thompson Outfitters, Inc., a corporation, hereinafter sometimes

referred to as "Respondent," and Respondent having been furnished with a copy of a draft of complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing a Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rule; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Decision and Order:

1. Respondent Norm Thompson Outfitters, Inc., is an Oregon corporation with its principal office or place of business at 3188 NW Aloclek Drive, Hillsboro, Oregon 97124

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

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "Respondent" shall mean Norm Thompson Outfitters, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.

B. "Adequate and well-controlled human clinical study" means a human clinical study that is randomized, double-blind, placebo controlled, and conducted by persons qualified by training and experience to conduct such study.

C. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

D. "Covered Product" means any garment containing a drug or cosmetic.

E. "Drug" and "cosmetic" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

F. "Reliably Reported," for a human clinical test or study ("test"), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication,

including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes substantial weight or fat loss or a substantial reduction in body size.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or any drug or cosmetic, in or affecting commerce, shall not make any representation, other than representations covered under Part I of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes weight or fat loss or a reduction in body size, unless the representation is non-misleading, and, at the time it is made, Respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Part, competent and reliable scientific evidence shall consist of at least two adequate and well-controlled human clinical studies of the Covered Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or any drug or cosmetic, in or affecting commerce, shall not make any representation, other than representations covered under Parts I and II of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product reduces or eliminates cellulite, unless the representation is non-misleading, and, at the time of making such

representation, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as set forth in Part VIII of this Order are available for inspection and production to the Commission.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication, including through the use of any product name or endorsement:

A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or

B. That the benefits of the product are scientifically proven.

V.

IT IS FURTHER ORDERED that

A. Nothing in this order shall prohibit Respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and

Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997; and

B. Nothing in this order shall prohibit Respondent from making any representation for any product that is permitted in the labeling for such product under any tentative final or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI.

IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days after the date of entry of this order, provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased any Covered Product from Respondent from March 20, 2011, through the date of entry of this order. Such file (1) shall include each consumer's name and address, the product(s) purchased, the total amount of moneys paid less any amount credited for returns or refunds, the date(s) of purchase, and, if available, the consumer's email address; (2) shall be updated through the National Change of Address database; and (3) shall be accompanied by a sworn affidavit attesting to its accuracy.

VII.

IT IS FURTHER ORDERED that Respondent shall create a fund in the amount of two hundred thirty thousand dollars ($230,000) to be used for the purpose of providing redress to those consumers who purchased any Covered Product from Respondent from March 20, 2011, through the date of entry of this order.

A. Within 45 days after the date of service of this order, Respondent shall send a notice, in form substantially identical to Attachment A to this order, to all persons whom it identified pursuant to Part VI of this order. Such notice shall be provided by email to all persons for whom Respondent has an email address and by

United States Mail to all persons for whom Respondent does not have an email address. Said notice shall contain no information other than that set forth in Attachment A, nor shall any other material be transmitted therewith.

B. Thirty (30) days after the emailing or mailing of the notice described in Part VII. A., Respondent shall credit to the credit card of record for each consumer who purchased a Covered Product from Respondent during the relevant time period an amount equal to such consumer's *pro rata* share of the redress fund.

C. No part of the costs associated with the administration of this redress program shall be paid out of the fund established pursuant to this Section. Respondent shall bear all costs associated with the above-described redress program.

D. Within sixty (60) days after the emailing or mailing of the notice described in Part VII. A., Respondent shall provide a report in writing to the Federal Trade Commission setting forth the name and address of each consumer who received a credit and the amount of such credit. Respondent shall remit to the Federal Trade Commission any funds remaining after the redress to consumers is completed. The Commission may apply any such funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Respondent's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Respondent shall be notified as to how the funds are distributed, but shall have no right to challenge the Commission's choice of remedies under this Part. No portion of any payment under this Part shall be deemed a payment of any fine, penalty, or punitive assessment.

E. Respondent agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or

subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case. Respondent further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A). For all other purposes and with respect to all other parties, Respondent's stipulation in this section shall have no effect. It is specifically agreed and acknowledged that this section is not intended to be, nor shall it be, construed as an admission of liability by Respondent with respect to the allegations set forth in the Complaint with respect to any claims or demands by any third parties.

F. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VIII.

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which Respondent relies to substantiate any claim covered by this Order, Respondent shall secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;

B. All documents referring or relating to recruitment; randomization; instructions, including oral

instructions, to participants; and participant compliance;

C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;

D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or between-group analysis performed on any test data; and

E. All documents referring or relating to the sponsorship of the test, including all contracts and communications between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part by (1) any Respondent; (2) any other person or entity in active concert or participation with any Respondent; (3) any person or entity affiliated with or acting on behalf of any Respondent; (4) any supplier of any ingredient contained in the product at issue to any of the foregoing or to the product's manufacturer; or (5) the supplier or manufacturer of such product.

For any test conducted, controlled, or sponsored, in whole or in part, by Respondent, Respondent must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to Respondent's size and complexity, the nature and scope of Respondent's activities, and the sensitivity of the personal information collected from or about the participants.

IX.

IT IS FURTHER ORDERED that Respondent Norm Thompson Outfitters, Inc., and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, upon reasonable notice and request, make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

X.

IT IS FURTHER ORDERED that Respondent Norm Thompson Outfitters, Inc., and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents and representatives having primary responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgements of receipt of this order obtained pursuant to this Part.

XI.

IT IS FURTHER ORDERED that Respondent Norm Thompson Outfitters, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "In the Matter of Norm Thompson Outfitters, Inc., FTC File Number 132-3094."

XII.

IT IS FURTHER ORDERED that Respondent Norm Thompson Outfitters, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

XIII.

This order will terminate on November 6, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any

violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any Respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ATTACHMENT A
EMAIL OR MAIL NOTICE TO CONSUMERS

Dear Norm Thompson customer:

Our records show that you purchased a Lytess slimming garment from Norm Thompson on or after March 20, 2011.

When we sold you the Lytess garment, we advertised, based on information we received from the manufacturer, that wearing the garments as instructed would reduce the size of your hips by up to 2.1 inches and your thighs by up to one inch and would eliminate or reduce cellulite and that scientific tests proved those results.

The Federal Trade Commission ("FTC") has charged that we did not have adequate substantiation for these claims. While Norm Thompson neither admits nor denies liability in connection with this matter, we have reached a settlement with the FTC that provides a partial refund to anyone who purchased these garments.

We will be crediting your refund to the credit card that we have on file based on your most recent purchase from Norm Thompson. That credit card ends in XXXX. If that credit card is still active, you do not need to do anything. You will be receiving your refund within XX days.

If that credit card is no longer active, please contact us at XXX-XXX-XXXX within 10 days and provide us with a credit card to which the refund can be credited.

You can verify that this notice is legitimate by going to the FTC's website at *www.ftc.gov* or by calling the FTC at XXX-XXX-XXXX.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an Agreement Containing Consent Order from Norm Thompson Outfitters, Inc. ("respondent"). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Analysis to Aid Public Comment

This matter involves the advertising, marketing, and sale by respondent of women's undergarments that are infused with microencapsulated caffeine and other ingredients. Respondent has marketed the garments through its mail order catalogs and through websites under the names Norm Thompson Outfitters, Sahalie, Solutions, Body Essentials and Body*Belle. According to the FTC complaint, respondent claimed the garments would slim and reshape the body and reduce cellulite.

Specifically, the FTC complaint alleges that respondent represented that wearing the garments eight hours a day for 30 days eliminates or substantially reduces cellulite; causes a reduction of up to two inches in the wearer's hip measurements and up to one inch in the wearer's thigh measurements in one month or less; and that the reduction in thigh and hip measurements can be achieved without effort. The complaint alleges that these claims are unsubstantiated and thus violate the FTC Act. The complaint also alleges that respondent represented that scientific tests prove that wearing the garments results in a substantial reduction in hip and thigh measurement and that scientific tests prove that wearing the garments five days a week, for eight hours a day, for 28 days will reduce a wearer's hip measurement by two inches and a wearer's thigh measurement by one inch. The complaint alleges that these claims are false and thus violate the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Parts I-III address the unsubstantiated claims alleged in the complaint. Part I prohibits respondent from claiming that any Covered Product – *i.e.*, a garment that contains any drug or cosmetic – causes substantial weight or fat loss or a substantial reduction in body size. The Commission has publicly advised that any claim that a product worn on the body causes substantial weight loss is always false.

Part II covers any representation, other than representations covered under Part I, that any Covered Product or any drug or cosmetic causes weight or fat loss or a reduction in body size. Part II prohibits respondent from making such representations unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon

competent and reliable scientific evidence that substantiates that the representation is true. For purposes of Part II, the proposed order defines "competent and reliable scientific evidence" as at least two randomized, double-blind, placebo-controlled human clinical studies that are conducted by independent, qualified researchers and that conform to acceptable designs and protocols, and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

Part III of the proposed order prohibits respondent from making any representation, other than representations covered under Parts I or II, that use of a Covered Product or a drug or cosmetic reduces or eliminates cellulite, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of Part III, the proposed order defines "competent and reliable scientific evidence" as tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results.

Part IV of the proposed order addresses the allegedly false claims that scientific tests prove that wearing the advertised garments results in the reduction in the wearer's body size. Part IV prohibits respondent, when advertising any product, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, or misrepresenting that the benefits of the product are scientifically proven.

Part V of the proposed order provides a safe harbor for representations that are permitted in labeling for that drug under any tentative or final standard promulgated by the Food and Drug Administration ("FDA"), any new drug application approved by the FDA, or FDA regulations pursuant to the Nutrition Labeling and Education Act of 1990 or the FDA Modernization Act of 1997.

Analysis to Aid Public Comment

Part VII of the proposed order requires respondent to pay two hundred thirty thousand dollars ($230,000) to the Commission to be used for equitable relief, including restitution. The order also requires respondent to administer and bear the costs of the redress program. To facilitate the payment of redress, Part VI of the proposed order requires respondent to provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased the garments from respondent from March 20, 2011, through the date of entry of the order.

Part VIII of the proposed order is triggered whenever the human clinical testing requirement in either Part II or Part III applies. Part VIII of the proposed order requires the company to secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test. There is an exception for a "Reliably Reported" test defined as a test published in a peer-reviewed journal that was not conducted, controlled, or sponsored by any proposed respondent or supplier. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Part IX of the proposed order contains recordkeeping requirements for advertisements and substantiation relevant to any representation covered by the proposed order. Parts X, XI and XII of the proposed order require respondent to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XIII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint and proposed order or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

WACOAL AMERICA, INC.

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

Docket No. C-4496; File No. 132 3095
Complaint, November 6, 2014 – Decision, November 6, 2014

This consent order addresses Wacoal America, Inc.'s advertising, marketing, and sale by respondent of iPants, women's undergarments that are infused with microencapsulated caffeine and other ingredients. The complaint alleges that respondent represented that wearing iPants garments eliminates or substantially reduces cellulite; causes a substantial reduction in the wearer's thigh measurements; and that iPants garments contain caffeine that causes the destruction of fat cells and results in substantial slimming. The consent order requires respondent to pay one million three hundred thousand dollars ($1,300,000) to the Commission to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. The order also prohibits respondent from claiming that any garment that contains any drug or cosmetic or any drug or cosmetic causes substantial weight or fat loss or a substantial reduction in unclad body size.

Participants

For the *Commission*: *Eric Edmondson* and *David M. Newman.*

For the *Respondent*: *D. Reed Freeman, Morrison & Foerster; Sherman W. Kahn, Mauriel Kapouytian Woods.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Wacoal America, Inc. ("Respondent") has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at One Wacoal Plaza, Lyndhurst, New Jersey.

2. Respondent advertises, offers for sale, sells and distributes women's undergarments under the brand name iPants, including bike shorts, tights and leggings (collectively the "Garments"),

which incorporate microcapsules containing caffeine and other ingredients in the fabric. The Garments are "devices" and the encapsulated caffeine and other ingredients are a "drug" and/or "cosmetic" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. The retail price of the Garments ranges from $44 to $85, depending on the style. Respondent promotes the Garments as able to slim the body and reduce cellulite.

5. Beginning not later than April 2011, Respondent has disseminated or has caused the dissemination of promotional materials for the Garments, including, but not limited to, print advertisements, point-of-sale displays and videos and online and mail order catalogs in the attached Exhibits A to G. These promotional materials contain the following statements and depictions:

a. (Exhibit A – print ad)

NEW

Anti-Cellulite Hi-Waist iPant

b. (Exhibit B – product hangtags)

Novarel Slim microfiber incorporates microcapsules containing **caffeine**, retinol, ceramides and other **active principles** that improve skin's appearance and control cellulite. The caffeine activates **microcirculation** and speeds up the breakdown of fat. The active principles are released during the garment's use, providing a permanent anti-cellulite effect.

After 28 days of use of this garment:

- 76% Slimming efficiency*
- 72% Users feel lighter*
- 63% State orange peel reduction*

*Clinical and sensorial trial carried out by an independent laboratory.

c. (Exhibit C – Wacoal-sponsored Facebook post, 1/28/11)

Wacoal Debuts Revolutionary iPant New shapewear that works with your body to eliminate cellulite . . . .

d. (Exhibit D – product hangtag)

HOW IT WORKS

It is recommended to wear the iPant 8 hours a day, 7 days a week for 28 days.

Novarel Slim® test results show most women reported improved appearance, a reduction in thigh measurement and that their clothes felt less tight.

e. (Exhibit E – point-of-sale video script)

Introducing, the revolutionary new anti-cellulite iPant from Wacoal. Superior comfort and smoothing, with amazing cosmetic benefits that fight cellulite. Made with Novarel Slim® nylon microfibers, embedded microcapsules combine the best selection of active ingredients: caffeine, retinol, ceramides, vitamin E, fatty acids and aloe vera. Caffeine is a renowned active slimming agent that promotes fat destruction.

f. (Exhibit F – print ad, appeared in *Glamour*, September 2011, and incorporated in point-of-sales poster)

iPant Anti-Cellulite Shapewear

Wacoal's new iPant offers superior comfort and smoothing along with amazing cosmetic benefits. The iPant is constructed of Novarel Slim® nylon microfibers with embedded microcapsules containing caffeine to promote fat destruction, vitamin E to prevent the effects of aging, ceramides to restore and maintain the skin's smoothness, and retinol and aloe vera to moisturize and increase the firmness of the skin.

g. (Exhibit G – Wacoal-sponsored blog post, 8/18/11)

My iPant and I, a perfect pair

As national spokesperson for Wacoal, I always have to look my best, which, for me, means slipping into a shaper as often as possible. I know that when I'm wearing Wacoal shapewear, I'll always have a great silhouette. So in January when Wacoal introduced the revolutionary new iPant – with microfibers containing caffeine to promote fat destruction; vitamin E to prevent the effects of aging; ceramides to restore and maintain the skin's smoothness; and retinol and aloe vera to moisturize and increase the firmness of the skin – I couldn't have been more delighted. It was a love affair at first sight (or sit!).

Efficacy Claims

6. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

a. the Garments eliminate or substantially reduce cellulite;

b. the Garments cause a substantial reduction in the wearer's thigh measurement; and

c. the Garments contain caffeine, which causes the destruction of fat cells and results in substantial slimming.

7. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made.

8. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

Establishment Claims

9. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

a. scientific tests prove that most iPant wearers achieve a substantial reduction in thigh measurement; and

b. scientific tests prove that wearing the Garments for eight hours a day for 28 days will substantially reduce a wearer's thigh measurement.

10. In truth and in fact,

a. scientific evidence does not prove that most iPant wearers achieve a substantial reduction in thigh measurement; and

b. scientific tests do not prove that wearing the Garments for eight hours a day for thirty days will substantially reduce a wearer's thigh measurement.

Among other things, the evidence relied on by Respondent for its representations concerning the Garments consisted primarily of results from two unblinded, uncontrolled clinical trials with significant methodological flaws. Moreover, Respondent

exaggerated the results of the studies: the average reported reduction in hip circumference was less than one-fourth of an inch and the average reported reduction in thigh measurement was less than one-sixth of an inch. Therefore, the representations set forth in Paragraph 9 were, and are, false and misleading.

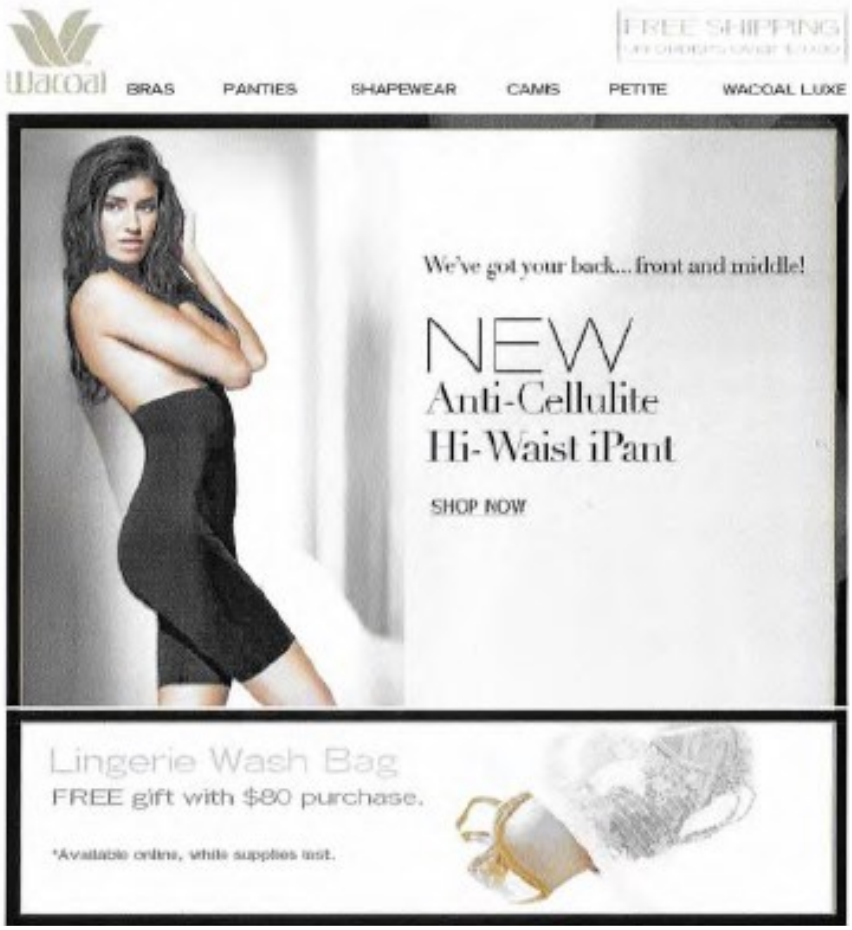
11. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this sixth day of November, 2014, has issued this complaint against Respondent.

By the Commission.

Complaint

Exhibit A



Complaint

Exhibit B

Exhibit C

Exhibit D


HOW IT WORKS
It is recommended to wear the iPant 8 hours a day, 7 days a week for 28 days.
Novarel Slim® test results show most women reported improved appearance, a reduction in thigh measurement and that their clothes felt less tight.
Active ingredients are still present after 100 washes.
LET WACOAL GIVE YOU HOPE ON A HANGER!
www.wacoal-america.com
W 256
LYCRA® is a registered trademark of INVISTA. Novarel Slim® is a registered trademark of NUREL.

Complaint

ExhibitE

iPant Video Script
Length: 52 seconds
Distribution: YouTube; in-store videos for Belk, Bloomingdales, Bon-Ton, Dillards, Lord and Taylor, Macy's, Neiman Marcus, Nordstrom, The Bay, Von Maur

VOICE OVER

Introducing, the revolutionary new anti-cellulite iPant, from Wacoal.

Superior comfort and smoothing, with amazing cosmetic benefits that fight cellulite.

Made with Novarel Slim® nylon microfibers, embedded microcapsules combine the best selections of active ingredients: caffeine, retinol, ceramides, vitamin E, fatty acids and aloe vera. Caffeine is a renowned active slimming agent that promotes fat destruction.

The iPant, with Lycra Beauty Fabric shapes and sculpts as it releases these ingredients into your skin, while you move throughout the day.

The anti-cellulite iPant; let Wacoal give you hope on a hanger.

Complaint

Exhibit F

EXHIBIT F

Complaint

Exhibit G

Best,
Liz

Post by Liz Smith at 12 October 2011
Label(s) : Breast Cancer Awareness, Awareness Bra, Embrace Lace Bra, Fit For The Cure, Support the Girls
facebook Tweet Pinterest

My iPant and I, a Perfect Pair

As national spokesperson for Wacoal, I always have to look my best, which, for me, means slipping into a shaper as often as possible. I know that when I'm wearing Wacoal shapewear, I'll always have a great silhouette. So in January when Wacoal introduced the revolutionary new iPant—with microfibers containing caffeine to promote fat destruction; vitamin E to prevent the effects of aging; ceramides to restore and maintain the skin's smoothness; and retinol and aloe vera to moisturize and increase the firmness of the skin—I couldn't have been more delighted. It was a love affair at first sight (or sit!).

Seasons passed and my iPant collection began to grow. I wanted a pair for every day of the week because I noticed that after wearing them regularly—28 days straight, eight to ten hours a day—my thighs and hips started to look and feel smoother. Even better, (okay, maybe just as good) I discovered that wearing the iPant is ultra comfortable. There have been days when I've had my iPant Long Leg Shaper on from 6:00 a.m. until midnight and never experienced a single tug, roll, or pinch. Who can beat that when you have to be on a flight all night long or at a Little League game that goes into extra (extra!) innings?

Recently, we added a new iPant Hi-Waist Long Leg Shaper to our collection. Try one style or try them both and use the "review" feature on our website to let us know what you think of your iPant. I hope you and your iPant are a "perfect pair" too!

I look forward to seeing you at a fitting, in a store, or online soon.

Liz

Post by Liz Smith at 18 August 2011
Label(s) :
facebook Tweet Pinterest

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http://m.wacoal-america.com/blogger.html

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of Wacoal America, Inc., a corporation, hereinafter sometimes referred to as "Respondent," and Respondent having been furnished with a copy of a draft of complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having thereupon accept the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Decision and Order:

1. Respondent Wacoal America, Inc., is a Delaware corporation with its principal office or place of business at One Wacoal Plaza, Lyndhurst, New Jersey 07071.

2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the

Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "Respondent" shall mean Wacoal America, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.

B. "Adequate and well-controlled human clinical study" means a human clinical study that is randomized, double-blind, placebo controlled, and conducted by persons qualified by training and experience to conduct such study.

C. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

D. "Covered Product" means any garment containing a drug or cosmetic.

E. "Drug" and "cosmetic" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

F. "Reliably Reported," for a human clinical test or study ("test"), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling,

advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes substantial weight or fat loss or a substantial reduction in unclad body size.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or any drug or cosmetic, in or affecting commerce, shall not make any representation, other than representations covered under Part I of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes weight or fat loss or a reduction in unclad body size, unless the representation is non-misleading, and, at the time it is made, Respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Part, competent and reliable scientific evidence shall consist of at least two adequate and well-controlled human clinical studies of the Covered Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or any drug or cosmetic, in or affecting commerce, shall not make any representation, other than representations covered under Parts I and II of this order, in any manner, expressly or by implication, including through the use of

a product name, endorsement, depiction, or illustration, that use of such product reduces or eliminates cellulite, unless the representation is non-misleading, and, at the time of making such representation, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as set forth in Part IX of this Order are available for inspection and production to the Commission.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication, including through the use of any product name or endorsement:

A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or

B. That the benefits of the product are scientifically proven.

V.

IT IS FURTHER ORDERED that

A. Nothing in this order shall prohibit Respondent from making any representation for any product that is

specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997; and

B. Nothing in this order shall prohibit Respondent from making any representation for any product that is permitted in the labeling for such product under any tentative final or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI.

IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days after the date of entry of this order, provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased any Covered Product from January 1, 2011, through the date of entry of this order, to the extent it has such information in its possession or control, including information available upon request from franchisees or others. Such file: (1) shall include each consumer's name and address, the product(s) purchased, the total amount of moneys paid less any amount credited for returns or refunds, the date(s) of purchase, and, if available, the consumer's telephone number and email address; (2) shall be updated through the National Change of Address database; and (3) shall be accompanied by a sworn affidavit attesting to its accuracy.

VII.

IT IS FURTHER ORDERED that Respondent shall pay to the Federal Trade Commission the sum of one million three hundred thousand dollars ($1,300,000). This payment shall be made in the following manner:

A. The payment shall be made by electronic funds transfer within ten (10) days after the date that this order becomes final and in accordance with

instructions provided by a representative of the Federal Trade Commission.

B. In the event of default on any obligation to make payment under this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.

C. All funds paid to the Commission pursuant to this order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress to consumers (which shall be the first priority for dispensing the funds set forth above) is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Respondent's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Respondent shall be notified as to how the funds are distributed, but shall have no right to challenge the Commission's choice of remedies under this Part. Respondent shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment under this Part shall be deemed a payment of any fine, penalty, or punitive assessment.

D. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

E. Respondent agrees that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy case. Respondent further agrees that the facts alleged in the complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this order shall have collateral estoppel effect for such purposes.

F. In accordance with 31 U.S.C. § 7701, Respondent is hereby required, unless it has done so already, to furnish to the Commission its taxpayer identifying number, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of Respondent's relationship with the government.

G. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VIII.

IT IS FURTHER ORDERED that Respondent shall comply with Paragraphs II and III of Appendix A to this order and shall also provide reasonable cooperation to the Commission with respect to the administration of the Consumer Redress Program and other Consumer Redress Requirements as described in Appendix A to this order, hereby incorporated into this order.

IX.

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which Respondent relies to substantiate any claim covered by this Order, Respondent shall

secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;

B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;

C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;

D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or between-group analysis performed on any test data; and

E. All documents referring or relating to the sponsorship of the test, including all contracts and communications between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part by (1) any Respondent; (2) any other person or entity in active concert or participation with any Respondent; (3) any person or entity affiliated with or acting on behalf of any Respondent; (4) any supplier of any ingredient contained in the product at issue to any

of the foregoing or to the product's manufacturer; or (5) the supplier or manufacturer of such product.

For any test conducted, controlled, or sponsored, in whole or in part, by Respondent, Respondent must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to Respondent's size and complexity, the nature and scope of Respondent's activities, and the sensitivity of the personal information collected from or about the participants.

X.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc., and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, upon reasonable notice and request, make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XI.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc., and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents and

representatives having primary responsibilities with respect to the advertising subject to the terms of Parts I-IV of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgements of receipt of this order obtained pursuant to this Part.

XII.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "In the Matter of Wacoal America, Inc., FTC File Number 132-3095."

XIII.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the

Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

XIV.

This order will terminate on November 6, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any Respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

APPENDIX A

CONSUMER REDRESS PROGRAM

The Commission shall apply funds received from Respondent pursuant to this order to a consumer redress program. Any funds required to administer the consumer redress program shall be taken from the sum provided by Respondent in Part VII of this order.

Within thirty days (30 days) of the date of service of this order, Respondent shall purchase: (A) no fewer than 6,300,000 online advertising impressions to run over a thirty-day (30-day) period on digital properties of Women's Health, Elle, Real Simple, and Glamour, some of which impressions may include advertisements in one or more of the properties' respective digital newsletters; and (B) a print advertising campaign in *USA Today* comprised of two (2) one-quarter page insertions in Marketplace Classifieds. The notices associated with A and B, above, shall, respectively, be in the forms set out in Exhibit 1 (with the understanding that banner ads will not contain the full text of the notice).

Within thirty (30) days of the date of service of this order, Respondent shall send a notice in form substantially identical to Exhibit 3 (a) by email to all persons identified in the file provided in compliance with Part VI of this Order for whom Respondent has an email address and (b) by United States Mail to all persons identified in the file provided in compliance with Part VI of this order for whom Respondent does not have an email address, but does have a street address. Said notice shall contain no information other than that set forth in Exhibit 3, nor shall any other material be transmitted therewith.

The Commission shall, consistent with the provisions otherwise set out herein, have full discretion to (1) review and approve the procedures used to identify those consumers who meet the criteria for redress; (2) determine the application of the criteria for participation in any redress program and identify those consumers entitled to relief in any redress program implemented pursuant to this order; (3) determine the manner and timing of the sending to consumers of the forms attached hereto as Exhibits 2, 4 and 5; and

(4) delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations of its choice and to pay the fees, salaries, and expenses incurred thereby from the payments made by Respondent pursuant to Part VII of this order. The FTC or its designated agent shall send directly to consumers the forms attached hereto as Exhibits 2, 4 and 5.

The award under this redress program shall be a pro rata share, with respect to each covered product purchased by the consumer (allocated by price and style), to each consumer who qualifies for the redress program, not to exceed the total purchase price of the Covered Products purchased by the consumer.

Any applicant who does not submit a Claim Form within sixty (60) days of the last online notice or publication of the *USA Today* notice described in Paragraph II shall not be eligible for any award under this redress program.

Following the completion of the redress program described in Part VII of this Order and in this Appendix A, the Commission or its designated agent shall provide to Respondent a report containing the name and address of each consumer to whom redress was paid pursuant to this Order and, for each consumer, the Covered Product(s) for which such claim was made, the total dollar volume of such claim and the redress paid. Respondent shall have no right to contest the validity of any claim submitted pursuant to the redress program.

EXHIBIT 1 – [*USA Today* Notice]

Did you buy a Wacoal iPant product? You may be eligible for a refund.

The Federal Trade Commission (FTC), the nation's consumer protection agency, sued Wacoal, alleging that Wacoal's advertising about iPant products was not adequately supported by scientific data. The FTC says Wacoal made misleading claims that wearing iPant products would reduce cellulite and reduce thigh size.

To settle the lawsuit, the company is offering money back to people who bought iPant products since January 1, 2011. You don't need your receipt and you don't have to send the product back.

There are two ways to apply for a refund:

1) Call [toll-free number] and request a claim form; complete the form and mail it back by [date certain -- sixty (60) days after the last online notice or publication of the *USA Today* notice], **or**

2) Apply online at [URL] by [date certain-- sixty (60) days after the last online notice or publication of the *USA Today* notice].

How much you get back will depend on how many people apply.

If you have questions, visit [URL] or call [toll-free number].

EXHIBIT 2 -- REFUND APPLICATION

[sent to consumers who request a claim form]

I bought the following Wacoal iPant product(s) since January 1, 2011.

____ Cupless Camisole (Style No. 802171)

____ Legging (Style No. 804171)

____ Mid-Thigh Shaper (Style No. 804271)

____ Hi-Waist Long Leg Shaper (Style No. 805171)

____ Brief (Style No. 808171)

____ Long Leg Shaper (Style No. 809171)

(If you bought more than one, please say how many.)

If I'm eligible to get money back as part of the FTC's lawsuit against Wacoal, send my refund to:

NAME: _____

ADDRESS: _____

CITY AND STATE:
_____

ZIP CODE: _____

- Mail this form to [address] by [date certain -- sixty (60) days after the last online notice or publication of the *USA Today* notice].
- You don't need your receipt and you don't have to send the product(s) back.
- For more information, visit [URL] or call [toll-free number].

EXHIBIT 3 – [Email or letter to online buyers]

[date]

Name of Consumer
Address
City/State/ZIP

RE: Refunds for people who bought Wacoal iPant products

Dear Consumer:

We're writing because according to the records of Wacoal America, you bought iPant product(s) from the company's website. The Federal Trade Commission (FTC), the nation's consumer protection agency, sued Wacoal, alleging that Wacoal's advertising about iPant products was not adequately supported by scientific data. The FTC says Wacoal made misleading claims that wearing iPant products would reduce cellulite and reduce thigh size.

To settle the lawsuit, the company is offering money back to people who bought iPant products since January 1, 2011. You don't need your receipt and you don't have to send the product back.

There are two ways to apply for a refund:

1) Complete the attached form and mail it back by [date certain-- sixty (60) days after the last online notice or publication of the *USA Today* notice], or

2) Apply online at [URL] by [date certain-- sixty (60) days after the last online notice or publication of the *USA Today* notice].

How much you get back will depend on how many people apply.

If you have questions, visit [URL] or call [toll-free number].

Sincerely,
[name]

[Attach same Refund Application form.]

REFUND APPLICATION
[Attachment to letter to people who bought from Wacoal's website]

I bought the following Wacoal iPant product(s) since January 1, 2011. .

____ Cupless Camisole (Style No. 802171)
____ Legging (Style No. 804171)
____ Mid-Thigh Shaper (Style No. 804271)
____ Hi-Waist Long Leg Shaper (Style No. 805171)
____ Brief (Style No. 808171)
____ Long Leg Shaper (Style No. 809171)

(If you bought more than one, please say how many.)

If I'm eligible to get money back as part of the FTC's lawsuit against Wacoal, send my refund to:

NAME: _____
ADDRESS: _____
CITY AND STATE: _____
ZIP CODE: _____

- Mail this form to [address] by [date certain -- sixty (60) days after the last online notice or publication of the *USA Today* notice].

- You don't need your receipt and you don't have to send the product(s) back.

- For more information, visit [URL] or call [toll-free number].

EXHIBIT 4 – [Letter to accompany redress payment]

[date]

Name of Consumer
Address
City/State/ZIP

RE: Refunds for people who bought Wacoal iPant products

Dear Consumer:

You applied for a refund as part of the Federal Trade Commission's lawsuit against Wacoal America for deceptive advertising about iPant products. A check for your part of the settlement is enclosed. Please cash it by [date certain]. After that, the check won't be good.

If you have questions, please call the FTC [or name] at [toll-free number].

For consumer information about evaluating advertising claims for products like this, visit the FTC's Health & Fitness page, *http://www.consumer.ftc.gov/topics/health-fitness*.

Sincerely,

[name]

EXHIBIT 5 – [Letter to ineligible consumers]

[date]

Name of Consumer
Address
City/State/ZIP

RE: Refunds for people who bought Wacoal iPant products

Dear Consumer:

You applied for a refund as part of the Federal Trade Commission's lawsuit against Wacoal America for deceptive advertising of iPant products. We reviewed the information you sent. Unfortunately, your purchase isn't covered by the settlement, and you don't qualify for a refund.

If you have questions, please call the FTC [or name] at [toll-free number].

For consumer information about evaluating advertising claims for products like this, visit the FTC's Health & Fitness page, *http://www.consumer.ftc.gov/topics/health-fitness*.

Sincerely,

[name]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an Agreement Containing Consent Order from Wacoal America, Inc. ("respondent"). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves the advertising, marketing, and sale by respondent of iPants, women's undergarments that are infused with microencapsulated caffeine and other ingredients. Respondent has marketed the iPants garments to consumers through third-party retailers and through its website. According to the FTC complaint, respondent claimed the iPants garments would slim and reshape the body and reduce cellulite.

Specifically, the FTC complaint alleges that respondent represented that wearing iPants garments eliminates or substantially reduces cellulite; causes a substantial reduction in the wearer's thigh measurements; and that iPants garments contain caffeine that causes the destruction of fat cells and results in substantial slimming. The complaint alleges that these claims are unsubstantiated and thus violate the FTC Act. The complaint also alleges that respondent represented that scientific tests prove that most iPant wearers achieve a substantial reduction in thigh measurement and that scientific tests prove that wearing the iPants garments for eight hours a day for 28 days will substantially reduce a wearer's thigh measurement. The complaint alleges that these claims are false and thus violate the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Parts I-III address the unsubstantiated claims alleged in the complaint. Part I prohibits respondent from claiming that any Covered Product – *i.e.*, a garment that contains any drug or cosmetic – causes substantial weight or fat loss or a

substantial reduction in unclad body size. The Commission has publicly advised that any claim that a product worn on the body causes substantial weight loss is always false.

Part II covers any representation, other than representations covered under Part I, that any Covered Product or any drug or cosmetic causes weight or fat loss or a reduction in unclad body size. Part II prohibits respondent from making such representations unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of Part II, the proposed order defines "competent and reliable scientific evidence" as at least two randomized, double-blind, placebo-controlled human clinical studies that are conducted by independent, qualified researchers and that conform to acceptable designs and protocols, and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

Part III of the proposed order prohibits respondent from making any representation, other than representations covered under Parts I or II, that use of a Covered Product or a drug or cosmetic reduces or eliminates cellulite, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of Part III, the proposed order defines "competent and reliable scientific evidence" as tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results.

Part IV of the proposed order addresses the allegedly false claims that scientific tests prove that wearing iPants garments result in reduction of the wearer's thigh measurement. Part IV prohibits respondent, when advertising any product, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, or

misrepresenting that the benefits of the product are scientifically proven.

Part V of the proposed order provides a safe harbor for representations that are permitted in labeling for that drug under any tentative or final standard promulgated by the Food and Drug Administration ("FDA"), any new drug application approved by the FDA, or FDA regulations pursuant to the Nutrition Labeling and Education Act of 1990 or the FDA Modernization Act of 1997.

Part VII of the proposed order requires respondent to pay one million three hundred thousand dollars ($1,300,000) to the Commission to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. To facilitate the payment of redress, Part VI of the proposed order requires Wacoal America to provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased the iPants garments directly from respondent from January 1, 2011, through the date of entry of the order. Part VIII of the proposed order requires respondent to comply with the provisions of Appendix A to the order, which sets out the methods for notifying consumers who may be entitled to file a claim for consumer redress.

Part IX of the proposed order is triggered whenever the human clinical testing requirement in either Part II or Part III applies. Part IX of the proposed order requires the company to secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test. There is an exception for a "Reliably Reported" test defined as a test published in a peer-reviewed journal that was not conducted, controlled, or sponsored by any proposed respondent or supplier. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Part X of the proposed order contains recordkeeping requirements for advertisements and substantiation relevant to any representation covered by the proposed order. Parts XI, XII and XIII of the proposed order require respondent to provide copies of the order to its personnel; to notify the Commission of changes in

corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XIV provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or and proposed order or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

MADE IN THE USA BRAND, LLC

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

Docket No. C-4497; File No. 142 3121
Complaint, November 10, 2014 – Decision, November 10, 2014

This consent order addresses Made in the USA Brand, LLC's marketing, sale, and distribution of licenses to use its "Made in USA" certification mark to companies wishing to make U.S.-origin claims for their products. The complaint alleges that Respondent represented that products and entities using Respondent's certification mark were independently and objectively evaluated for compliance with Respondent's accreditation standard. The complaint further alleges that Respondent did not possess and rely upon a reasonable basis to substantiate its claims that entities promoted on its website sold products that are all or virtually all made in the United States. The consent order prohibits Respondent from representing, expressly or by implication, that covered entities meet Respondent's accreditation standard, unless: (1) an entity with no material connection to that covered entity conducted an independent and objective evaluation to confirm that the accreditation standard was met; or (2) Respondent's mark and marketing materials prominently disclose that the accreditation standard may be met through self-certification.

Participants

For the *Commission*: *Julia Solomon Ensor.*

For the *Respondent*: *Robert Cochran, Ice Miller LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Made in the USA Brand, LLC, a limited liability company ("Respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Made in the USA Brand, LLC ("MUSA Brand") is an Ohio limited liability company with its principal office or place of business at 1398 Goodale Boulevard, Columbus, Ohio 43212.

2. Respondent has advertised, offered for sale, sold, and distributed licenses to use its "Made in USA" certification mark to companies wishing to make U.S.-origin claims for their products.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

MUSA Brand Certification Mark

4. As U.S.-origin claims become more material to some consumers, those consumers increasingly rely on seals and certification programs to confirm that such claims are credible.

5. Respondent introduced a U.S.-origin seal for marketers to use to boost the credibility of their "Made in USA" claims in 2009, and registered it as a Certification Mark with the United States Patent and Trademark Office in 2010.

6. Respondent sells licenses to use its Certification Mark through its website at www.madeintheusabrand.com. Respondent charges $250 to $2,000 for a one-year license to use the Certification Mark, depending on the licensee's annual sales.

7. Respondent grants licenses to use its Certification Mark to any company, product, or entity that states it meets Respondent's accreditation standard and pays the licensing fee.

8. Respondent's accreditation standard for using its Certification Mark is the Federal Trade Commission's Enforcement Policy Statement for U.S.-Origin Claims.

9. Respondent does not rely on an independent or objective evaluation to confirm that licensees meet its accreditation standard. Instead, Respondent awards licenses to any company, product, or entity that self-certifies that it meets the accreditation standard.

10. Respondent does not audit licensees to confirm ongoing compliance with the accreditation standard.

11. Respondent has never rejected an application to use its Certification Mark and has never terminated any licensee's use of its Certification Mark.

12. In some instances, Respondent has licensed use of the Certification Mark to companies that do not meet the accreditation standard.

13. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for the MUSA Brand Certification Mark, as well as promotional materials for licensed companies to use to promote their products as made in the USA. These materials include, but are not necessarily limited to, the attached Exhibits A through D. Exhibits A through D contain the following statements and images:

a. 

(Exhibit A, https://www.madeintheusabrand.com (2014)).

b. "The Made in USA Brand Certification Mark provides a standard symbol for Made in USA product identification . . . When printed on labels by accredited manufacturers, consumers are able to identify at a glance which products are made in the USA."

. . .

"The Certification Mark is available to be downloaded by U.S. business that meet the accreditation standards based on the Federal Trade Commission's regulations for complying with Made in USA origin claims."

(Exhibit B, flyer (2010)).

c. "The Made In USA Brand Certification Mark is a perfect fit for me, my family and my race team, because it stands for buying American products produced by American workers. That's really important in today's world when creating and sustaining jobs is a priority for all Americans. We can all make a difference by checking for the Made In USA Brand Certification Mark on the products we purchase."

(Exhibit C, https://www.madeintheusabrand.com/2012/05/are-you-made-in-usa/ (2012)).

d. "Consumers value transparency in the manufacturing process and have looked to trusted symbols and certification marks to help align their purchases with their beliefs. The Made in USA Brand Certification Mark joins the ranks of such symbols as Certified Organic, Certified Gluten-Free and Rainforest Alliance Certified. For the first time American companies will have a registered certification mark to label and distinguish their products are of United States country of origin. Consumers will be able to identify at a glance that the product they are buying is of United States country of origin."

. . .

"Consumers have become conditioned to read labels. They look to certification marks and trusted symbols to help align their purchases with their values and their beliefs."

(Exhibit D, https://www.madeintheusabrand.com/2011/01/registered-certification-mark-now-available-to-label-and-identify-made-in-usa-products (2011)).

14. In numerous instances, including, but not limited to, the promotional materials shown in Exhibits A-D, Respondent has represented that entities and products using its Certification Mark have been independently and objectively evaluated for compliance with Respondent's accreditation standard. For

example, in Exhibit D, Respondent strongly implied that it independently and objectively evaluated licensees by claiming on its website that its Certification Mark "joins the ranks" of "trusted symbols and certification marks [that] help align [consumers'] purchases with their beliefs," and that its Certification Mark is "available for accredited U.S. businesses."

15. In fact, entities and products using Respondent's Certification Mark have not been independently and objectively evaluated for compliance with Respondent's accreditation standard.

16. In numerous instances, including, but not limited to, the promotional materials shown in Exhibits A-D, Respondent has represented that products using its Certification Mark are all or virtually all made in the United States. For example, Respondent promotes a directory of licensees on its website as a list of manufacturers selling U.S.-origin products in compliance with the FTC's Enforcement Policy Statement for U.S.-Origin Claims.

17. In fact, Respondent does not possess competent and reliable evidence that products using its Certification Mark are all or virtually all made in the United States.

18. In numerous instances, Respondent has distributed promotional materials, including but not limited to the promotional materials shown in Exhibits A-D, to third-party marketers for use in the marketing and sale of those third parties' products.

19. In so doing, Respondent has provided third-party marketers with the means and instrumentalities to deceive consumers. For example, several of Respondent's licensees have used Respondent's Certification Mark or other materials to promote products that contain significant imported content.

COUNT I (False or Misleading Representation)

20. In connection with the advertising, promotion, offering for sale, or sale of the MUSA Brand Certification Mark, Respondent has represented, directly or indirectly, expressly or by implication, that each entity or product licensed to use its Certification Mark

has been independently and objectively evaluated for compliance with Respondent's accreditation standard.

21. In fact, products and entities using Respondent's Certification Mark have not been independently and objectively evaluated for compliance with Respondent's accreditation standard. Therefore, the representation set forth in Paragraph 20 is false or misleading.

COUNT II (False or Unsubstantiated Representation)

22. In connection with the advertising, promotion, offering for sale, or sale of the MUSA Brand Certification Mark, Respondent has represented, directly or indirectly, expressly or by implication that the entities promoted on its website sell products that are all or virtually all made in the United States.

23. In fact, in numerous instances, entities promoted on Respondent's website have sold products containing significant imported content, and Respondent does not possess competent and reliable evidence that any entity promoted on its website sells products that are all or virtually all made in the United States. Therefore, the representation set forth in Paragraph 22 was false or not substantiated at the time the representation was made.

COUNT III (Means and Instrumentalities)

24. Respondent has distributed the promotional materials described in Paragraphs 13-19 to third-party marketers for use in the marketing and sale of those third parties' products. In so doing, Respondent has provided the means and instrumentalities to these third-party marketers for the commission of deceptive acts or practices.

VIOLATION OF SECTION 5

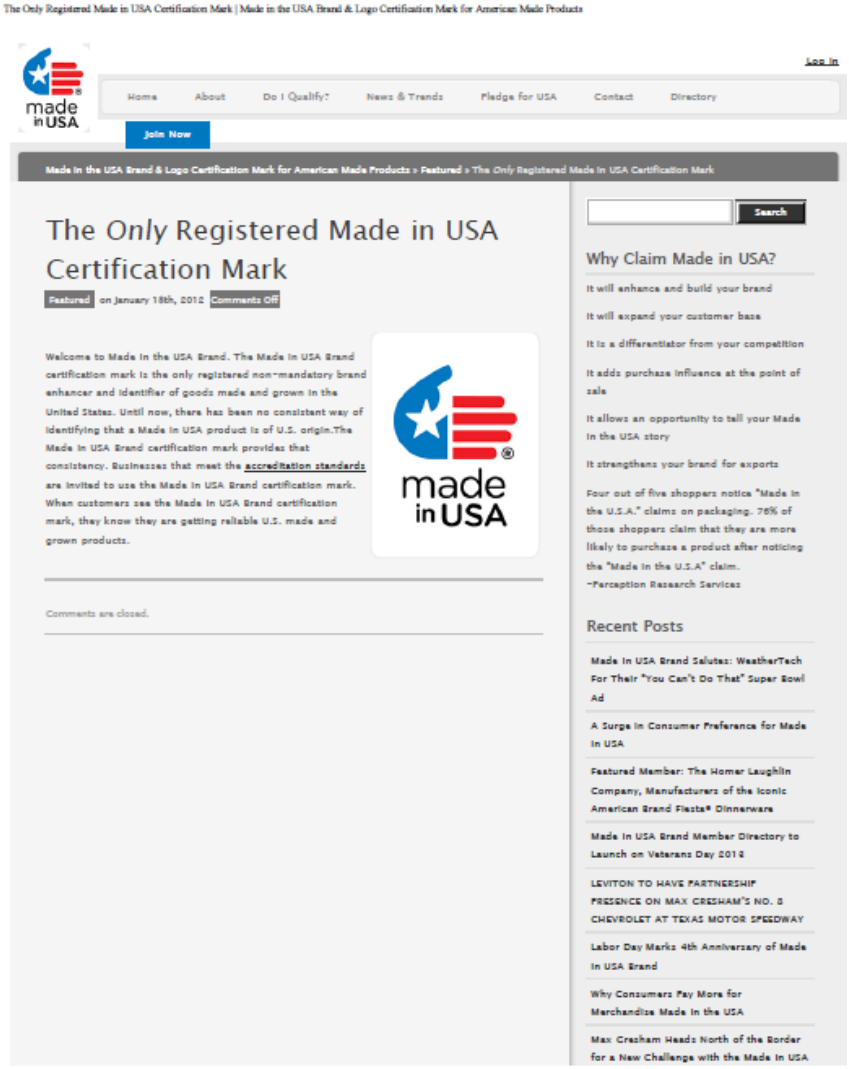
25. The acts and practices of Respondent as alleged in this Complaint, constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this tenth day of November, 2014, has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A



https://www.madeintheusabrand.com/2012/01/certification_mark/[2/19/2014 11:06:25 AM]

Exhibit A

Complaint

Exhibit B

Made in USA Brand | Certification Mark

made in USA

Made in USA Brand Certification Mark Sets the Standard to Label and Identify Made in USA Products

The Made in USA Brand Certification Mark logo is the only certification mark registered with the United States Patent and Trademark Office for labeling and identifying goods either made or grown in the United States. This is vital news to U.S. manufacturers, retailers and consumers. It comes at a time when Pocketbook Patriotism (buying American) and American jobs are important topics. Now, more than ever, consumers are interested in buying local and purchasing goods made in America because they associate them with American jobs and higher quality.

The Made in USA Brand Certification Mark provides a standard symbol for Made in USA product identification. American companies now have a distinctive, registered certification mark for labeling the United States as country of origin on their packaging and goods. When printed on labels by accredited manufacturers, consumers are able to identify at a glance which products are made in the USA.

The Certification Mark is available to be downloaded by U.S. businesses that meet the accreditation standards based on the Federal Trade Commission's regulations for complying with Made in USA origin claims found at **madeintheusabrand.com/form/.**

Since its inception in 2009, the Made In USA Brand Certification Mark has gained widespread acceptance. The number of accredited companies using the mark to identify their American-made products and services has grown to nearly 1000, including Ball Corporation, MaxPower Precision Parts and Leviton.

Contact: Marcie Gabor, President, Made in USA Brand and Principal, Conrad | Phillips | Vutech at 614.224.3887 or marcie@cpvinc.com.

"The 'Made in USA' Brand has allowed MaxPower to emphasize the fact that our mower blades are all 100% made in the United States of America. The logo lets the customer know right away where this product is made."
-Terry Mormon, Vice President Sale at MaxPower Precision Parts

"This effort has been very well received by Leviton customers as they are eager to promote Made in USA goods on their shelves. Leviton congratulates the Made in USA Brand organization for taking on the initiative to unify and certify the Made In USA identification."
-Carol Lynch, Vice President Sales and Marketing Retail at Leviton

1398 Goodale Blvd Columbus, OH 43212 614.224.3887 www.MadeinUSAbrand.com

Exhibit B

Exhibit C

Are You Made in USA? | Made in the USA Brand & Logo Certification Mark for American Made Products

Log In

made in USA

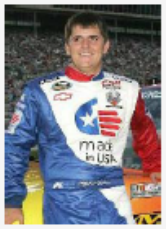
Home | About | Do I Qualify? | News & Trends | Pledge for USA | Contact | Directory

Join Now

Made in the USA Brand & Logo Certification Mark for American Made Products » Featured » Are You Made in USA?

Are You Made in USA?

Featured on May 31st, 2012 Comments Off



NASCAR Driver Max Cresham

Max Cresham is racing the No. 8 Made in USA Brand Chevrolet Silverado for awareness of manufacturers that are making products here in the United States and to raise awareness of fans to look for and buy American products.

Fans, are you interested in looking for and buying Made in USA products? Pledge along with Max to purchase made in USA manufactured goods. Take the pledge for free at www.PledgeForUSA.com.

Manufacturers, are you making or growing an American product? Identify your products for the consumer, claim your U.S. Country of origin. The Made in USA Brand Certification Mark is the only certification mark for labeling and identifying goods that are made or grown in the United States.

Companies interested in securing the Made in USA Brand Certification Mark for their products are encouraged to log on to www.MadeInUSABrand.com.

Manufacturers, are you interested in showing your Made in USA pride? Learn more about co-branding with Made in USA Brand and sponsorship opportunities with Max Cresham and the No. 8 Made in USA Brand Chevy. Contact:

J. R. Longley
JRLongley@MaxCresham.com
706-551-6970

> *Race fans are proud of their sport and their country. The Made in USA Brand Certification Mark is a perfect fit for me, my family and my race team, because it stands for buying American products produced by American workers. That's really important in today's world when creating and sustaining jobs is a priority for all Americans. We can all make a difference by checking for the Made in USA Brand Certification Mark on the products we purchase. That's a message we are going to bring to the racetrack throughout the 2012 racing season. – Max Cresham.*

For more information about Max Cresham, please visit www.MaxCresham.com. You can also follow Cresham on Twitter @MaxCresham and at the Max Cresham Fan Page on Facebook.

Tags: American Manufacturing, co-branding, country of origin, Made in America logo, Made in USA Brand Certification Mark, Made in USA label, Made in USA logo, Made in USA manufacturing, Max Cresham, NASCAR, NASCAR sponsorship, pledge for USA, pledgeforusa.com, r u made in usa, rumadeinusa.com

Comments are closed.

Search

Why Claim Made in USA?

It will enhance and build your brand

It will expand your customer base

It is a differentiator from your competition

It adds purchase influence at the point of sale

It allows an opportunity to tell your Made in the USA story

It strengthens your brand for exports

Four out of five shoppers notice "Made in the U.S.A." claims on packaging. 76% of those shoppers claim that they are more likely to purchase a product after noticing the "Made in the U.S.A" claim.
-Perception Research Services

Recent Posts

Made in USA Brand Salutes: WeatherTech For Their "You Can't Do That" Super Bowl Ad

A Surge in Consumer Preference for Made in USA

Featured Member: The Homer Laughlin Company, Manufacturers of the Iconic American Brand Fiesta® Dinnerware

Made in USA Brand Member Directory to Launch on Veterans Day 2012

LEVITON TO HAVE PARTNERSHIP PRESENCE ON MAX CRESHAM'S NO. 8 CHEVROLET AT TEXAS MOTOR SPEEDWAY

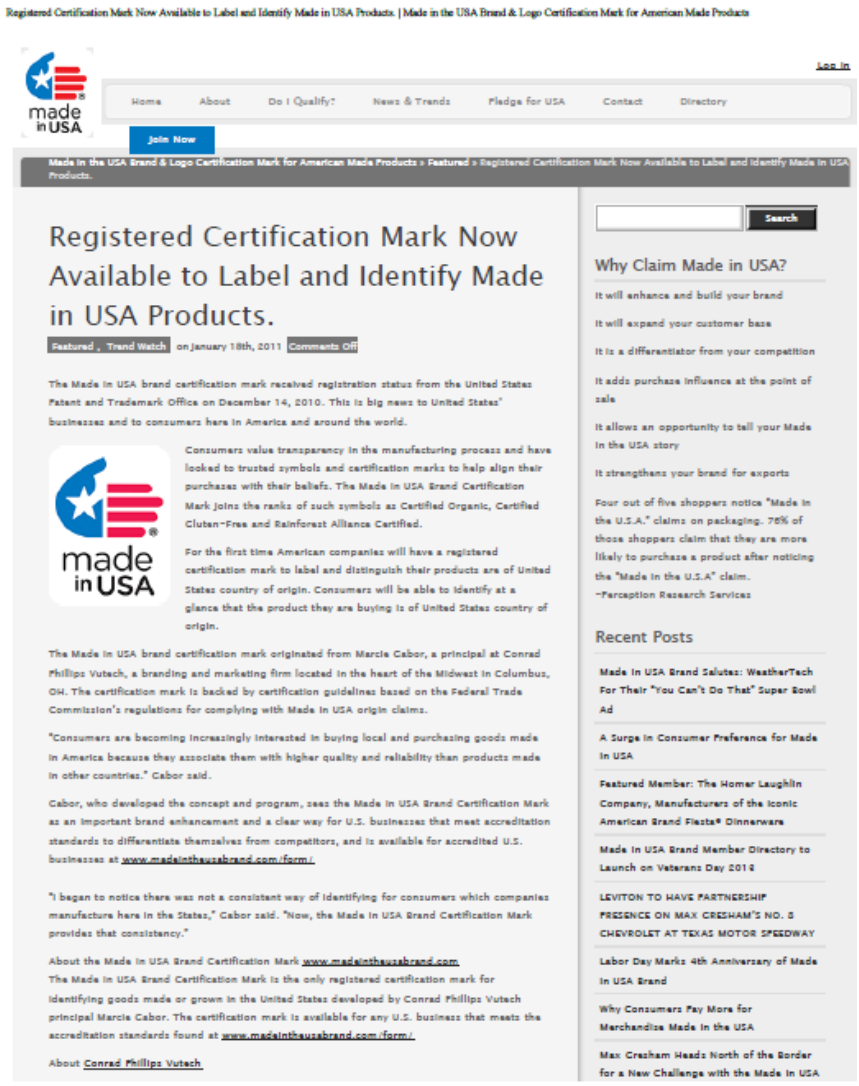
Labor Day Marks 4th Anniversary of Made in USA Brand

Why Consumers Pay More for Merchandise Made in the USA

Max Cresham Heads North of the Border for a New Challenge with the Made in USA

Complaint

Exhibit D



Registered Certification Mark Now Available to Label and Identify Made in USA Products. | Made in the USA Brand & Logo Certification Mark for American Made Products

Log In

made in USA

Home About Do I Qualify? News & Trends Pledge for USA Contact Directory

Join Now

Made in the USA Brand & Logo Certification Mark for American Made Products » Featured » Registered Certification Mark Now Available to Label and Identify Made in USA Products.

Registered Certification Mark Now Available to Label and Identify Made in USA Products.

Featured , Trend Watch on January 18th, 2011 Comments Off

The Made in USA brand certification mark received registration status from the United States Patent and Trademark Office on December 14, 2010. This is big news to United States' businesses and to consumers here in America and around the world.

Consumers value transparency in the manufacturing process and have looked to trusted symbols and certification marks to help align their purchases with their beliefs. The Made in USA Brand Certification Mark joins the ranks of such symbols as Certified Organic, Certified Gluten-Free and Rainforest Alliance Certified.

For the first time American companies will have a registered certification mark to label and distinguish their products are of United States country of origin. Consumers will be able to identify at a glance that the product they are buying is of United States country of origin.

The Made in USA brand certification mark originated from Marcie Cabor, a principal at Conrad Phillips Vutech, a branding and marketing firm located in the heart of the Midwest in Columbus, OH. The certification mark is backed by certification guidelines based on the Federal Trade Commission's regulations for complying with Made in USA origin claims.

"Consumers are becoming increasingly interested in buying local and purchasing goods made in America because they associate them with higher quality and reliability than products made in other countries." Cabor said.

Cabor, who developed the concept and program, sees the Made in USA Brand Certification Mark as an important brand enhancement and a clear way for U.S. businesses that meet accreditation standards to differentiate themselves from competitors, and is available for accredited U.S. businesses at www.madeinthausabrand.com/form/

"I began to notice there was not a consistent way of identifying for consumers which companies manufacture here in the States," Cabor said. "Now, the Made in USA Brand Certification Mark provides that consistency."

About the Made in USA Brand Certification Mark www.madeinthausabrand.com
The Made in USA Brand Certification Mark is the only registered certification mark for identifying goods made or grown in the United States developed by Conrad Phillips Vutech principal Marcie Cabor. The certification mark is available for any U.S. business that meets the accreditation standards found at www.madeinthausabrand.com/form/

About Conrad Phillips Vutech

Search

Why Claim Made in USA?

It will enhance and build your brand

It will expand your customer base

It is a differentiator from your competition

It adds purchase influence at the point of sale

It allows an opportunity to tell your Made in the USA story

It strengthens your brand for exports

Four out of five shoppers notice "Made in the U.S.A." claims on packaging. 76% of those shoppers claim that they are more likely to purchase a product after noticing the "Made in the U.S.A" claim.
-Perception Research Services

Recent Posts

Made in USA Brand Salutes: WeatherTech For Their "You Can't Do That" Super Bowl Ad

A Surge in Consumer Preference for Made in USA

Featured Member: The Homer Laughlin Company, Manufacturers of the Iconic American Brand Fiesta® Dinnerware

Made in USA Brand Member Directory to Launch on Veterans Day 2012

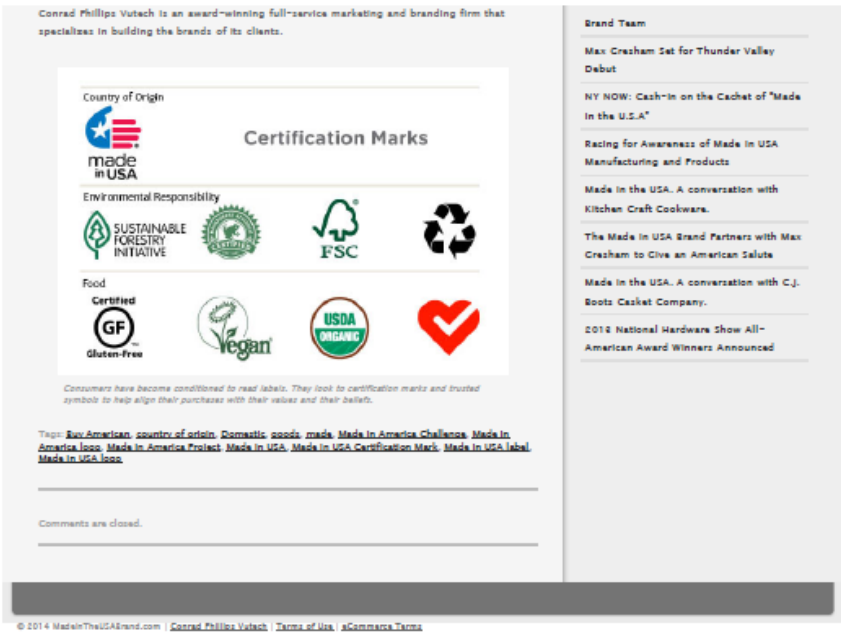
LEVITON TO HAVE PARTNERSHIP PRESENCE ON MAX CRESHAM'S NO. 8 CHEVROLET AT TEXAS MOTOR SPEEDWAY

Labor Day Marks 4th Anniversary of Made in USA Brand

Why Consumers Pay More for Merchandise Made in the USA

Max Cresham Heads North of the Border for a New Challenge with the Made in USA

Registered Certification Mark Now Available to Label and Identify Made in USA Products | Made in the USA Brand & Logo Certification Mark for American Made Products



Conrad Phillips Vutech is an award-winning full-service marketing and branding firm that specializes in building the brands of its clients.

Country of Origin

made in USA

Certification Marks

Environmental Responsibility

SUSTAINABLE FORESTRY INITIATIVE

FSC

Food

Certified Gluten-Free

Vegan

USDA ORGANIC

Consumers have become conditioned to read labels. They look to certification marks and trusted symbols to help align their purchases with their values and their beliefs.

Tags: Buy American, country of origin, Domestic, goods, made, Made in America Challenge, Made in America logo, Made in America Project, Made in USA, Made in USA Certification Mark, Made in USA label, Made in USA logo

Comments are closed.

Brand Team

Max Cresham Set for Thunder Valley Debut

NY NOW: Cash-in on the Cachet of "Made in the U.S.A"

Racing for Awareness of Made in USA Manufacturing and Products

Made in the USA. A conversation with Kitchen Craft Cookware.

The Made in USA Brand Partners with Max Cresham to Give an American Salute

Made in the USA. A conversation with C.J. Boots Casket Company.

2014 National Hardware Show All-American Award Winners Announced

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https://www.madeintheusabrand.com/2011/01/registered-certification-mark-now-available-to-label-and-identify-made-in-usa-products/[2/19/2014 11:07:51 AM]

Exhibit D
p. 2 of 2

DECISION AND ORDER

The Federal Trade Commission ("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 a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the 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 Consent Order ("Consent Agreement"), which includes: a statement by Respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this Decision and Order, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 Federal Trade Commission Act, and that a 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 thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Made in the USA Brand, LLC is an Ohio limited liability company with its principal office or place of business at 1398 Goodale Boulevard, Columbus, Ohio 43212.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the

Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

A. "Accreditation Standard" means any independently-developed and objectively-applied criteria Respondent sets for Covered Entities to meet in order to use Respondent's Certification Mark, which substantiate the claim being made.

B. "Certification Mark" means any certification mark that Respondent has registered with the United States Patent and Trademark Office including, but not limited to, the following marks:

1. 

2. 

C. "Clearly and prominently" shall mean as follows:

1. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is

presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

2. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

3. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

D. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

E. "Covered Entity" means any product, including any product line or group of products, or any company, group, or other association, that Respondent authorizes to use any of Respondent's Certification Marks, seals, logos, brands, or other marketing or promotional material.

F. "Independent and Objective Evaluation" means an audit or verification check, conducted by a party other

than a Covered Entity with no Material Connection to a Covered Entity, to confirm that a Covered Entity complies with Respondent's Accreditation Standard.

G. "Material Connection" shall mean any relationship that materially affects the weight or credibility of Respondent's Certification Mark and that would not be reasonably expected by consumers, provided that a reasonable certification fee shall not constitute a Material Connection.

H. "Respondent" means Made in the USA Brand, LLC, a limited liability company, and its successors and assigns.

I.
PROHIBITED MISREPRESENTATIONS

IT IS ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with marketing, promoting, offering for sale, or selling any product, good, or service, are permanently restrained and enjoined from representing, expressly or by implication, that a Covered Entity meets Respondent's Accreditation Standard, unless: (1) an entity with no Material Connection to that Covered Entity has conducted an Independent and Objective Evaluation to confirm that the Covered Entity meets the Accreditation Standard; or (2) Respondent's Certification Mark, seal, logo, brand, or any other promotional materials clearly and prominently disclose that Covered Entities may meet Respondent's Accreditation Standard through self-certification.

II.
SUBSTANTIATION

IT IS FURTHER ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with marketing, promoting,

offering for sale, or selling any product, good, or service, shall not make any representation, in any manner, expressly or by implication, including but not limited to on Respondent's website or other marketing material, regarding the country of origin of any Covered Entity unless: (1) the representation is true, not misleading, and at the time it is made, Respondent possesses and relies upon competent and reliable evidence to substantiate the representation; or (2) for representations made through use of Respondent's Certification Mark, the Mark, seal, logo, brand, or any other promotional materials clearly and prominently disclose that Covered Entities may meet Respondent's Accreditation Standard through self-certification.

III.
MEANS AND INSTRUMENTALITIES

IT IS FURTHER ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any product, good, or service, shall not provide to others the means and instrumentalities with which to make any representation prohibited by Part I above. For the purposes of this Part, "means and instrumentalities" means any information, including, but not necessarily limited to, any Certification Mark, advertising, labeling, promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any Covered Entity.

IV.
RECORDKEEPING

IT IS FURTHER ORDERED that Respondent shall, for five (5) years after the last date of dissemination of any Representation that includes or concerns any U.S.-origin claim, Respondent's Certification Mark, or advertising or promotional materials that contain Respondent's Certification Mark, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the Representation;

B. All materials that were relied upon in disseminating the Representation;

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the Representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and

D. All signed and dated statements acknowledging receipt of the Order secured pursuant to the Order Distribution provision of this Order

V.
ORDER DISTRIBUTION

IT IS FURTHER ORDERED that Respondent shall deliver a copy of this Order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Respondent shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.
NOTICE OF CORPORATE CHANGES

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or

practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580. The subject line must begin: "In re Made in the USA Brand, LLC, File No. 142 3121."

VII.
COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Respondent, within sixty (60) days after the date of service of this Order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this Order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

VIII.
ORDER TERMINATION

This order will terminate on November 10, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a Complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a Complaint will not affect the duration of:

A. Any Part in this Order that terminates in less than twenty (20) years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from Made in the USA Brand, LLC. ("Respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves Respondent's marketing, sale, and distribution of licenses to use its "Made in USA" certification mark to companies wishing to make U.S.-origin claims for their products. According to the FTC's complaint, Respondent represented that products and entities using Respondent's certification mark were independently and objectively evaluated for compliance with Respondent's accreditation standard. These

claims were false or misleading. Additionally, the complaint alleges that Respondent did not possess and rely upon a reasonable basis to substantiate its claims that entities promoted on its website sold products that are all or virtually all made in the United States. In fact, in numerous instances, entities promoted on Respondent's website have sold products containing significant imported content. Finally, the complaint alleges that Respondent distributed promotional materials to third-party marketers for use in the marketing and sale of those third parties' products, providing the means and instrumentalities to those marketers to commit deceptive acts or practices. Accordingly, the complaint concludes that Respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Specifically, Part I prohibits Respondent from representing, expressly or by implication, that covered entities meet Respondent's accreditation standard, unless: (1) an entity with no material connection to that covered entity conducted an independent and objective evaluation to confirm that the accreditation standard was met; or (2) Respondent's mark and marketing materials prominently disclose that the accreditation standard may be met through self-certification.

Part II prohibits Respondent from making any country of origin claim about a product authorized to use Respondent's certification mark unless: (1) the claim is true, not misleading, and Respondent has a reasonable basis substantiating the representation; or (2) for representations made through use of Respondent's certification mark, Respondents clearly and prominently disclose that covered entities may meet the accreditation standard through self-certification.

Part III prohibits Respondent from providing third-party retailers with the means and instrumentalities to make the claims prohibited in Part I.

Parts IV through VIII are reporting and compliance provisions. Part IV requires Respondent to keep and make available to the Commission on request: copies of advertisements, labeling, packaging, and promotional materials

containing the representations identified in Parts I and II; materials relied upon in disseminating those representations; evidence that contradicts, qualifies, or calls into question the representations or the basis relied upon for the representations; and all acknowledgments of receipt of the Order. Part V requires Respondent to disseminate the Order to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. Part VI requires notification to the FTC of changes in Respondent's corporate status. Part VII requires Respondent to submit an initial compliance report to the FTC within sixty (60) days of service and subsequent reports upon request.

Finally, Part VIII is a "sunset" provision, terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

GOOGLE INC.

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

Docket No. C-4499; File No. 122 3237
Complaint, December 2, 2014 – Decision, December 2, 2014

This consent order addresses Google Inc.'s billing for charges incurred by children in apps that are likely to be used by children without having obtained the account holders' express informed consent. The complaint alleges that Google offers thousands of apps, including games that children are likely to play, and that in many instances, children can obtain virtual items within a game app that cost money for which Google bills parents and other adult account holders. The complaint further alleges that, in connection with billing for children's in-app charges, Google in many instances did not request a password or other method to obtain account holder authorization. The consent order requires Google to provide full refunds to Google account holders who have been billed by Google for unauthorized in-app charges incurred by minors, for a year following entry of the order. If Google's refunds total less than $19 million, Google will remit any remaining balance to the Commission to be used for informational remedies, further redress, or payment to the U.S. Treasury as equitable disgorgement.

Participants

For the *Commission*: *Jason Adler* and *Duane Pozza.*

For the *Respondent*: *Logan Breed, Wes Carson, Christine Habeeb,* and *Corey Roush, Hogan Lovells LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Google Inc. ("Google" or "Respondent") has violated provisions of the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

2. Respondent has billed for charges related to activity within software applications ("apps") consumers download to their mobile devices from Respondent's app store.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act.

RESPONDENT'S BUSINESS PRACTICES

4. Google offers thousands of apps for free or a specific dollar amount, including games that children are likely to play. In many instances, after installation, children can obtain virtual items within a game, many of which cost money. Google bills charges for items that cost money within an app—"in-app charges"—to the parent. Although the issue of unauthorized charges in kids' apps had received media scrutiny before Google introduced in-app charges to its app store in March 2011, Google began billing for such charges without any password requirement or other method to ensure account holder authorization. In fact, just weeks after it began billing for in-app charges, Google began receiving complaints from parents and other consumers about being billed for unauthorized charges by children. Yet Google took no steps to require account holder involvement within an app prior to in-app charges being incurred by children until mid- to late 2012. Currently, in connection with billing for children's in-app charges, Google only sometimes requests a parent's Google password. In many instances, once the password is entered, Google begins a thirty-minute window during which purchases can be made by children without further action by the account holder. During this process, Google in many instances has not informed account holders that password entry would approve a charge or initiate a thirty-minute window during which children using the app can incur charges without further action by the account holder. Through these practices, Google often has failed to obtain parents' informed consent to charges incurred by children. As a result, parents and other Google account holders have suffered significant monetary injury, with many thousands of consumers complaining about unauthorized in-app charges by children, and many consumers reporting hundreds of dollars in such charges.

Background on Google Play Store

5. Google offers apps through its Google Play Store, a digital store preloaded on Android mobile devices. Apps provide a wide variety of mobile computing functionality, allowing users, for example, to browse the Internet, check the weather, or play games.

6. Google generally assigns each app it sells to at least one topical category, such as "Games" or "News & Magazines." Google also groups apps by price, including the top "Free" apps and top "Paid" apps.

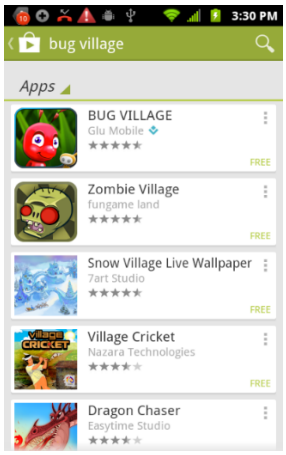
7. Google charges account holders for certain user activities within some apps. These in-app charges can range from $0.99 to $200 and can be incurred in unlimited amounts. In many instances, the apps containing in-app charges are games that children are likely to play.

8. Account holders can associate their Google accounts with certain payment mechanisms such as a credit card, gift card, or mobile phone billing. In many instances, consumers set up such a payment mechanism prior to installing an app or incurring in-app charges. Google bills consumers' Google accounts for Google Play store transactions and in-app charges, and retains thirty percent of all revenue, amounting to tens of millions of dollars. Google's stated policy regarding refunds for in-app charges has been that refunds are at the discretion of the developer, and, as a matter of course, Google refers consumers seeking refunds to the app developer.

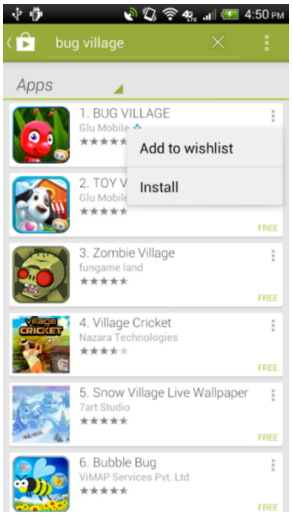
Installing an App from the Google Play Store

9. To install an app, a parent or other account holder must first locate it by searching for the app by keyword (*e.g.*, the name of the app) or by browsing the various categories within the Google Play Store. Whether an account holder searches for an app by keyword or browses a Google Play Store category, the results display as a scrollable list of rectangular tiles with specific information about each app (referred to herein as "App Cards").

10. Each App Card contains the app's icon and name, the name of the developer, the user rating, and, in the bottom right-hand corner, the price of the app: either "FREE" or a specific dollar amount. Directly above the app's price is an icon consisting of three vertical dots. An example of the App Cards that display when an account holder searches for an app called Bug Village appears below.

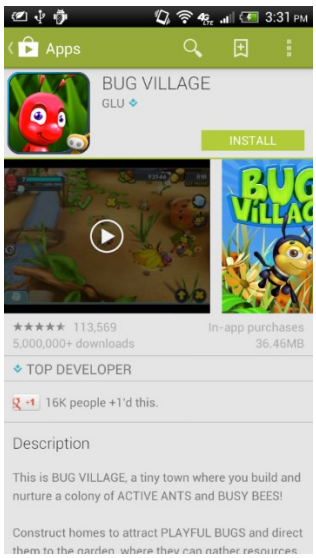


Clicking on the vertical dots on an app's App Card opens a popup menu containing links labeled "Add to wishlist" and "Install." An image of an expanded popup menu containing the links appears below.



By clicking on the "Install" link, an account holder can begin the process of installing an app directly from the App Card, without receiving any information about in-app charges.

11. Alternatively, by clicking elsewhere on the App Card, an account holder can install the app through the app's "product details page." At the top of the product details page, Google displays a button labeled "INSTALL." Google in many instances has displayed the product details page in the same format as the one below.



If an account holder scrolls through the product details page, certain information is available, including the app's description and content rating ("Everyone," "Low Maturity," "Medium Maturity," or "High Maturity"). As pictured above, Google displays the words "In-app purchases" in small print on the product details page. Prior to November 2013, Google did not display that language. Nowhere on the product details page does Google explain what "In-app purchases" are (including that they cost real money or how much) or that the account holder's entry of the Google password will approve a charge and initiate a thirty-minute window during which children can incur charges without further action by the account holder.

12. To initiate app installation, the account holder must either choose the "Install" link from the menu on the App Card or click the "INSTALL" button on the product details page. In both cases, Google displays a popup labeled "App permissions" (referred to herein as the "Permissions Popup"). The Permissions Popup lists various functions that an app may perform, including, for example, accessing information about battery usage or operating the device's flashlight. At the bottom of the Permissions Popup is a button labeled "ACCEPT." If an account holder clicks the "ACCEPT" button, the app is installed on the device. Until in or around March 2014, account holders could simply click "ACCEPT" to begin the app installation process without viewing any information about in-app charges.

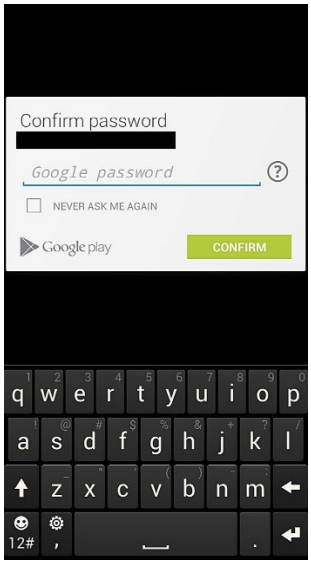
Incurring In-App Charges

13. After an account holder installs an app, a user can incur in-app charges. In many instances—including in apps that children are likely to play and that are, for example, rated as "Everyone" or "Low Maturity"—these users are children. In many instances, parents have complained that their children could not and did not understand that their activities while playing the app could result in charges that cost real money.

14. When a user engages in an activity associated with an in-app charge (*e.g.*, clicking on a button to acquire virtual treats for use in a game), Google displays a popup containing information about the virtual item and the amount of the charge (the "Charge Popup"). A child, however, can clear the Charge Popup simply by pressing a button labeled "CONTINUE."

15. In many instances, once a user had cleared the Charge Popup, Google did not request any further action before billing the account holder for the corresponding in-app charge. In these cases, each time a child cleared the Charge Popup, Google billed the account holder for the in-app charge without obtaining his or her consent.

16. Not until mid- to late 2012 did Google begin requiring password entry in connection with in-app charges. A sample password prompt appearing within an app is below.



As initially displayed, the password prompt does not contain any information about in-app charges. Once the account holder enters the Google password and presses "CONFIRM," Google bills the in-app charge to the linked Google account. By default, entering the Google password and pressing "CONFIRM" also begins a thirty-minute window during which Google does not display the password prompt for subsequent in-app charges, allowing children to incur unlimited charges without password entry for thirty minutes. Regardless of the number or amount of charges incurred during this period, Google does not prompt for additional password entry.

17. In many instances, Google has not obtained an account holder's informed consent before billing for in-app charges incurred by children. For example, in many instances, during the processes described in paragraphs 9 through 16, Google did not inform account holders that password entry begins a window during which users can incur unlimited charges without further action by the account holder.

Google Bills Many Parents for Unauthorized In-App Charges Incurred by Children

18. Many of the apps that charge for in-app activities are apps that children are likely to use. Indeed, many such apps are rated

as "Everyone" or "Low Maturity" and are described or marketed as suitable for children, or are widely used by children.

19. Many of these games invite children to obtain virtual items in contexts that blur the line between what costs virtual currency and what costs real money. For example, the app Air Penguins asks children to "[j]ourney through the icy South Pole to help Air Penguin save his family from melting ice caps" and is replete with kid-friendly graphics of arctic animals such as penguins and polar bears. The game sometimes presents children with a screen selling polar bears, penguins, and various quantities of fish. The screen does not contain any dollar signs or other description of the real-money cost of any of the items. Buying polar bears and penguins costs virtual currency, but buying fish costs real money, with the largest quantity of fish (20,000) costing $49.99.

20. Similarly, in the app Ice Age Village, children manage an ice-age habitat with instructions offered by characters from the animated "Ice Age" movies. The in-game "Shop" offers virtual items, each of which cost a certain amount of virtual currency (either "coins" or "acorns"). The price of each virtual item is displayed on green buttons that, when pressed, allow children to purchase the virtual items without any associated real-money charge. But another screen offers coins and acorns with similar green buttons that initiate real-money transactions. Children can obtain various quantities of acorns and coins for various amounts of real money, with the largest quantities (4,200 acorns or 2,100,000 coins) costing $99.99.

21. Many consumers report that they and their children were unaware that in-app activities would result in real monetary loss. For example, a consumer whose children incurred unauthorized in-app charges in the Air Penguins app complained that he "did not realize that some 'free games' had buried 'in app' purchase opportunities" and that his "kids (ages 4 and 7) were told not to make any purchases, but apparently they did not realize they were spending my money. The purchases were not approved by me." Another consumer, who "downloaded Ice Age Village to the delight of [his] son" but later learned that hundreds of dollars of in-app charges were made to his credit card, commented that "[k]ids do not know anything about money transactions with credit cards."

22. Many consumers complain specifically about the fact that Google billed for in-app activities without obtaining their consent. For example, a parent whose five-year-old son incurred over $400 in unauthorized charges playing Bug Village stated "these multiple purchases were not approved by me." Another parent called Google and complained that he thought his account had been hacked because he did not realize that his son had made unauthorized purchases while playing Tiny Monsters.

23. Google has received thousands of complaints related to unauthorized in-app charges by children in these and other games. In fact, in a June 2012 email, a Google product manager opined that "'friendly fraud' (unauthorized purchases by individuals you know) is the lead cause of chargebacks. For example, parents realize their kids have made a series of purchases and call the credit card company claiming those were unauthorized. Risk estimates that close to 80% of current chargebacks are driven by this specific issue." Similarly, the notes for a February 2012 internal team meeting referred to a "high number of canceled orders for in-app billing" and explained that "these usually tend to be family fraud (kid takes phone and buys lots of food for virtual fish)."

24. Many children incur unauthorized in-app charges without their parents' knowledge. Even parents who discover the charges and want to request a refund face a process that at least one member of the Google Play Support Team has described, in emails to consumers, as "confusing." Indeed, as noted in paragraph 8 above, Google's stated policy regarding refunds for in-app charges has been that all refunds are at the discretion of the app developer, and Google's practice is to refer consumers seeking refunds first to the app developer. Consumers' attempts to receive refunds through app developers have often been unsuccessful, with consumers reporting to Google that the app developer was uncooperative or did not respond.

VIOLATIONS OF THE FTC ACT

25. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

26. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers themselves cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I

Unfair Billing of In-App Charges

27. In numerous instances, Respondent bills parents and other Google account holders for children's activities in apps that are likely to be used by children without having obtained the account holders' express informed consent.

28. Respondent's practices as described in paragraph 27 cause or are likely to cause substantial injury to consumers that consumers themselves cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition.

29. Respondent's practices as described in paragraph 27 therefore constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and (n).

THEREFORE, the Federal Trade Commission this second day of December, 2014, has issued this complaint against Respondent.

By the Commission, Commissioner Wright recused.

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 Respondent having been furnished thereafter with a copy of a draft complaint that the

Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with a violation of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45 *et seq*; and

Respondent and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes a statement by Respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 has reason to believe that Respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Google Inc. ("Google") is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

V.

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

ORDER

DEFINITIONS

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

A. "**Account Holder**" means an individual or entity, with a billing address in the United States, that controls an account to which Google may bill In-App Charges.

B. "**Application**" or "**App**" means any software application that can be installed on a mobile device.

C. "**Clear and Conspicuous**" or "**Clearly and Conspicuously**" means:

1. In textual communications, the disclosure must be in a noticeable type, size, and location, using language and syntax comprehensible to an ordinary consumer;

2. In communications disseminated orally or through audible means, the disclosure must be delivered in a volume, cadence, language, and syntax sufficient for an ordinary consumer to hear and comprehend them;

3. In communications disseminated through video means: (1) written disclosures must be in a form consistent with definition 3.A and appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and be in the same language as the predominant language that is used in the communication; and (2) audio disclosures must be consistent with definition 3.B; and

4. The disclosure cannot be combined with other text or information that is unrelated or immaterial to the subject matter of the disclosure. No other

representation(s) may be contrary to, inconsistent with, or in mitigation of, the disclosure.

D. "**Respondent**" or "**Google**" means Google Inc. and its successors and assigns.

E. "**Express, Informed Consent**" means, upon being presented with options to provide or withhold consent, an affirmative act communicating informed authorization of In-App Charge(s), made proximate to an In-App Activity for which there is an In-App Charge and to Clear and Conspicuous disclosure of all material information related to the billing, including:

1. If consent is sought for a specific In-App Charge: (1) the In-App Activity associated with the charge; (2) the specific amount of the charge; and (3) the account that will be billed for the charge (e.g., the Google account); or

2. If consent is sought for potential future In-App Charges: (1) the scope of the charges for which consent is sought, including the duration, devices, and Apps to which consent applies; (2) the account that will be billed for the charge; and (3) method(s) through which the Account Holder can revoke or otherwise modify the scope of consent on the device, including an immediate means to access the method(s).

Provided that in obtaining Express, Informed Consent, Google may rely on information provided by the App's developer about the In-App Activity associated with the In-App Charge.

Provided also that the means of requesting the "affirmative act" and the disclosure of the information in definitions 5.A and 5.B above must be reasonably calculated to ensure that the person providing Express, Informed Consent is the Account Holder.

Provided also that if Google obtains Express, Informed Consent to potential future In-App Charges as set forth in definition 5.B above, it must do so a minimum of once per account or mobile device.

F. "**In-App Activity**" or "**In-App Activities**" means any user conduct within an App including the acquisition of real or virtual currency, goods, or services or other Apps.

G. "**In-App Charge**" means a charge associated with In-App Activity billed by Google.

H. "**Consumer Redress Period**" means the twelve (12) month period of time between the entry and the first anniversary of this order.

I.

IT IS FURTHER ORDERED that Google and its officers, agents, and employees, and all other persons in active concert or participation with it, who receive actual notice of this order, whether acting directly or indirectly, are restrained and enjoined for the term of this order from billing an account for any In-App Charge without having obtained Express, Informed Consent to Google's billing that account for the In-App Charge. If Google seeks and obtains Express, Informed Consent to billing potential future charges for In-App Activities, Google must allow the Account Holder to revoke such consent at any time.

Provided that this section does not apply where Google does not control the user interface in which the In-App Charge is incurred.

Provided also that, where an Account Holder provides Express, Informed Consent to potential future In-App Charges at the account level, Google will provide, at least once before the first In-App Charge on a device, Clear and Conspicuous disclosure of the information in 5.B.

II.

IT IS FURTHER ORDERED that Google shall provide full refunds to Account Holders who have been billed by Google for unauthorized In-App Charges incurred by minors as follows:

A. Google shall provide prompt refunds to Account Holders for the full purchase price of any Eligible In-App Charge(s). For purposes of this Section II, an "Eligible In-App Charge" is an In-App Charge that the Account Holder indicates was: (1) paid by the Account Holder and incurred by a minor; (2) and was accidental or not authorized by the Account Holder; and (3) has not already been refunded. For purposes of this Section II.A, a "prompt" refund means a refund provided within the later of (1) thirty (30) days for a refund issued by check or ten (10) days for a refund issued by other means of a request for refund of an Eligible In-App Charge by the Account Holder; or (2) the completion of a fraud investigation. Google may decline a refund request for an Eligible In-App Charge only if it has sufficient credible evidence that the refund request is fraudulent. Google may process all refund requests through its customer service channels, which include a contact phone number and web form through which consumers may contact Google directly.

B. Google shall refund no less than $19,000,000 for Eligible In-App Charges pursuant to section II.A of this order, and such amount shall not constitute a penalty.

C. Within thirty (30) days of the end of the Consumer Redress Period, Google shall provide the Commission with records sufficient to show the refunds requested and paid to Account Holders for In-App Charges during the Consumer Redress Period, and any requests that were denied under Section II.A of this order.

D. If Google fails to refund $19,000,000 pursuant to section II.B of this order, the balance of that amount

shall be remitted to the Commission within forty-five (45) days of the end of the Consumer Redress Period.

E. All funds paid to the Commission pursuant to section II.D of this order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, at the Commission's sole discretion, for informational remedies regarding In-App Charges by children or consumer redress and any attendant expenses for the administration of any redress fund. Any money not used for such purposes shall be deposited to the United States Treasury. Google shall have no right to challenge the Commission's choice of remedies under this Paragraph.

F. Google shall provide an electronic notice to any Account Holder who has made an In-App Purchase prior to entry of the order. Google shall send such notice within fifteen (15) days after entry of the order. The electronic notice shall include a subject line relating to the content of the notice and contain the following information, disclosed in a Clear and Conspicuous manner and in writing: (1) that refunds are available for Account Holders that have been billed for In-App Charges incurred by minors that were not authorized by the Account Holder, (2) that such refunds are available until the end of the Consumer Redress Period, and (3) instructions regarding how to obtain refunds pursuant to section II.A of this order, including means of contacting Google for a refund. Google shall send the notice to the current or last known email address for the Account Holder.

G. Sections II.A and II.B of this order shall be effective beginning on the date that the order is entered, and will terminate at the end of the Consumer Redress Period.

III.

IT IS FURTHER ORDERED that Respondent and its successors and assigns for five (5) years after the date of issuance

of this order, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating their compliance with the terms and provisions of this order, including but not limited to:

A. All complaints from United States consumers conveyed to Respondent, or forwarded to Respondent by a third party, that relate to the conduct prohibited by this order and any responses to such complaints;

B. Refund requests from United States consumers related to In-App Charges, and refunds paid by Respondent related to In-App Charges; and

C. Records necessary to demonstrate full compliance with each provision of this order.

IV.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall deliver a copy (written or electronic) of this order to all current and future principals, officers, and corporate directors, and to all current and future managers, employees, agents, and representatives who have supervisory responsibility regarding the design of the platform in which Account Holders incur In-App Charges and those who implement that design. For the duration of the Consumer Redress Period, Respondent and its successors and assigns shall deliver a copy (written or electronic) of this order to all current and future employees who have responsibility for providing refunds to consumers in connection with this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall notify the Commission within fourteen (14) days of any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other

action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that Respondent or its successors and assigns shall, ninety (90) days after entry of the 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. Within ten (10) business days of receipt of a written notice related to this order from a representative of the Commission, Respondent shall submit an additional compliance report setting forth the manner and form in which Respondent has complied with this order.

VII.

This order will terminate on December 2, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years; and

B. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed

and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal. Respondent may seek modification of this order pursuant to 15 U.S.C. § 45(b) and 16 C.F.R. 2.51(b) to address relevant developments that affect compliance with this order, including, but not limited to, technological changes and changes in methods of obtaining Express, Informed Consent.

By the Commission, Commissioner Wright recused.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order from Google Inc. ("Google").

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Google bills consumers for charges related to activity within software applications ("apps") that consumers download to their mobile devices from Google's Google Play store. This matter concerns Google's billing for charges incurred by children in apps that are likely to be used by children without having obtained the account holders' express informed consent.

The Commission's proposed complaint alleges that Google offers thousands of apps, including games that children are likely to play, and that in many instances, children can obtain virtual items within a game app that cost money. Google bills parents and other adult account holders for items that cost money within

an app—"in-app charges." In connection with billing for children's in-app charges, Google in many instances did not request a password or other method to obtain account holder authorization. Currently, in connection with billing for children's in-app charges, Google only sometimes requests a parent's Google password. In many instances, once the password is entered, Google begins a thirty-minute window during which purchases can be made by children without further action by the account holder. During this process, Google in many instances has not informed account holders that password entry will approve a charge or initiate a thirty-minute window during which children using the app can incur charges without further action by the account holder. The Commission's proposed complaint alleges that, through these practices, Google often has failed to obtain parents' informed consent to charges incurred by children, which constitutes an unfair practice under Section 5 of the FTC Act.

The proposed order contains provisions designed to prevent Google from engaging in the same or similar acts or practices in the future. Part I of the proposed order requires Google to obtain express, informed consent to in-app charges before billing for such charges, and to allow consumers to revoke consent to prospective in-app charges at any time. As defined in the proposed order, express, informed consent requires an affirmative act communicating authorization of an in-app charge (such as entering a password), made proximate to both an in-app activity for which Google is billing a charge and a clear and conspicuous disclosure of material information about the charge. Under the definition, the act and disclosure must be reasonably calculated to ensure that the person providing consent is the account holder (as opposed to the child). The proposed order would require the disclosure to appear at least once per mobile device.

Part II of the proposed order requires Google to provide full refunds to Google account holders who have been billed by Google for unauthorized in-app charges incurred by minors, for a year following entry of the order. If Google's refunds total less than $19 million, Google will remit any remaining balance to the Commission to be used for informational remedies, further redress, or payment to the U.S. Treasury as equitable disgorgement. To effectuate refunds, Google must send an

electronic notice to its consumers that clearly and conspicuously discloses the availability of refunds and instructions on how to obtain such refunds. Within 30 days of the end of the one-year redress period, Google must provide the Commission with records of refund requests, refunds paid, and any refunds denied.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III of the proposed order requires Google to maintain and upon request make available certain compliance-related records, including certain consumer complaints and refund requests, for a period of five years. Part IV is an order distribution provision that requires Google to provide the order to current and future principals, officers, and corporate directors, as well as current and future managers, employees, agents, and representatives who participate in certain duties related to the subject matter of the proposed complaint and order.

Part V requires Google to notify the Commission of corporate changes that may affect compliance obligations within 14 days of such a change. Part VI requires Google to submit a compliance report 90 days after entry of the order. It also requires Google to submit additional compliance reports within 10 business days of a written request by the Commission. Part VII is a provision "sunsetting" the order after 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

Complaint

IN THE MATTER OF

VERISK ANALYTICS, INC.; INSURANCE SERVICES OFFICE, INC.; AND EAGLEVIEW TECHNOLOGY CORP.

COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. 9363; File No. 141 0085
Complaint, December 16, 2014 – Decision, December 19, 2014

The complaint alleges that the acquisition of EagleView Technology Corporation by Verisk Analytics, Inc. would have anti-competitive effects in the market for rooftop aerial measurement services and reports for insurance purposes in the United States. The Order dismisses the Complaint because the parties abandoned the transaction.

Participants

For the *Commission*: *Michael E. Blaisdell, Alex Bryson, Rebecca P. Dick, Ashley Masters, Terry Thomas*, and *Cathlin Tully.*

For the *Respondents*: *Joel Cohen, Davis Polk & Wardwell LLP; Ward C. Laracy, McCarter & English, LLP; Paolo Morante, DLA Piper LLP.*

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 (the "Commission"), having reason to believe that Respondents Verisk Analytics, Inc., Insurance Services Office, Inc. (together, "Verisk"), and EagleView Technology Corporation ("EagleView") (collectively, "Respondents") have executed an agreement pursuant to which Verisk will acquire the assets of EagleView, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and which if consummated may substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the

FTC 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 pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.
NATURE OF THE CASE

1. Verisk's proposed acquisition of EagleView threatens to harm competition by eliminating its largest and most significant competitor for rooftop aerial measurement services and reports ("Rooftop Aerial Measurement Products") for insurance purposes in the United States. If Verisk consummates its proposed $650 million acquisition of EagleView (the "Acquisition"), Verisk will emerge as the only significant firm producing and selling Rooftop Aerial Measurement Products for insurance purposes in the United States, with remaining fringe competitors collectively comprising only approximately one percent of sales in the market. The proposed Acquisition would eliminate important head-to-head competition in Rooftop Aerial Measurement Products between the merging companies. This direct competition already has provided lower-priced options for insurance carriers and, but for the proposed Acquisition, would continue to yield substantial benefits to such customers in the form of lower prices, more choice, better service and quality, and increased innovation.

2. Rooftop damage makes up approximately 35 percent of all real property insurance claims in the United States. Insurance carriers use Rooftop Aerial Measurement Products to calculate the costs associated with replacing or repairing rooftops. Rooftop Aerial Measurement Products use high-resolution aerial imagery and data to generate accurate dimensions and other information about a roof. Rooftop Aerial Measurement Products allow insurance carriers to see, in detail, the rooftop before the damage, which, in turn, enables them to calculate cost of replacement or repair. Because of the superior efficiency, accuracy, and safety of Rooftop Aerial Measurement Products, insurance carriers do not consider manual measurements as reasonable substitutes.

I.

3. EagleView, the self-proclaimed "industry standard" in Rooftop Aerial Measurement Products, controls approximately 90

percent share of the relevant market. Verisk, through its subsidiary Xactware Solutions, Inc. ("Xactware"), offers two Rooftop Aerial Measurement Products, Aerial Sketch and Roof InSight, which pose the only meaningful competition to EagleView today. In only two years since entering the relevant market, Verisk accomplished what no other Rooftop Aerial Measurement Products provider could achieve—winning significant insurance carriers from EagleView. Indeed, Verisk captured more sales to insurance customers than any company other than EagleView and is in the best position to continue competing vigorously with EagleView. Verisk owns the dominant software platform through which insurers use Rooftop Aerial Measurement Products to estimate property damage claims, it has a strong incentive to withstand the threat of patent litigation from EagleView (which already has forced others from the market), it has strong relationships with property insurers, and it has access to high-quality aerial images.

4. Respondents competed vigorously against each other until they began to discuss this Acquisition. In early 2012, Verisk released an enhanced second version of its Aerial Sketch Rooftop Aerial Measurement Product. In January 2013, Verisk's CEO observed, [redacted] In September 2013, Verisk commercially launched a second Rooftop Aerial Measurement Product, Roof InSight, emphasizing, [redacted] EagleView reacted to the launch of Roof InSight by proclaiming internally, [redacted]

5. In the early fall of 2013, consistent with an earlier attempt by Verisk to acquire EagleView, Verisk approached EagleView about the instant Acquisition. Shortly after Respondents agreed on acquisition terms, the CEO of Verisk's Xactware division commented, [redacted]

6. Post-Acquisition, Verisk would control almost all sales of Rooftop Aerial Measurement Products for insurance purposes. The Acquisition would combine EagleView's number one position with its leading competitor and eliminate the close competition Verisk now poses to EagleView's Rooftop Aerial

Measurement Products. As described in the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"), the loss of this close direct competition is likely in and of itself to lead to anticompetitive effects. For example, after the Acquisition, Verisk will no longer need to effectively discount on sales to insurance carriers to compete with EagleView and will have less incentive to develop new and better products. As a result, insurance carriers are likely to pay higher prices for Rooftop Aerial Measurement Products.

7. Under the relevant case law and the Merger Guidelines, the extraordinarily high post-Acquisition concentration levels render the Acquisition presumptively unlawful in the relevant market in which Verisk and EagleView compete.

8. New entry or expansion into the relevant market will not prevent this harm. Only Verisk has challenged EagleView with lower prices and gained meaningful sales of Rooftop Aerial Measurement Products. Other competitors have failed, been acquired by EagleView, or if they still exist, have trivial shares.

9. Respondents have not shown cognizable efficiencies that would outweigh the anticompetitive effects, including higher prices, which will occur if Respondents consummate the Acquisition, especially given the extremely high post-Acquisition market share and the loss of close competition between Verisk and EagleView.

II.
RESPONDENTS

10. Verisk Analytics, Inc. is a for-profit, publicly traded corporation existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 545 Washington Boulevard, Jersey City, New Jersey 07310. Verisk designs and provides data analytics and related services, including Rooftop Aerial Measurement Products, to the insurance industry.

11. Insurance Services Office, Inc. is a for-profit corporation existing and doing business under and by virtue of the laws of

Delaware, with its office and principal place of business located at 545 Washington Boulevard, Jersey City, New Jersey 07310. Insurance Services Office, Inc. is a wholly owned subsidiary of Verisk Analytics, and pursuant to the Acquisition agreement, will acquire Respondent EagleView Technology Corporation.

12. EagleView Technology Corporation is a for-profit corporation existing and doing business under and by virtue of the laws of Washington, with its office and principal place of business located at 3700 Monte Villa Parkway, Suite 200, Bothell, Washington 98021. EagleView captures aerial image data and provides that data separately and combined within Rooftop Aerial Measurement Products to the insurance industry and contractors that support the insurance industry.

III.
JURISDICTION

13. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

14. The Acquisition constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

IV.
THE ACQUISITION

15. Pursuant to an Agreement and Plan of Merger dated January 14, 2014, Verisk now proposes to acquire EagleView for $650 million and operate it with its wholly owned subsidiary, Xactware. The Acquisition would create an entity with annual sales exceeding $1.7 billion. Respondents Verisk and EagleView have combined U.S. Rooftop Aerial Measurement Products revenues exceeding

V.
BACKGROUND AND INDUSTRY STRUCTURE

Rooftop Aerial Measurement Products for Insurance Purposes

16. Hail, wind, storms, and other catastrophic weather events damage and destroy rooftops, accounting for approximately 35 percent of all property claims. Insurance carriers require accurate measurements to estimate the repair or replacement costs of damaged roofs. Traditionally, insurance adjusters or contractors would climb damaged roofs to obtain measurements. Depending on the size and complexity of the roof, the effort and safety risk to the adjuster could be significant, and the accuracy of the measurements may vary depending on the skill of the adjuster.

17. In 2008, EagleView introduced its Rooftop Aerial Measurement Products to provide roof measurements derived from high-resolution, low-altitude aerial imagery and associated data as an advance over manual measurements. EagleView produces its Rooftop Aerial Measurement Products by applying technology to aerial images and data, thus providing its customers with reports and information that enable them to estimate the costs of repair or replacement of the subject rooftop.

18. EagleView's Rooftop Aerial Measurement Products gained immediate popularity, first with roofing contractors throughout the country and then with insurance carriers. EagleView's revenues grew from [redacted] in 2008 to more than [redacted] in 2013, with 24 of the top 25 insurance carriers as customers of its Rooftop Aerial Measurement Products.

19. Insurance carriers and associated independent adjusters and contractors are the primary customers of Rooftop Aerial Measurement Products. Insurance carriers typically access rooftop measurements through specialized software that enables them to estimate the total amount of the claim ("Claims Estimation Software"). Insurance carriers use Claims Estimation Software to estimate claims for all types of property damage, including roof damage. Claims Estimation Software integrates third party data, such as roof measurements, with data about the pricing of materials and labor to estimate the cost of a given

repair. Rooftop Aerial Measurement Products thus must work and integrate with Claims Estimation Software platforms. Claims Estimation Software is an indispensable tool for insurance adjusters, who use it throughout the life of the claim, not only to assess damage, but also to communicate with contractors and other third parties, write the estimate, and issue payment to the policyholder.

20. Verisk, through its subsidiary Xactware, is the leading provider of Claims Estimation Software in the United States. Approximately 85 percent of all insurance carriers use Xactware's Claims Estimation Software, called "Xactimate," providing Xactware approximately an [redacted] percent share of claims through Claims Estimation Software.

Historic Relationship between EagleView and Xactware

21. In 2008, EagleView and Xactware entered into a written agreement, later modified in 2011, pursuant to which they agreed to integrate EagleView's Rooftop Aerial Measurement Products with Xactware's leading insurance Claims Estimation Software, Xactimate. The relationship between Respondents began to break down in 2012, as they fought about a number of issues, including the revenue split for sales of EagleView reports through Xactimate and EagleView's relationship with Symbility Solutions, Inc., the only other significant Claims Estimation Software provider. Xactware also entered the market for Rooftop Aerial Measurement Products by developing, marketing, and selling its new products to EagleView's insurance carrier customers.

22. Respondents' emerging rivalry culminated in a contractual dispute in which EagleView claimed that Verisk improperly attempted to terminate Respondents' integration agreement. On October 29, 2012, EagleView filed suit against Xactware in the Western District of Washington, claiming breach of contract and seeking to prevent termination of the agreement. EagleView's complaint touted the close competition between Respondents, alleging, "Xactware has developed a product, known as Aerial Sketch, which enables it to compete directly with EagleView's business of providing rooftop aerial measurement services and reports." EagleView also alleged that Xactware was seeking to

take EagleView's market share. Upon discovering Xactware was piloting Roof InSight to insurance carriers and adjusters, EagleView requested leave to amend its complaint in August 2013 to add allegations about Xactware's "development, piloting, marketing, and intended rollout later this year of the Roof InSight product it created to compete directly with EagleView." EagleView also represented to the federal court that Xactware's directly competitive Roof InSight product would "discourage actual and prospective customers" of EagleView from purchasing EagleView reports.

VI.

II. RELEVANT PRODUCT MARKET

23. The appropriate relevant product market affected by the proposed Acquisition is the sale of Rooftop Aerial Measurement Products for insurance purposes.

24. Insurance carriers buy Rooftop Aerial Measurement Products based upon a variety of factors. First, carriers seek aerial imagery (and the derived measurements) for all of their insured properties throughout their coverage areas—for some carriers, this may be a single state or a region, but the major insurance carriers require nationwide coverage. Second, insurance carriers seek aerial images used for Rooftop Aerial Measurement Products that are up-to-date and of sufficient quality to calculate measurements of current structures and to allow their adjusters to identify attributes of their insured properties. Rooftop Aerial Measurement Products function best with high-resolution, top-down, and angled north, south, east, and west images refreshed approximately every two to three years. Third, the Rooftop Aerial Measurement Products must provide accuracy comparable to or better than manual measurement, regardless of whether the product derives its measurements solely through software algorithms or incorporates some tracing of the aerial images on the computer screen by the adjuster. Fourth, insurance carriers seek Rooftop Aerial Measurement Products for which the provider is able to produce measurements within a short timeframe, generally less than a few hours. Fifth, insurance carriers value providers that are able to handle surge capacity to meet post-catastrophe demand, which may mean producing

numerous Roof Aerial Measurement Products in a day. Finally, insurance carriers prefer that the Rooftop Aerial Measurement Products integrate seamlessly with Claims Estimation Software.

25. EagleView today has the most extensive aerial image library and the broadest set of capabilities sought by insurance carriers. Verisk, through its automation efforts, sketch technology, surge capacity, proprietary aerial images, integration with Xactware's leading Claims Estimation Software, and strong relationships with insurers, is EagleView's closest and only significant competitor. While Verisk's proprietary aerial image library today is not as vast as EagleView's, its aerial image library coverage is closest to EagleView's library.

26. Insurance carriers value Rooftop Aerial Measurement Products for various reasons, including their accuracy, efficiency, and safety. Insurance carriers will not consider switching back to manual measurements in the event of a small but significant non-transitory price increase.

27. Insurance carriers' requirements and preferences differ from the needs of contractors, who may also use rooftop aerial measurement services as an alternative to manual measurements. Contractors do not demand similar fast, high-volume turnaround following catastrophic weather events, nor do they require seamless integration with Claims Estimation Software. Contractors also require less accuracy than do insurance carriers. In any event, even if the relevant market included sales of rooftop aerial measurement services for insurance purposes and non-insurance purposes, the relative post-merger market share and concentration levels would not materially change and the proposed Acquisition would still eliminate competition between the closest and only significant competitors.

VII.
RELEVANT GEOGRAPHIC MARKET

28. The relevant market in which to analyze the effects of the proposed Acquisition is the United States. Insurance carriers insuring U.S. consumers require structural data for domestic properties, with the large insurers requiring national coverage. In order to compete for these customers who demand national

coverage, suppliers of Rooftop Aerial Measurement Products must compete nationwide. Likewise, U.S. insurance carriers can turn to producers located anywhere in the United States. Respondents are located in the United States, as are all other current producers of roof reports sold in the United States. Respondents compete for and win business throughout the country.

VIII.

MARKET CONCENTRATION AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

29. Post-Acquisition, the combined firm would control close to 99 percent of the relevant market, resulting in a dominant firm with no meaningful competitors.

30. The Herfindahl-Hirschman Index ("HHI") measures market concentration under the Merger Guidelines. The Merger Guidelines presumes a merger or acquisition likely creates or enhances market power, and thus presumes a transaction illegal, when the post-merger HHI exceeds 2,500 points and the merger or acquisition increases the HHI by more than 200 points. Here, the market concentration level exceeds these thresholds by a wide margin. The post-Acquisition HHI in the relevant market, as measured by unit sales, will be above 9,900, an increase of over 2,000 points. Even if the relevant market includes sales to contractors, the post-Acquisition HHI remains near-monopoly with presumptively illegal increases in concentration.

31. The proposed Acquisition's effect on market concentration renders it presumptively illegal under the Merger Guidelines and relevant case law.

IX.

THE ACQUISITION WILL ELIMINATE DIRECT AND CLOSE COMPETITION BETWEEN EAGLEVIEW AND VERISK

32. The Acquisition will eliminate head-to-head competition between the only two meaningful providers of Rooftop Aerial

Measurement Products to U.S. insurance carriers. Even within the relatively short period after Verisk's entry into Rooftop Aerial Measurement Products, insurance carriers have benefitted from Respondents' close and growing rivalry, which the Acquisition would immediately extinguish.

33. Today, EagleView has the largest share of Rooftop Aerial Measurement Products sold to insurance customers. EagleView was the first to offer Rooftop Aerial Measurement Products and secured long-term access to aerial imagery when it merged last year with the leading aerial image library provider, Pictometry International Corporation ("Pictometry"). EagleView's Rooftop Aerial Measurement Products provide features that meet insurance carriers' needs. EagleView currently offers the broadest set of top-down and angled images and associated data necessary to measure rooftops. EagleView utilizes proprietary technology and teams of trained professionals to drive highly accurate roof measurements. Finally, EagleView offers the scale to meet high demand during catastrophic events.

34. Xactware entered the market for Rooftop Aerial Measurement Products in 2012 and has grown through enhancement and new product development and—like EagleView—maintains its own aerial image library. Despite its recent entry into the market, and despite delaying [redacted] to a leading insurance carrier and other prospective customers, [redacted] Xactware has grown to become EagleView's strongest competitor.

35. Xactware competes more closely with EagleView than any other Rooftop Aerial Measurement Products provider. Its close existing relationships with insurance carriers enabled it to grow faster and better penetrate the market than any fringe rooftop aerial measurement competitor. Moreover, its strong presence in Claims Estimation Software provides Xactware a significant, and unique, ability to continue competing vigorously with EagleView. It also provides Xactware a strong incentive to defend against any threats of EagleView patent claims because it can expect a much larger share of roof reports flowing through its platform than can any other Rooftop Aerial Measurement Products provider. Likewise, Verisk has a strong incentive to continue developing a

proprietary library of high-resolution aerial images, not only to support roof reports, but also to support other products and services for insurance carriers.

36. Verisk forecasts combined product revenues for Aerial Sketch and Roof InSight to reach approximately [redacted] this year, based on the first six months of 2014. These revenues exceed Xactware's sales projections for 2014 and represent a 300 percent revenue increase over 2013. Sales of Roof InSight in 2014 likely would have been higher if not for the pending Acquisition, as Verisk, for months, has delayed negotiating with prospective customers of Roof InSight until the merger closes.

37. Respondents identify [redacted] as a company that competes to sell Rooftop Aerial Measurement Products to insurance customers. Sales of [redacted] are trivial, garnering a market share below one percent. Among other factors, [redacted] lacks the characteristics for quality, accuracy, and scalability that Roof InSight and EagleView products share.

38. Direct competition between EagleView and Verisk already has led to lower prices for insurance carriers. For example, in 2012, [redacted] a top five insurer, dropped EagleView in favor of Xactware's Aerial Sketch because Xactware offered significantly lower quality-adjusted prices. After this loss, EagleView warned its board, [redacted] and complained, [redacted] at [redacted] and that Verisk offered Aerial Sketch to [redacted] at [redacted] EagleView recognized the close competition posed by Aerial Sketch outside the company as well. For example, EagleView acknowledged to Pictometry management before their merger in 2013 that, [redacted]

39. Verisk enhanced its competitive offerings by commercially launching Roof InSight in September 2013. Customers have benefitted from, and continue to benefit from, lower prices because Roof InSight provides a competitive alternative to EagleView. Unlike fringe competitors, Xactware intended to use its popular Claims Estimation Software platform

to [redacted] Xactware executives observed that [redacted] Verisk's strategy is to set Roof InSight prices at a discount of up to [redacted] percent less than EagleView's prices. Large insurance carrier customers, including [redacted] and [redacted] already benefit from this price competition today—paying significantly less for Roof InSight reports than if they ordered reports for the same properties from EagleView. The Acquisition would eliminate this price competition if, and as soon as, Respondents close the proposed Acquisition.

40. EagleView and Verisk also compete to offer customers more innovative products and better service. Verisk embarked on a program to capture aerial images with higher resolution imagery to win insurance carrier customers away from EagleView. EagleView boasts broad image and data coverage for over 90 percent of U.S. structures. Verisk proprietary images allow it to provide Rooftop Aerial Measurement Products for what it estimates to be over [redacted] percent of likely roof claims. Verisk documents demonstrate that Verisk planned to capture aerial images across the rest of the country to support Roof InSight and new underwriting products.

41. Verisk now claims that it decided to halt [redacted] for independent business reasons unrelated to the proposed Acquisition. No contemporaneous business records exist to support this proposition. To the contrary, Verisk abruptly halted [redacted] and thus quality competition, in November 2013, soon after Respondents agreed on the purchase price for the proposed Acquisition. Xactware's CEO explained: [redacted] Xactware also invested in automation processes and technology enhancements to improve Aerial Sketch and Roof InSight. The proposed Acquisition would eliminate the close competition created by efforts to [redacted] to provide more accurate rooftop aerial measurements, and to enhance and improve upon existing products.

42. Because Respondents are each other's closest competitor, no other company in the market today is in a position to replace that lost competition.

X.

ENTRY AND REPOSITIONING BARRIERS

43. Entry, repositioning, or fringe firm growth would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the proposed Acquisition. Other providers of Rooftop Aerial Measurement Products are small, sell primarily to contractors, and are unable to gain traction with insurance carriers. The barriers facing fringe competitors and potential entrants but not faced by the Respondents include, among other factors, the absence of strong relationships with insurance carriers, the need to develop software capable of deriving property measurements from aerial images, the lack of revenue incentive to withstand the threat of patent infringement litigation by EagleView, and the lack of product acceptance by the insurance industry.

44. Shortly after EagleView began offering Rooftop Aerial Measurement Products in 2008, other companies attempted to offer their own competing products. Since receiving its first patent in 2011, EagleView has aggressively asserted its patent rights against most actual or potential competitors, suing two competitors and sending cease-and-desist letters to at least [redacted] others. Within the past three years, EagleView has eliminated almost all of these competitors, either by threatening and/or bringing intellectual property challenges or by acquisition.

45. [redacted] with less than one percent of Rooftop Aerial Measurement Products sales to insurer carriers, is a recent target of EagleView's patent infringement claims seeking to enjoin one of its senior executives from participating in the industry. Though EagleView has yet to establish that any of its competitors infringe on its patents, any competitor or new entrant must be prepared to defend its products from EagleView's patent infringement claims, have access to a national library of high-resolution images and data, and be able to access insurance carriers through Claims Estimation Software.

46. These substantial entry barriers have enabled EagleView to earn profit margins near [redacted] percent. Verisk is the most significant constraint on EagleView's ability to raise prices even further, a constraint that the proposed Acquisition would eliminate.

III. XI.

EFFICIENCIES

47. To a significant extent, the efficiencies Respondents claim would result from the Acquisition are not verifiable or merger specific. In any event, to the extent there are merger-specific and verifiable efficiencies, they are insufficient to outweigh the Acquisition's likely harm.

XII.

VIOLATIONS

COUNT I – ILLEGAL AGREEMENT

48. The allegations of Paragraphs 1 through 47 are incorporated by reference as though fully set forth.

49. The Acquisition agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION

50. The allegations of Paragraphs 1 through 47 are incorporated by reference as though fully set forth.

51. The Acquisition, if consummated, may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15.U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the nineteenth day of May, 2015, at 10:00 a.m. is hereby fixed as the time, and the Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the answer is filed by the Respondents. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the answer is filed by the Respondents). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answer, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition challenged in this proceeding violates Section 7 of the Clayton Act, as amended, and/or Section 5 of the FTC Act, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant market, with the ability to offer such products and services as Verisk and EagleView were offering and planning to offer prior to the Acquisition.

2. A prohibition against any transaction between Verisk and EagleView that combines their businesses in the relevant market, except as may be approved by the Commission.

3. A requirement that, for a period of time, Verisk and EagleView provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant market with any other company operating in the relevant market.

4. A requirement to file periodic compliance reports with the Commission.

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore EagleView as a viable, independent competitor in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this sixteenth day of December 2014.

By the Commission.

ORDER DISMISSING COMPLAINT

On December 16, 2014, the Federal Trade Commission issued the Administrative Complaint in this matter, having reason to believe that Respondents Verisk Analytics, Inc., Insurance Services Office, Inc. (together, "Verisk"), and EagleView Technology Corporation ("EagleView") (collectively, "Respondents") had executed an Agreement and Plan of Merger, which, if consummated, would violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (2014), and substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18 (2014). Complaint Counsel and Respondents have now filed a Joint Motion To Dismiss Complaint, which states that Respondent Verisk has decided not to proceed with the proposed acquisition and has withdrawn the Hart-Scott-Rodino Notification and Report Form it filed for the proposed transaction.[1]

1 *See* Joint Motion To Dismiss Complaint (December 17, 2014), *at* http://www.ftc.gov/system/files/documents/cases/141217veriskcmpt.pdf.

The Commission has determined to dismiss the Administrative Complaint without prejudice, as the most important elements of the relief set out in the Notice of Contemplated Relief in the Administrative Complaint have been accomplished without the need for further administrative litigation.[2] In particular, Respondent Verisk has announced that it has decided not to proceed with the proposed acquisition, and has withdrawn the Hart-Scott-Rodino Notification and Report Form it filed for the proposed transaction. As a consequence, the Respondents would not be able to effect the proposed acquisition without filing new Hart-Scott-Rodino Notification and Report Forms.

For the foregoing reasons, the Commission has determined that the public interest warrants dismissal of the Administrative Complaint in this matter. The Commission has determined to do so without prejudice, however, because it is not reaching a decision on the merits. Accordingly,

IT IS ORDERED THAT the Administrative Complaint in this matter be, and it hereby is, dismissed without prejudice.

By the Commission.

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2 *See, e.g.*, *In the Matter of Visant Corp., Jostens, Inc., and American Achievement Corporation, Docket No. 9362*, Order Dismissing Complaint (May 7, 2014), *at* http://www.ftc.gov/system/files/documents/cases/140507vaisantjostensorder.pdf; *In the Matter of Integrated Device Technology, Inc. and PLX Technology, Inc., Docket No. 9354*, Order Dismissing Complaint (January 15, 2013), *at* http://www.ftc.gov/sites/default/files/documents/cases/2013/01/130115idtcmpt.pdf.

Complaint

IN THE MATTER OF

SNAPCHAT, INC.

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

Docket No. C-4501; File No. 132 3078
Complaint, December 23, 2014 – Decision, December 23, 2014

This consent order addresses Snapchat, Inc.'s mobile application that allows consumers to send and receive photo and video messages known as "snaps." The complaint alleges that Snapchat markets the application as an "ephemeral" messaging application, and claimed that once the timer expires, the snap "disappears forever." The complaint further alleges that Snapchat misrepresented that when sending a message though its application, the message would disappear forever after the user-set time period expires and that the sender will be notified if the recipient takes a screenshot of a snap. The consent order requires Snapchat to establish and maintain a comprehensive privacy program that is reasonably designed to: (1) address privacy risks related to the development and management of new and existing products and services for consumers, and (2) protect the privacy and confidentiality of covered information, whether collected by Snapchat or input into, stored on, captured with, or accessed through a computer using Snapchat's products or services. The order also prohibits Snapchat from misrepresenting the extent to which Snapchat or its products or services protect the privacy, security, or confidentiality of covered information, including: (1) the extent to which a message is deleted after being viewed by the recipient; (2) the extent to which Snapchat or its products or services are capable of detecting or notifying the sender when a recipient has captured a screenshot of, or otherwise saved, a message; (3) the categories of covered information collected; or (4) the steps taken to protect against misuse or unauthorized disclosure of covered information.

Participants

For the *Commission*: *Allison Lefrak* and *Nithan Sannappa.*

For the *Respondent*: *Rebecca Engrav* and *Susan Fahringer, Perkins Cole.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Snapchat, Inc. ("respondent") has violated the provisions of the

Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Snapchat, Inc. ("Snapchat"), the successor corporation to Toyopa Group LLC, is a Delaware corporation with its principal office or place of business at 63 Market Street, Venice, California 90291.

2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

RESPONDENT'S BUSINESS PRACTICES

3. Snapchat provides a mobile application that allows consumers to send and receive photo and video messages known as "snaps." Before sending a snap, the application requires the sender to designate a period of time that the recipient will be allowed to view the snap. Snapchat markets the application as an "ephemeral" messaging application, having claimed that once the timer expires, the snap "disappears forever."

4. Snapchat launched its mobile application on Apple Inc.'s iOS operating system in September 2011 and on Google Inc.'s Android operating system in October 2012. Snapchat added video messaging to the iOS version of its application in December 2012 and to the Android version of its application in February 2013.

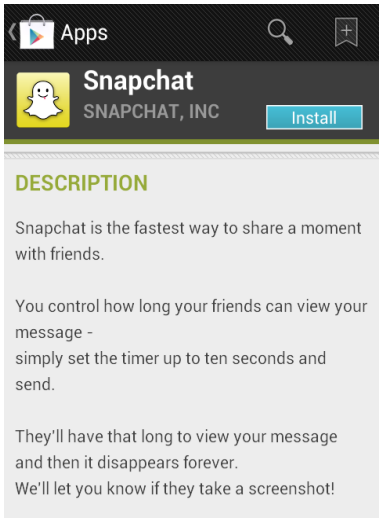
5. Both the iTunes App Store and the Google Play store list Snapchat among the top 15 free applications. As of September 2013, users transmit more than 350 million snaps daily.

SNAPCHAT'S "DISAPPEARING" MESSAGES
(Counts 1 and 2)

6. Snapchat marketed its application as a service for sending "disappearing" photo and video messages, declaring that the message sender "control[s] how long your friends can view your message." Before sending a snap, the application requires the sender to designate a period of time – with the default set to a

maximum of 10 seconds – that the recipient will be allowed to view the snap, as depicted below:

7. Since the application's launch on iOS until May 2013, and since the application's launch on Android until June 2013, Snapchat disseminated, or caused to be disseminated, to consumers the following statements on its product description page on the iTunes App Store and Google Play:



8. From October 2012 to October 2013, Snapchat disseminated, or caused to be disseminated, to consumers the following statement on the "FAQ" page on its website:

> **Is there any way to view an image after the time has expired?**
> No, snaps disappear after the timer runs out. …

9. Despite these claims, several methods exist by which a recipient can use tools outside of the application to save both photo and video messages, allowing the recipient to access and view the photos or videos indefinitely.

10. For example, when a recipient receives a video message, the application stores the video file in a location outside of the application's "sandbox" (*i.e.*, the application's private storage area on the device that other applications cannot access). Because the file is stored in this unrestricted area, until October 2013, a recipient could connect his or her mobile device to a computer and use simple file browsing tools to locate and save the video file. This method for saving video files sent through the application was widely publicized as early as December 2012. Snapchat did not mitigate this flaw until October 2013, when it began encrypting video files sent through the application.

11. Furthermore, third-party developers have built applications that can connect to Snapchat's application programming interface ("API"), thereby allowing recipients to log into the Snapchat service without using the official Snapchat application. Because the timer and related "deletion" functionality is dependent on the recipient's use of the official Snapchat application, recipients can instead simply use a third-party application to download and save both photo and video messages. As early as June 2012, a security researcher warned Snapchat that it would be "pretty easy to write a tool to download and save the images a user receives" due to the way the API functions. Indeed, beginning in spring 2013, third-party developers released several applications on the iTunes App Store and Google Play that recipients can use to save and view photo or video messages indefinitely. On Google Play alone, ten of these applications have been downloaded as many as 1.7 million times.

12. The file browsing tools and third-party applications described in paragraphs 10 and 11 are free or low cost and publicly available on the Internet. In order to download, install, and use these tools, a recipient need not make any modifications to the iOS or Android operating systems and would need little technical knowledge.

13. In addition to the methods described in paragraphs 10-12, a recipient can use the mobile device's screenshot capability to capture an image of a snap while it appears on the device screen.

14. Snapchat claimed that if a recipient took a screenshot of a snap, the sender would be notified. On its product description pages, as described in paragraph 7, Snapchat stated: "We'll let you know if [recipients] take a screenshot!" In addition, from October 2012 to February 2013, Snapchat disseminated, or caused to be disseminated, to consumers the following statement on the "FAQ" page on its website:

> **What if I take a screenshot?**
> Screenshots can be captured if you're quick. The sender will be notified immediately.

15. However, recipients can easily circumvent Snapchat's screenshot detection mechanism. For example, on versions of iOS prior to iOS 7, the recipient need only double press the device's Home button in rapid succession to evade the detection mechanism and take a screenshot of any snap without the sender being notified. This method was widely publicized.

Count 1

16. As described in Paragraphs 6, 7, and 8, Snapchat has represented, expressly or by implication, that when sending a message through its application, the message will disappear forever after the user-set time period expires.

17. In truth and in fact, as described in Paragraph 9-12, when sending a message through its application, the message may not disappear forever after the user-set time period expires. Therefore, the representation set forth in Paragraph 16 is false or misleading.

Count 2

18. As described in Paragraphs 7 and 14, Snapchat has represented, expressly or by implication, that the sender will be notified if the recipient takes a screenshot of a snap.

19. In truth and in fact, as described in Paragraph 15, the sender may not be notified if the recipient takes a screenshot of a snap. Therefore, the representation set forth in Paragraph 18 is false or misleading.

SNAPCHAT'S COLLECTION OF GEOLOCATION INFORMATION (Count 3)

20. From June 2011 to February 2013, Snapchat disseminated or caused to be disseminated to consumers the following statements in its privacy policy:

We do not ask for, track, or access any location-specific information from your device at any time while you are using the Snapchat application.

21. In October 2012, Snapchat integrated an analytics tracking service in the Android version of its application that acted as its service provider. While the Android operating system provided notice to consumers that the application may access location information, Snapchat did not disclose that it would, in fact, access location information, and continued to represent that Snapchat did "not ask for, track, or access any location-specific information . . ."

22. Contrary to the representation in Snapchat's privacy policy, from October 2012 to February 2013, the Snapchat application on Android transmitted Wi-Fi-based and cell-based location information from users' mobile devices to its analytics tracking service provider.

Count 3

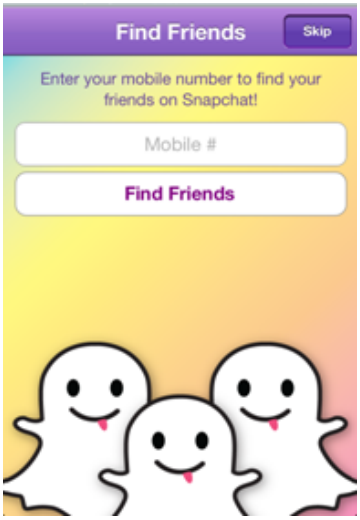
23. As described in Paragraph 21, Snapchat has represented, expressly or by implication, that it does not collect users' location information.

24. In truth and in fact, as described in Paragraph 22, Snapchat did collect users' location information. Therefore, the representation set forth in Paragraph 23 is false or misleading.

SNAPCHAT'S COLLECTION OF CONTACTS INFORMATION (Counts 4 and 5)

Snapchat's Deceptive Find Friends User Interface

25. Snapchat provides its users with a feature to find friends on the service. During registration, the application prompts the user to "Enter your mobile number to find your friends on Snapchat!," implying – prior to September 2012 – through its user interface that the mobile phone number was the only information Snapchat collected to find the user's friends, as depicted below:



Users can also access this "Find Friends" feature at any time through the application's menu options.

26. However, when the user chooses to Find Friends, Snapchat collects not only the phone number a user enters, but also, without informing the user, the names and phone numbers of all the contacts in the user's mobile device address book.

27. Snapchat did not provide notice of, or receive user consent for, this collection until September 2012, at which time the iOS operating system was updated to provide a notification when an application accessed the user's address book.

Count 4

28. As described in Paragraphs 25, through its user interface, Snapchat represented, expressly or by implication, that the only personal information Snapchat collected when the user chose to Find Friends was the mobile number that the user entered.

29. In truth and in fact, as described in Paragraph 26, the mobile number that the user entered was not the only personal information that Snapchat collected. Snapchat also collected the names and phone numbers of all contacts in the user's mobile device address book. Therefore, the representation set forth in Paragraph 28 is false or misleading.

Snapchat's Deceptive Privacy Policy Statement Regarding the Find Friends Feature

30. From June 2011 to February 2013, Snapchat disseminated or caused to be disseminated to consumers the following statements, or similar statements, in its privacy policy regarding its Find Friends feature:

> Optional to the user, we also collect an email, phone number, and facebook id for purpose of finding friends on the service. (Emphasis in original).

31. As explained in Paragraph 26, the Snapchat application collected more than email, phone number, and Facebook ID for purpose of finding friends on the service. The application collected the names and phone numbers of all contacts in the user's mobile device address book.

Count 5

32. As described in Paragraph 30, Snapchat, through its privacy policy, represented, expressly or by implication, that the only personal information Snapchat collected from a user for the purpose of finding friends on the service was email, phone number, and Facebook ID.

33. In truth and in fact, as described in Paragraph 31, email, phone number, and Facebook ID was not the only personal information that Snapchat collected for the purpose of finding friends on the service. Snapchat collected the names and phone numbers of all contacts in the user's mobile device address book when the user chose to Find Friends. Therefore, the representation set forth in Paragraph 32 is false or misleading.

SNAPCHAT'S FAILURE TO SECURE ITS FIND FRIENDS FEATURE (Count 6)

34. Snapchat failed to securely design its Find Friends feature. As described in paragraph 25, Snapchat prompts the user to enter a mobile phone number that will be associated with the user's account. In addition, as described in paragraph 26, Snapchat collects the names and phone numbers of all the contacts in the user's address book. Snapchat's API uses this information to locate the user's friends on the service.

35. From September 2011 to December 2012, Snapchat failed to verify that the phone number that an iOS user entered into the application did, in fact, belong to the mobile device being used by that individual. Due to this failure, an individual could create an account using a phone number that belonged to another consumer, enabling the individual to send and receive snaps associated with another consumer's phone number.

36. Numerous consumers complained to Snapchat that individuals had created Snapchat accounts with phone numbers belonging to other consumers, leading to the misuse and unintentional disclosure of consumers' personal information. For example, consumers complained that they had sent snaps to accounts under the belief that they were communicating with a

friend, when in fact they were not, resulting in the unintentional disclosure of photos containing personal information. In addition, consumers complained that accounts associated with their phone numbers had been used to send inappropriate or offensive snaps.

37. Snapchat could have prevented the misuse and unintentional disclosure of consumers' personal information by verifying phone numbers using common and readily available methods.

38. Indeed, in December 2012, Snapchat began performing short-message-service ("SMS") verification to confirm that the entered phone number did in fact belong to the mobile device being used by that individual.

39. In addition, from September 2011 to December 2013, Snapchat failed to implement effective restrictions on the number of Find Friend requests that any one account could make to its API. Furthermore, Snapchat failed to implement any restrictions on serial and automated account creation. As a result of these failures, in December 2013, attackers were able to use multiple accounts to send millions of Find Friend requests using randomly generated phone numbers. The attackers were able to compile a database of 4.6 million Snapchat usernames and the associated mobile phone numbers. The exposure of usernames and mobile phone numbers could lead to costly spam, phishing, and other unsolicited communications.

40. From June 2011 to May 2012, Snapchat disseminated or caused to be disseminated to consumers the following statement in its privacy policy:

> The Toyopa Group, LLC is dedicated to securing customer data and, to that end, employs the best security practices to keep your data protected.

41. From May 2012 to February 2013, Snapchat disseminated or caused to be disseminated to consumers the following statement in its privacy policy:

> Snapchat takes reasonable steps to help protect your personal information in an effort to prevent loss, misuse,

> and unauthorized access, disclosure, alteration, and destruction.

42. From February 2013 to the present, Snapchat disseminated or caused to be disseminated to consumers the following statement in its privacy policy:

> We take reasonable measures to help protect information about you from loss, theft, misuse and unauthorized access, disclosure, alteration and destruction.

Count 6

43. As described in Paragraphs 40-42, Snapchat has represented, expressly or by implication, that it employs reasonable security measures to protect personal information from misuse and unauthorized disclosure.

44. In truth and in fact, as described in Paragraphs 34-39, in many instances, Snapchat did not employ reasonable security measures to protect personal information from misuse and unauthorized disclosure. Therefore, the representation set forth in Paragraph 43 is false or misleading.

45. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this twenty-third day of December, 2014, has issued this complaint against respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission" or "FTC"), 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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45 *et seq*.;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 FTC Act, and that a 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 thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Snapchat, Inc. ("Snapchat"), the successor corporation to Toyopa Group LLC, is a Delaware corporation with its principal office or place of business at 63 Market Street, Venice, California 90291.

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

ORDER

DEFINITIONS

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

A. Unless otherwise specified, "respondent" shall mean Snapchat, Inc. and its successors and assigns.

B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

C. "Covered information" shall mean information from or about an individual consumer, including but not limited to (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a persistent identifier, such as a customer number held in a "cookie," a static Internet Protocol ("IP") address, a mobile device ID, or processor serial number; (f) precise geo-location data of an individual or mobile device, including GPS-based, Wi-Fi-based, or cell-based location information; (g) an authentication credential, such as a username or password; or (h) any communications or content that is transmitted or stored through respondent's products or services.

D. "Computer" shall mean any desktop, laptop computer, tablet, handheld device, telephone, or other electronic product or device that has a platform on which to download, install, or run any software program, code, script, or other content and to play any digital audio, visual, or audiovisual content.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, directly or indirectly, shall not misrepresent in any manner, expressly or by implication, in or

affecting commerce, the extent to which respondent or its products or services maintain and protect the privacy, security, or confidentiality of any covered information, including but not limited to: (1) the extent to which a message is deleted after being viewed by the recipient; (2) the extent to which respondent or its products or services are capable of detecting or notifying the sender when a recipient has captured a screenshot of, or otherwise saved, a message; (3) the categories of covered information collected; or (4) the steps taken to protect against misuse or unauthorized disclosure of covered information.

II.

IT IS FURTHER ORDERED that respondent, in or affecting commerce, shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive privacy program that is reasonably designed to: (1) address privacy risks related to the development and management of new and existing products and services for consumers, and (2) protect the privacy and confidentiality of covered information, whether collected by respondent or input into, stored on, captured with, or accessed through a computer using respondent's products or services. Such program, the content and implementation of which must be fully documented in writing, shall contain privacy controls and procedures appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the covered information, including:

A. the designation of an employee or employees to coordinate and be accountable for the privacy program;

B. the identification of reasonably foreseeable, material risks, both internal and external, that could result in the respondent's unauthorized collection, use, or disclosure of covered information, and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this privacy risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management,

including training on the requirements of this order; and (2) product design, development and research;

C. the design and implementation of reasonable privacy controls and procedures to address the risks identified through the privacy risk assessment, and regular testing or monitoring of the effectiveness of the privacy controls and procedures;

D. the development and use of reasonable steps to select and retain service providers capable of maintaining security practices consistent with this order, and requiring service providers by contract to implement and maintain appropriate safeguards;

E. the evaluation and adjustment of respondent's privacy program in light of the results of the testing and monitoring required by subpart C, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows, or has reason to know, may have a material impact on the effectiveness of its privacy program.

III.

IT IS FURTHER ORDERED that, in connection with its compliance with Part II of this order, respondent shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. A person qualified to prepare such Assessments shall have a minimum of three (3) years of experience in the field of privacy and data protection. All persons selected to conduct such assessments and prepare such reports shall be approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The reporting period for the Assessments shall cover: (1) the first one hundred eighty (180) days after service of the order for the initial Assessment; and (2) each two (2) year period thereafter for twenty (20) years

after service of the order for the biennial Assessments. Each Assessment shall:

A. set forth the specific privacy controls that respondent has implemented and maintained during the reporting period;

B. explain how such privacy controls are appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the covered information;

C. explain how the safeguards that have been implemented meet or exceed the protections required by Part II of this order; and

D. certify that the privacy controls are operating with sufficient effectiveness to provide reasonable assurance to protect the privacy of covered information and that the controls have so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request. Unless otherwise directed by a representative of the Commission, the initial Assessment, and any subsequent Assessments requested, shall be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580 with the subject line *In the Matter of Snapchat, Inc.*, FTC File No. 1323078.

IV.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, unless respondent asserts a valid legal privilege, a print or electronic copy of:

A. for a period of five (5) years from the date of preparation or dissemination, whichever is later, statements disseminated to consumers that describe the extent to which respondent maintains and protects the privacy, security and confidentiality of any covered information, including, but not limited to, any statement related to a change in any website or service controlled by respondent that relates to the privacy, security, and confidentiality of covered information, with all materials relied upon in making or disseminating such statements;

B. for a period of five (5) years from the date received, all consumer complaints directed at respondent, or forwarded to respondent by a third party, that relate to the conduct prohibited by this order and any responses to such complaints;

C. for a period of five (5) years from the date received, any documents, whether prepared by or on behalf of respondent that contradict, qualify, or call into question respondent's compliance with this order; and

D. for a period of five (5) years after the date of preparation of each Assessment required under Part III of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of respondent including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, for the compliance period covered by such Assessment.

V.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future subsidiaries, current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current subsidiaries and personnel within thirty (30) days after service of this order, and to such future subsidiaries and personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

VI.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580 with the subject line *In the Matter of Snapchat, Inc.*, FTC File No. 1323078.

VII.

IT IS FURTHER ORDERED that respondent within ninety (90) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VIII.

This order will terminate on December 23, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. any Part in this order that terminates in fewer than twenty (20) years;

B. this order's application to any respondent that is not named as a defendant in such complaint; and

C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, a consent order applicable to Snapchat, Inc. ("Snapchat").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Snapchat provides a mobile application that allows consumers to send and receive photo and video messages known as "snaps." Both the iTunes App Store and the Google Play store list Snapchat among the top 15 free applications. As of September 2013, users transmitted more than 350 million snaps daily. Before sending a snap, the application requires the sender to designate a period of time that the recipient will be allowed to view the snap, up to ten seconds. Snapchat markets the application as an "ephemeral" messaging application, and claimed that once the timer expires, the snap "disappears forever." Snapchat represented, for a certain period, on its product description page on the iTunes App Store and Google Play and on the "FAQ" page on its website that snaps disappear when the timer expires. Snapchat further claimed that if a recipient took a screenshot of a snap, the sender would be notified. Snapchat also provides its users with a feature to find friends on the service, and prompts users during registration to enter their mobile telephone number in order to find friends.

Count 1 of the Commission's complaint alleges that Snapchat misrepresented that when sending a message though its application, the message would disappear forever after the user-set time period expires. Count 2 of the complaint alleges that Snapchat misrepresented that the sender will be notified if the recipient takes a screenshot of a snap. The complaint alleges that several methods exist by which a recipient can use tools outside of the application to save snaps, allowing the recipient to view them

indefinitely. Additionally, the complaint alleges that widely publicized methods existed by which recipients could easily circumvent Snapchat's screenshot detection mechanism and capture a screenshot of a snap without the sender being notified.

Count 3 of the complaint alleges that Snapchat misrepresented in its privacy policy that it does not access location-specific information from consumers' mobile devices. Contrary to this representation, the complaint alleges that for a certain period, the Snapchat application on Android transmitted Wi-Fi based and cell-based location information from user's mobile devices to an analytics tracking provider.

Count 4 of the complaint alleges that Snapchat misrepresented, for a certain period, in its user interface that a user's mobile phone number was the only personal information that Snapchat collected in order to find the user's friends. Count 5 of the complaint alleges that Snapchat misrepresented in its privacy policy that it collected only the user's email, phone number, and Facebook ID for the purpose of finding friends. However, the complaint alleges that when the user chose to find friends, Snapchat collected not only the user's phone number, but also, without informing the user, the names and phones numbers of all the contacts in the user's mobile device address book.

Finally, Count 6 of the complaint alleges that Snapchat misrepresented that it employed reasonable security measures in the design of its find friends feature. Specifically, the complaint alleges that for a certain period of time, Snapchat failed to verify that the phone number that an iOS user entered into the application did, in fact, belong to the mobile device being used by that individual. Due to this failure, an individual could create an account using a phone number that belonged to another consumer, enabling the individual to send and receive snaps associated with another consumer's phone number. Additionally, for a certain period, Snapchat allegedly failed to implement effective restrictions on the number of find friends requests that any one account could make. Further, Snapchat allegedly failed to implement any restrictions on serial and automated account creation. As a result of these security failures, in December 2013, attackers were able to use multiple accounts to send millions of

find friends requests and compile a database of 4.6 million Snapchat usernames and the associated phone numbers.

The proposed order contains provisions designed to prevent Snapchat from engaging in the future in practices similar to those alleged in the complaint. Part I of the proposed order prohibits Snapchat from misrepresenting the extent to which Snapchat or its products or services protect the privacy, security, or confidentiality of covered information, including: (1) the extent to which a message is deleted after being viewed by the recipient; (2) the extent to which Snapchat or its products or services are capable of detecting or notifying the sender when a recipient has captured a screenshot of, or otherwise saved, a message; (3) the categories of covered information collected; or (4) the steps taken to protect against misuse or unauthorized disclosure of covered information.

Part II of the proposed order requires Snapchat to establish and maintain a comprehensive privacy program that is reasonably designed to: (1) address privacy risks related to the development and management of new and existing products and services for consumers, and (2) protect the privacy and confidentiality of covered information, whether collected by Snapchat or input into, stored on, captured with, or accessed through a computer using Snapchat's products or services. The privacy program must contain privacy controls and procedures appropriate to Snapchat's size and complexity, the nature and scope of Snapchat's activities, and the sensitivity of the covered information. Specifically, the proposed order requires Snapchat to:

- designate an employee or employees to coordinate and be accountable for the privacy program;

- identify material internal and external risks that could result in Snapchat's unauthorized collection, use, or disclosure of covered information, and asses the sufficiency of any safeguards in place to control these risks;

- design and implement reasonable privacy controls and procedures to address the risks identified through the privacy risk assessment, and regularly test or monitor the effectiveness of the privacy controls, and procedures;

- develop and use reasonable steps to select and retain service providers capable of maintaining security practices consistent with the order, and require service providers by contract to implement and maintain appropriate safeguards; and

- evaluate and adjust its privacy program in light of the results of testing and monitoring, any material changes to operations or business arrangement, or any other circumstances that Snapchat knows or has reason to know may have a material impact on its privacy program.

Part III of the proposed order requires Snapchat to obtain within the first one hundred eighty (180) days after service of the order, and on a biennial basis thereafter for a period of twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) it has in place a privacy program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) its privacy program is operating with sufficient effectiveness to provide reasonable assurance to protect the privacy of covered information.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires Snapchat to retain documents relating to its compliance with the order. The order requires that all of the documents be retained for a five-year period. Part V requires dissemination of the order now and in the future to all current and future principals, officers, directors, and managers, and to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Snapchat submit a compliance report to the FTC within 60 days, and periodically thereafter as requested. Part VIII is a provision

"sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

INTERLOCUTORY, MODIFYING, VACATING, AND MISCELLANEOUS ORDERS

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, July 7, 2014

Letter approving application to divest two funeral homes and one cemetery in Greenville and one funeral home and one cemetery in Columbia, South Carolina to Rollings Funeral Service, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.*, Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on April 2, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposal to divest certain assets to Rollings Funeral Service, Inc. ("Rollings").

After consideration of SCI's Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and Rollings in connection with SCI's Petition and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, July 7, 2014

Letter approving application to divest the Edward Sagel Funeral Home located in Rockville, Maryland to Edward Sagel Funeral Direction, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.*, Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on April 2, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposal to divest certain assets to Edward Sagel Funeral Direction, Inc. ("ESFD").

After consideration of SCI's Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and ESFD in connection with SCI's Petition and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

GENERAL ELECTRIC COMPANY

Docket No. C-4411. Order, July 11, 2014

Letter granting the request of General Electric Company to modify the Commercial Assurances Agreement to allow GE IT analysts to access certain Pratt & Whitney confidential information solely to investigate and prevent internet security threats.

LETTER WAIVING COMMISSION APPROVAL AND PUBLIC COMMENT PERIOD

Matthew M. Shultz, Esquire
Arnold & Porter LLP

Re: *In the matter of General Electric Company, FTC Docket No. C-4411*

Dear Mr. Shultz:

This is in reference to the request of General Electric Company, dated May 24, 2014, submitted to the Federal Trade Commission, with respect to a proposed amendment to the Commercial Assurances Agreement, incorporated by reference into the above-referenced Order. General Electric requests waiver of the Commission's approval process with respect to Amendment No. 2, which is attached to the May 24 request.

After consideration of General Electric's request and pursuant to the authority delegated to me under Rule 2.4l(f)(5)(ii) of the Commission's Rules of Practice, 16 C.F.R. §2.41 (f)(5)(ii), I hereby waive the requirements for Commission approval and the public comment period for the modification to the Commercial Assurances Agreement as described in General Electric's request.

If you have further questions , please contact Paul Frangie, the Compliance staff attorney assigned to this matter. Mr. Frangie can be reached at 202-326-2697 or pfrangie@ftc.gov.

Interlocutory Orders, Etc.

IN THE MATTER OF

PHUSION PROJECTS, LLC; JAISEN FREEMAN; CHRISTOPHER HUNTER; AND JEFFREY WRIGHT

Docket No. C-4382. Order, July 24, 2014

Order responding to respondent's petition to reopen and modify the consent order.

ORDER TO SHOW CAUSE AND ORDER MODIFYING ORDER

The Commission issued a Complaint and a Decision and Order ("Order") against Phusion Projects, LLC, Jaisen Freeman, Christopher Hunter, and Jeffrey Wright ("Respondents") in Docket No. C-4382 on February 6, 2013. The Complaint alleged that Respondents had violated Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52, in connection with the advertising and marketing of the flavored malt beverage product Four Loko. Part I.A. of the Order required Respondents to immediately request approval from the Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau ("TTB") to display an "Alcohol Facts" disclosure, in the form set forth in Order Attachment A1-A3, on flavored malt beverages in containers providing 1.2 or more fluid ounces of ethanol. Part I.B. of the Order required Respondents to display those labels commencing no later than ninety (90) days after receiving TTB approval. Commencing six (6) months after the date of issuance, the Order prohibited Respondents from selling flavored malt beverages in containers providing more than 1.5 fluid ounces of ethanol, unless the container was resealable.

Respondents submitted requests for approval to display "Alcohol Facts" labels on their products to TTB, consistent with Part I.A. of the Order, on a timely basis. In addition, Respondents complied with all other relevant portions of the Order on a timely basis.

On August 31, 2013, TTB denied Respondents' applications for approval to display "Alcohol Facts" disclosures on their products. On February 19, 2014, TTB denied Respondents' appeal of that decision. However, on April 30, 2014, TTB approved three (3) applications by Respondents to display revised "Alcohol Facts" disclosures on certain of their products.

In view of the foregoing, the Commission has determined in its discretion that it is in the public interest to reopen the proceeding in FTC Docket No. C-4382, pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.72(b), and to modify the Order, as set forth below. Among other things, Part I.A. of the modification provides for a revised "Alcohol Facts" disclosure, and Part I.B.iii. of the modification provides that serving sizes, for the purposes of the "Alcohol Facts" disclosure, shall comply with TTB Ruling 2013-2, Voluntary Nutrient Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages (May 28, 2013). In addition, the modification deletes the requirement that certain of Respondents' products be resealable.

Respondents have consented to reopening this docket, have waived their rights under Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.72(b), and have consented to the modifications set forth below.

Accordingly,

IT IS ORDERED that this matter be, and it hereby is, reopened.

IT IS FURTHER ORDERED that the Order in Docket No. C-4382 be, and it hereby is, modified to replace the current language in Part I with the following:

I.

IT IS ORDERED that corporate respondent and controlling respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any flavored malt beverage in a

container that provides 1.2 or more fluid ounces of ethanol, in or affecting commerce:

A. Commencing no later than ninety (90) days after the Entry of this Order to Show Cause and Order Modifying Order, shall not offer for sale, sell, or distribute such product unless the label for such product includes the "Alcohol Facts" disclosure set forth in Part I.B., below.

B. The disclosure required by Part I.A. shall appear as depicted on Attachment A1-A4, *provided that*:

1. The disclosure shall be boxed with all black type printed on a white ground, and shall use the format, including fonts, lines, and spacing depicted on Attachments A1-A4 for the various container sizes there identified, and the dimensions of the disclosure shall be no smaller than the sizes identified for those container sizes;

2. The disclosure shall appear on the back of the container, perpendicular to the top of the container, and its outside border shall be at least 2.5 centimeters from the top and bottom of the container;

3. The serving size shall comply with TTB Ruling No. 2013-2, Voluntary Nutrient Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages (May 28, 2013);

4. The serving size shall be rounded to the nearest quarter ounce and reflected as a fraction (*i.e.*, ¼, ½, ¾ or a whole number); and

5. The disclosure of alcohol by volume will be considered accurate if it complies with 27 C.F.R. § 7.71.

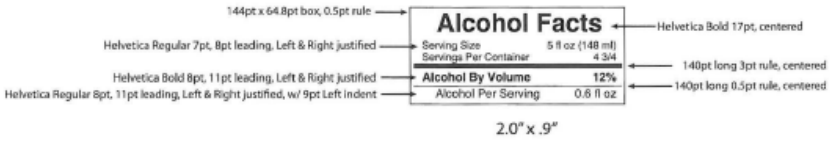
IT IS FURTHER ORDERED that the Order in Docket No. C-4382 be, and it hereby is, modified to delete Part II, and to renumber Parts III, IV, V, VI, VII, VIII, IX, and X, as Parts II, III, IV, V, VI, VII, VIII, and IX, respectively.

IT IS FURTHER ORDERED that the Order in Docket No. C-4382 be, and it hereby is, modified to delete Attachment A1-A3, and to replace them with Attachment A1-A4.

By the Commission.

Attachment A-1

Attachment A1. For containers with more than 20 fluid ounces.
(This sample shows the serving size for a 12% ABV product.)



2.0" x .9"

Interlocutory Orders, Etc.

Attachment A-2

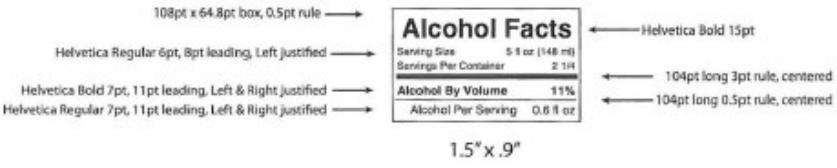
Attachment A2. For containers with more than 20 fluid ounces.
(This sample shows the serving size for a 6% ABV product.)

Attachment A-3

Attachment A3. For containers with 12 to 20 fluid ounces.
(This sample shows the serving size for an 8% ABV product).

Attachment A-4

Attachment A4. For containers with less than 12 ounces.
(This sample shows the serving size for an 11% ABV product.)



1.5"x .9"

Interlocutory Orders, Etc.

IN THE MATTER OF

FIDELITY NATIONAL FINANCIAL, INC.
AND
LENDER PROCESSING SERVICES, INC.

Docket No. C-4425. Order, July 24, 2014

Letter approving application to divest copies of five single-county title plants in Oregon to AmeriTitle, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Aidan Synnott, Esquire
Paul, Weiss, Rifkind, Wharton & Garrison LLP

Re: *In the Matter of Fidelity National Financial, Inc.,* FTC Docket No. C-4425

Dear Mr. Synnott:

This letter responds to the Amended Application for Approval of Proposed Divestiture of the Five Title Plant Assets to AmeriTitle, Inc., ("Amended Application"), which Fidelity National Financial, Inc., filed on May 21, 2014. The Amended Application requests that the Federal Trade Commission approve Fidelity's proposed divestiture pursuant to the order in this matter. The Amended Application was placed on the public record for comments until June 12 , 2014, and no substantive comments were received.

After consideration of the proposed divestitures as set forth in Fidelity's Amended Application and supplemental documents, as well as other available information, the Commission has determined to approve the proposed divestitures. In according its approval, the Commission has relied upon the information submitted and representations made in connection with Fidelity's Amended Application and has assumed them to be accurate and complete.

By direction of the Commission, Commissioner Wright dissenting.

Interlocutory Orders, Etc.

IN THE MATTER OF

FIDELITY NATIONAL FINANCIAL, INC.
AND
LENDER PROCESSING SERVICES, INC.

Docket No. C-4425. Order, July 24, 2014

Letter approving application to divest the Polk County title plant in Oregon and LPS's interest in the jointly-held title plant in the three counties including Portland, Oregon, to Old Republic Title Company of Oregon.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Aidan Synnott, Esquire
Paul, Weiss, Rifkind, Wharton & Garrison LLP

Re: *In the Matter of Fidelity National Financial, Inc.,* FTC Docket No. C-4425

Dear Mr. Synnott:

This letter responds to the Amended Application for Approval of Proposed Divestiture of the Portland Title Agency Interest and the Polk County Title Plant Assets to Old Republic Title Company of Oregon ("Amended Application"), which Fidelity National Financial, Inc., filed on May 21, 2014. The Amended Application requests that the Federal Trade Commission approve Fidelity's proposed divestitures pursuant to the order in this matter. The Amended Application was placed on the public record for comments until June 12 , 2014, and no substantive comments were received.

After consideration of the proposed divestitures as set forth in Fidelity's Amended Application and supplemental documents, as well as other available information, the Commission has determined to approve the proposed divestitures. In according its approval, the Commission has relied upon the information submitted and representations made in connection with Fidelity's Amended Application and has assumed them to be accurate and complete.

By direction of the Commission, Commissioner Wright dissenting.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, August 11, 2014

Letter approving application to divest Mobile Memorial Gardens Funeral Home in Mobile, Alabama to Legacy Funeral Holdings, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc., Docket No. C-4423*

Dear Ms. Wait:

This is in reference to the Petition for Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on May 29, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposal to divest certain assets to Legacy Funeral Holdings, Inc. ("Legacy").

After consideration of SCI's Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and Legacy in connection with SCI's Petition and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, August 11, 2014

Letter approving application to divest eleven funeral homes and eight cemeteries in California, Florida, and Texas to NorthStar Memorial Group LLC.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.,* Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on May 7, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposal to divest certain assets to NorthStar Memorial Group LLC ("NorthStar").

After consideration of SCI's Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and NorthStar in connection with SCI's Petition and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, August 11, 2014

Letter approving application to divest two cemeteries in Maryland and one cemetery in West Virginia to subsidiaries jointly owned by Guy Saxton and John Yeatman.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.,* Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on April 30, 2014, and the Petition For Approval of Proposed Divestiture filed by SCI and received on June 10, 2014 (collectively the "Petitions"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposals to divest certain assets to subsidiaries jointly owned by Guy Saxton and John Yeatman.

After consideration of SCI's Petitions and other available information, the Commission has determined to approve the proposed divestitures as set forth in the Petitions. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI, Mr. Saxton, and Mr. Yeatman in connection with SCI's Petitions and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

IRVING OIL LIMITED
AND
IRVING OIL TERMINALS INC.

Docket No. C-4328. Order, August 20, 2014

Letter granting the request of Irving Oil Limited and Irving Oil Terminals, Inc. to modify the Terminal Throughput Agreement (South Portland Terminal) between Irving, as the customer of the terminal, and South Portland Terminal LLC by replacing Appendix C of the agreement (which lists the customer dedicated tanks) with a revised appendix that changes several gasoline tank designations.

LETTER WAIVING COMMISSION APPROVAL AND PUBLIC COMMENT PERIOD

Joel R. Grosberg, Esq.
McDermott Will & Emery

Re: *In the Matter of Irving Oil Limited and Irving Oil Terminals, Inc., Docket No. C- 4328*.

Dear Mr. Grosberg:

This is in reference to the Request for Approval of Modification filed by Irving Oil Limited and Irving Oil Terminals, Inc. (collectively "Irving") and received on July 24, 2014 ("Request"). Pursuant to the Decision and Order in Docket No. C-4328, Irving requests Commission approval of its proposal to modify an agreement between Irving and South Portland Terminal LLC.

After consideration of Irving's Request and pursuant to the authority delegated to me un- der Rule 2.4l(f)(5)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 2.41(f)(5)(ii), I hereby waive the requirements for Commission approval and the public comment period for the modifications to the Terminal Throughput Agreement (South Portland Terminal) described in Irving's Request.

If you have further questions, please contact Jeff Dahnke, the Compliance staff attorney assigned to this matter. Mr. Dahnke can be reached at 202-326-2111 or jdahnke@ftc.gov.

Interlocutory Orders, Etc.

IN THE MATTER OF

HERTZ GLOBAL HOLDINGS, INC.

Docket No. C-4376. Order, September 2, 2014

Letter responding to Franchise Services of North America's petition to sell certain airport rental concessions from Simply Wheelz LLC, d/b/a Advantage Rent-A-Car to Sixt Rent-A-Car, LLC, and Avis Budget Group.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Craig M. Geno, Esquire
Law Offices of Craig M. Geno, PLLC

Re: *In the Matter of Hertz Global Holdings, Inc., Docket No. C-4376*

Dear Mr. Geno:

This letter responds to the Petition of Franchise Services Corporation, Inc. for Prior Approval of the Sale of the Non-Transferred Locations filed by Franchise Services of North America ("FSNA") on July 10, 2014 ("Petition"). The Petition requests that the Federal Trade Commission approve, pursuant to the Order in this matter, the sale and assignment of one closed Advantage location, in San Jose, California, to Sixt Rent-A-Car, LLC, and one closed Advantage location, in Portland, Oregon, to Avis Budget Group. The Petition was placed on the public record for comments until July 11, 2014. No comments were received.

After consideration of the proposed divestiture as set forth in FSNA's Petition and supplemental documents, as well as other available information, the Commission has determined to approve both proposed sales. In according its approval, the Commission has relied upon the accuracy and completeness of information submitted and representations made in connection with FSNA's Petition.

By direction of the Commission, Commissioner Wright and Commissioner McSweeny not participating.

Interlocutory Orders, Etc.

IN THE MATTER OF

PHOEBE PUTNEY HEALTH SYSTEM, INC.; PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.; PHOEBE NORTH, INC.; HCA INC.; PALMYRA PARK HOSPITAL, INC.; AND HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY

Docket No. 9348. Order, September 4, 2014

Order returning Matter to adjudication.

ORDER RETURNING MATTER TO ADJUDICATION

On June 24, 2013, the Commission issued an Order withdrawing this matter from adjudication for the purpose of considering a consent proposal. Thereafter, the Commission accepted a proposed consent agreement for public comment. As authorized by Commission Rule 3.25(f), 16 C.F.R. § 3.25(f), and as explained in the attached Statement, the Commission has now determined to withdraw its acceptance of the proposed consent agreement, to so notify the parties, and to return this matter to adjudication.

The Commission has also determined that the evidentiary hearing should commence on February 4, 2015. After consulting with the parties, the Administrative Law Judge should promptly issue a scheduling order consistent with this hearing date. Accordingly,

IT IS ORDERED THAT this matter in its entirety be, and it hereby is, returned to adjudication for further proceedings before the Administrative Law Judge under Part 3 of the Commission Rules of Practice, 16 C.F.R. §§ 3.1 *et seq*.; and

IT IS FURTHER ORDERED THAT the evidentiary hearing shall commence on February 4, 2015.

Statement of the Commission

By the Commission, Commissioner Wright and Commissioner McSweeny not participating.

Statement of the Federal Trade Commission

We have decided to withdraw our acceptance of the proposed consent agreement with Respondents Phoebe Putney Health System, Inc. ("PPHS"), Phoebe Putney Memorial Hospital, Inc. ("PPMH"), Phoebe North, Inc. ("Phoebe North") (collectively "Phoebe Putney"), HCA Inc. ("HCA"), Palmyra Park Hospital, Inc. ("Palmyra"), and the Hospital Authority of Albany-Dougherty County ("Hospital Authority") and return this matter to administrative litigation.[1]

The Commission first challenged the Hospital Authority's acquisition of Palmyra Park Hospital from HCA and subsequent transfer of all management control of Palmyra to Phoebe Putney under a long-term lease arrangement (the "transaction") in April 2011. The Commission alleged that Phoebe Putney's acquisition of Palmyra, its only rival in Albany, Georgia, would create a monopoly in the provision of inpatient general acute-care hospital services sold to commercial health plans in Albany and its surrounding six-county area, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.[2] In addition to authorizing an administrative complaint, the Commission filed a complaint for temporary and preliminary relief in federal court in the Middle District of Georgia. In June 2011, U.S. District Court Judge W. Louis Sands granted the defendants' motion to dismiss, holding that the state action

1 This statement reflects the views of Chairwoman Ramirez and Commissioners Brill and Ohlhausen. Commissioners Wright and McSweeny did not participate in this vote.

2 The Commission alleged that Phoebe Putney intentionally structured the deal using the Hospital Authority in an attempt to shield the acquisition from federal antitrust scrutiny under the state action doctrine. Compl. ¶ 3.

doctrine immunized the transaction from federal antitrust scrutiny.[3]

On appeal by the Commission, the U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's dismissal on state action grounds, although it agreed that, "on the facts alleged, the joint operation of [PPMH] and Palmyra would substantially lessen competition or tend to create, if not create, a monopoly."[4] The transaction was consummated on December 15, 2011, following the Eleventh Circuit's ruling. The Commission filed a petition for certiorari, which the U.S. Supreme Court granted on June 25, 2012. In February 2013, a unanimous Supreme Court ruled in favor of the Commission and reversed the dismissal of the complaint, holding that the state action doctrine did not bar the Commission from taking action.[5] We thereafter determined to proceed with the administrative action that had been stayed pending the collateral federal court appeals.

In August 2013, the Commission accepted for public comment a proposed consent to resolve this matter, which did not require a divestiture of Palmyra, the most appropriate and effective remedy to restore competition in Albany and the surrounding six-county area. At the time, we explained our understanding that, because Phoebe Putney had combined its hospital permit with Palmyra's following the acquisition, the legal and practical challenges presented by Georgia's certificate of need ("CON") laws and regulations would very likely prevent a divestiture of hospital assets from being effectuated to restore competition, even assuming a finding of liability following a full merits trial and appeals.[6] While we still had reason to believe that the transaction created an unlawful monopoly, the Commission accepted a

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3 *FTC v. Phoebe Putney Health Sys., Inc.*, 793 F. Supp. 2d 1356, 1366 (M.D. Ga. 2011).

4 *FTC v. Phoebe Putney Health Sys., Inc.*, 663 F.3d 1369, 1375 (11th Cir. 2011).

5 *FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003, 1011 (2013).

6 *See In re Phoebe Putney Health Sys., Inc.*, Analysis of Proposed Agreement Containing Consent Order to Aid Public Comment, 78 Fed. Reg. 53,457, 53,460 (Aug. 29, 2013).

proposed non-structural remedy for comment, in light of the apparent unavailability of a practical and meaningful structural remedy.

Our understanding is now different. As a result of public comments we received, as well as other information obtained by the Commission in response to the public comments, we became aware that the CON laws might not bar a structural remedy in this matter. Additionally, in March 2014, North Albany Medical Center, LLC, a newly-formed healthcare entity, expressed an interest in acquiring Palmyra and operating it as a competing general acute care hospital. Seeking clarification on whether Georgia's CON laws would impede such an acquisition, North Albany filed a "request for a determination" with the Georgia Department of Community Health ("DCH") on the issue. On June 3, 2014, DCH staff issued an initial determination that, among other things, "returning Phoebe North to its status as a separately licensed . . . hospital for divestiture would not require prior CON review and approval."[7] That initial determination is currently on appeal, but we believe that Georgia CON laws may not be an impediment to structural relief.

While we regret that we accepted a proposed settlement based on a potentially erroneous understanding of Georgia's CON requirements, the public comment period served its intended purpose. We received important information from members of the public about which we had not previously been aware that led us to reconsider, and ultimately withdraw, our acceptance of the proposed settlement. Under these circumstances, the Commission is authorized to withdraw acceptance of the proposed consent agreement with the parties and return the matter to administrative litigation for further proceedings and adjudication.[8] We do so

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7 *See* Letter from Matthew Jarrard, Deputy Division Chief/Health Planning Dir., Healthcare Facility Regulation Div., Ga. Dep't of Cmty. Health, to G. Edward Alexander, President and CEO, North Albany Medical Ctr. 4 (June 3, 2014).

8 *See* Commission Rule 3.25(f), 16 C.F.R. § 3.25(f) (providing that, following the public comment period, the Commission may "decide[], based on comments received or otherwise, to withdraw its acceptance of the agreement, . . . [and] return to adjudication any portions of the matter previously withdrawn from adjudication for further proceedings"); *see also* Agreement Containing

now because we continue to have reason to believe that Phoebe Putney's acquisition of Palmyra violated Section 7 of the Clayton Act and Section 5 of the FTC Act and now also believe that structural relief remains available.

Consent Order ¶ 20, *available at* http://www.ftc.gov/sites/default/files/documents/cases/2013/08/130822phoebeputneyorder.pdf ("The Commission . . . may . . . withdraw its acceptance of this Consent Agreement and so notify Respondents, in which event it will take such action as it may consider appropriate, including returning the matter to adjudication.").

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, September 18, 2014

Letter approving application to divest the Cole & Garrett Funeral Home in the Nashville, Tennessee area to William Gregory.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.*, Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on March 24, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposal to divest certain assets to William Gregory through newly created Cole & Garrett LLC.

After consideration of SCI's Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and William Gregory in connection with SCI's Petition and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, September 18, 2014

Letter approving application to divest the Oak Hill Memorial Park, Funerals and Cremations in Kingsport, Tennessee to Heritage Family Funeral Services, Inc., and Heritage Family Cemetery, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.*, Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on March 24, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposal to divest certain assets to Heritage Family Funeral Services, Inc., and Heritage Family Cemetery, Inc. (collectively "Heritage Family").

After consideration of SCI's Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and Heritage Family in connection with SCI's Petition and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, September 18, 2014

Letter approving application to divest the Cheatham Hill Memorial Park / Southern Cremations & Funerals (which is a combination funeral home and cemetery) and Holly Hill Memorial Park and Eastlawn Memorial Park in Georgia to Hunsaker Partners LLC.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.*, Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on March 7, 2014, and the Petition For Approval of Proposed Divestiture filed by SCI and received on July 3, 2014 (collectively the "Petitions"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposals to divest certain assets to Hunsaker Partners LLC.

After consideration of SCI's Petitions and other available information, the Commission has determined to approve the proposed divestitures as set forth in the Petitions. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and Hunsaker Partners LLC in connection with SCI's Petitions and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

JERK, LLC D/B/A JERK.COM
AND
JOHN FANNING

Docket No. 9361. Order, October 9, 2014

Order extending the time in which Respondent needs to reply to Complaint Counsel's motion.

ORDER EXTENDING TIME TO RESPOND TO COMPLAINT COUNSEL'S MOTION FOR SUMMARY JUDGMENT

On October 2, 2014, Respondent John Fanning ("Fanning") filed a Motion for Extension of Time requesting an additional thirty days to file his response opposing Complaint Counsel's Motion for Summary Decision in this proceeding. Complaint Counsel opposes the Motion, but, in the alternative, proposes an extension of fourteen days. For the reasons below, the Commission grants Mr. Fanning an additional twenty-one days to file his response.

Commission Rule 3.24(a)(2), 16 C.F.R. § 3.24(a)(2), gives parties fourteen days after service of a motion for summary decision to file opposing affidavits with the Commission. The time periods prescribed by the Commission Rules of Practice ordinarily should afford parties to FTC proceedings sufficient time to file submissions of sufficient quality and detail to aid in the preparation of Commission opinions and orders. Absent a Commission order granting an extension of time to Mr. Fanning, his response would be due on October 14.

Respondent has requested that the time to file an opposition be extended by thirty days. Respondent represents that he needs additional time due to a combination of the voluminous nature of the case record, the need to separate and address materials directed at Jerk, LLC or Mr. Fanning, and the effect of the compressed schedule on his counsel (Motion ¶¶ 2, 5). He asserts that it would be unfair and prejudicial to require him to respond without a reasonable extension in the deadline (Motion ¶ 4).

Under these circumstances, the Commission is willing to grant Mr. Fanning additional time to prepare his response. Respondent's request for a thirty-day extension, however, would more than triple the standard time for a response. In view of the volume of material appended to Complaint Counsel's filing, we too agree that some additional time to respond is warranted. Moreover, the other respondent in this proceeding, Jerk LLC, was not served with Complaint Counsel's Motion until October 7. Extending the response deadline for each respondent until November 4 will give both Respondents at least 28 days to respond.

In opposing Respondent Fanning's motion, Complaint Counsel has also requested an additional six days to reply. Because the nature of Respondent's opposition filing is unknown, however, that request is premature. We therefore decline Complaint Counsel's request at this time, without prejudice.

IT IS ORDERED THAT Respondents John Fanning and Jerk, LLC may file their responses to Complaint Counsel's Motion for Summary Decision on or before Tuesday, November 4, 2014.

By the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, October 9, 2014

Letter approving application to divest Greenwood Cemetery and New Gray Cemetery in Knoxville, Tennessee to Alliance Funeral Group, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.*, Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on July 24, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposal to divest certain assets to Alliance Funeral Group, Inc. ("Alliance").

After consideration of SCI's Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and Alliance in connection with SCI's Petition and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, October 9, 2014

Letter approving application to divest Lubyen Family Dilday-Motell Mortuary, Funeraria Del Angel JT Oswald, and Custer Christiansen Mortuary in the Los Angeles area to Guerra & Gutierrez LLC and Guerra & Gutierrez Enterprises, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.*, Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on July 31, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposal to divest certain assets to Guerra & Gutierrez LLC and Guerra & Gutierrez Enterprises, Inc. (collectively "G&G").

After consideration of SCI's Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and G&G in connection with SCI's Petition and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, October 9, 2014

Letter approving application to divest three funeral homes and two cemeteries in the Miami area to Miami Memorial LLC.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.*, Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on August 7, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423, SCI requests prior Commission approval of its proposal to divest certain assets to Miami Memorial LLC ("MMLLC").

After consideration of SCI's Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and MMLLC in connection with SCI's Petition and has assumed them to be accurate and complete.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

PHOEBE PUTNEY HEALTH SYSTEM, INC.; PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.; PHOEBE NORTH, INC.; HCA INC.; PALMYRA PARK HOSPITAL, INC.; AND HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY

Docket No. 9348. Order, October 30, 2014

Order granting temporary stay in the proceedings.

ORDER GRANTING RESPONDENTS' UNOPPOSED MOTION FOR TEMPORARY STAY OF PROCEEDING

On October 21, 2014, Respondents filed an Unopposed Motion For Temporary Stay of the administrative proceedings in this matter under Commission Rule 3.22(a). On October 22, 2014, the Administrative Law Judge certified that motion to the Commission, with the recommendation that the Motion be granted. For the following reasons, the Commission grants the Unopposed Motion for Temporary Stay.

The Commission issued an Order returning this matter to adjudication on September 4, 2014, after determining to withdraw its acceptance of a proposed Consent Agreement for the reasons explained in the Statement of the Commission issued in connection with the Order. In brief, the Commission had accepted for public comment a proposed Consent Agreement without a structural remedy, the most favored way to restore competition, because it appeared at that time that Georgia's Certificate of Need ("CON") laws would preclude a divestiture of Palmyra Park Hospital, Inc. ("Palmyra"). Thereafter -- as a result of public comments the Commission received and other information obtained by the Commission in response to the public comments -- the Commission became aware that the CON laws might not preclude a structural remedy in this matter. The

Commission's understanding was based, in part, on a June 3, 2014 initial determination by the Georgia Department of Community Health ("DCH") staff that, among other things, "returning Phoebe North to its status as a separately licensed . . . hospital for divestiture would not require prior CON review and approval."[1] At the time the Commission returned this matter to adjudication, the Respondents had filed an appeal from the DCH staff's initial determination with the DCH hearing officer, but the appeal was still pending. The Commission Order provided that the administrative trial should begin on February 4, 2015.

On October 2, 2014, the DCH hearing officer overturned the DCH staff's initial determination letter. In addition, the DCH Commissioner, who will issue the final agency decision on the matter, issued a public statement indicating that he "is in support of and in agreement with the hearing officer decision." *See* Ex. 2 of Respondents' Unopposed Motion.

In light of these developments, which create uncertainty regarding the applicability of Georgia's CON laws to the feasibility of re-establishing Palmyra as a second Dougherty County hospital -- and of the transfer of Palmyra from the Hospital Authority of Albany-Dougherty County ("Authority") to a private owner -- the Commission has decided to issue a temporary stay of the administrative proceeding in this matter as set forth below. This decision is based on Respondents' representation that the status quo will be preserved and that neither party will be prejudiced by a stay. Respondents indicate that they will continue to abide by the Stipulated Preliminary Injunction entered by the United States District Court in the related federal court litigation. We are also mindful of Respondents' statement that continued litigation will cost Respondents and third parties significant resources in continuing to comply with discovery requests.

We also base our decision on the fact that Complaint Counsel has not opposed Respondents' Motion. In its Memorandum

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1 *See* Letter from Matthew Jarrard, Deputy Division Chief/Health Planning Dir., Healthcare Facility Regulation Div., Ga. Dep't of Cmty. Health, to G. Edward Alexander, President and CEO, North Albany Medical Ctr. 4 (June 3, 2014).

Relating to Respondents' Motion, Complaint Counsel concurs with both of the considerations raised by Respondents in seeking the stay. Complaint Counsel states that its case will not be prejudiced by a limited stay of the administrative proceedings because the duration of the stay will be short, and a number of protections are in place through additional commitments from Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and the Authority.

In deciding whether to grant Respondents' Motion, we exercise our discretion to oversee this adjudication, comparable to the broad discretion of a court "to stay proceedings[,]. . . incidental to the power inherent in every court to control the disposition of the [cases] on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for an exercise of judgment." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). While the Commission has a strong interest in completing Part 3 proceedings expeditiously,[2] we conclude that there is good cause to issue a temporary stay in this case.

Accordingly,

IT IS ORDERED that all proceedings before the Administrative Law Judge in this matter be, and they hereby are, stayed until the earlier of:

A. Thirty (30) days after the expiration of the period for seeking any judicial appeal for a final decision of the Georgia Department of Community Health in DET2014-033, *see* OCGA 50-13-19(b); or

B. January 28, 2015.

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2 *See* Rule 3.1, 16 C.F.R. § 3.1 ("[T]he Commission's policy is to conduct [adjudicative] proceedings expeditiously."); Rule 3.41(b), 16 C.F.R. § 3.41(b) ("Hearings shall proceed with all reasonable expedition . . . ."); Rules of Practice Amendments, 61 Fed. Reg. 50,640 (FTC Sept. 26, 1996) ("[A]djudicative proceedings shall be conducted expeditiously and … litigants shall make every effort to avoid delay at each stage of a proceeding.").

By the Commission, Commissioner Wright and Commissioner McSweeny not participating.

Interlocutory Orders, Etc.

IN THE MATTER OF

JERK, LLC D/B/A JERK.COM
AND
JOHN FANNING

Docket No. 9361. Order, December 5, 2014

Order denying Complaint Counsel's Motion to Supplement the Record on Complaint Counsel's pending Motion for Summary Decision.

ORDER DENYING WITHOUT PREJUDICE COMPLAINT COUNSEL'S MOTION TO SUPPLEMENT THE RECORD FOR SUMMARY DECISION

By McSWEENY, Commissioner:

On November 25, 2014, Complaint Counsel filed a Motion to Supplement the Record on Complaint Counsel's pending Motion for Summary Decision. Complaint Counsel seeks to add to the factual record for summary decision Respondents' admissions that resulted from a failure to timely respond to Complaint Counsel's Second Request for Admissions. On November 26, 2014, Respondent John Fanning filed an objection to Complaint Counsel's motion.

For the reasons set forth below, Complaint Counsel's Motion is **DENIED WITHOUT PREJUDICE**.

Background

On September 29, 2014, Complaint Counsel moved for summary decision, asking for a finding of liability against Respondents Jerk, LLC ("Jerk") and John Fanning. In support of its motion, Complaint Counsel submitted a Statement of Material Facts as to Which There is No Genuine Issue for Trial. On November 4, 2014, Respondent John Fanning filed his opposition to Complaint Counsel's Motion for Summary Decision. Respondent Jerk did not respond to the motion.[1] On November

1 In fact, Jerk has not provided any response or otherwise participated in this action since Jerk counsel of record filed a notice with the Commission and the

12, Complaint Counsel filed their reply, and Mr. Fanning filed a surreply on November 19.

Following Mr. Fanning's opposition to Complaint Counsel's motion, on November 4, Complaint Counsel served its Second Request for Admissions on Respondents Jerk and Mr. Fanning. Neither Jerk nor Mr. Fanning responded to the Second Request for Admissions within the ten-day period provided by Commission Rule 3.32(b). *See* Declaration of Beatrice Burke, ¶ 7 (attached to Complaint Counsel's Motion to Supplement the Record). Complaint Counsel now move to add those statements to the record for their pending motion for summary decision as admissions.

In his opposition to the motion to supplement the record, Mr. Fanning admits that he did not respond to the Request for Admissions by November 14, but also states the failure to respond "was obviously an oversight." Fanning Opposition, ¶ 2. He also states that counsel for Mr. Fanning "has taken steps to complete the answers and expects to serve responses forthwith." *Id.* Mr. Fanning argues that Complaint Counsel provides no basis in Commission rules to supplement the summary decision record. He also claims there is undue prejudice against him if the admissions are added to the summary decision record and given conclusive effect.

Analysis

Commission Rule 3.24(a)(3) permits the affidavits supporting or opposing a motion for summary decision to be supplemented with additional discovery. Thus, contrary to Mr. Fanning's argument, Complaint Counsel's motion to supplement the summary decision record is properly before us.

Commission Rule 3.32(b) states that when a party serves written requests for admission on another party, "the matter is admitted unless, within ten (10) days after service . . . the party to whom the request is directed serves . . . a sworn written answer or objection addressed to the matter." Here, as Mr. Fanning admits,

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Administrative Law Judge that as of July 18, 2014, she and her law firm no longer represent Jerk.

he did not respond to the Second Request for Admissions within the deadline. Thus, under Commission rules, the matters are deemed admitted. *See* 16 C.F.R. § 3.32(b). Moreover, absent other action, the admitted matters are deemed "conclusively established." *See* 16 C.F.R. § 3.32(c).

Mr. Fanning argues that his failure to respond to the Second Request for Admissions was inadvertent and that the use of the admissions is prejudicial. There is no question that the consequences to a party of having requests for admission deemed admitted and conclusively established can be severe. We note, however, that parties facing such consequences may appeal to an Administrative Law Judge. Commission Rule 3.32(b) states that requests for admission must be answered within ten (10) days or "such shorter or longer time as the Administrative Law Judge may allow." 16 C.F.R. § 3.32(b). Rule 3.32(c) provides that the ALJ "may permit withdrawal or amendment [of an admission] when the presentation of the merits of the proceeding will be subserved thereby and the party who obtained the admission fails to satisfy the Administrative Law Judge that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits." 16 C.F.R. § 3.32(c).

In light of the fact that the relevant requests for admissions were served recently and Mr. Fanning's failure to respond might be due to excusable oversight, we decline to supplement the summary decision record at this time. We will allow Jerk and Mr. Fanning the opportunity to seek relief from the ALJ for their failure to timely respond to Complaint Counsel's Second Request for Admissions pursuant to Rule 3.32(c). Any such motion must be filed no later than December 12, 2014.

Accordingly, Complaint Counsel's Motion to Supplement the Record for Summary Decision is hereby DENIED WITHOUT PREJUDICE.

By the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

COMMUNITY HEALTH SYSTEMS, INC.
AND
HEALTH MANAGEMENT ASSOCIATES, INC.

Docket No. C-4427. Order, December 15, 2014

Letter approving application to divest Carolina Pines Regional Medical Center and related assets to Capella Healthcare, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Bilal Sayyed, Esquire
Kirkland & Ellis, LLP

Re: *In the Matter of Community Health Systems and Health Management Associates, Docket No. C-4427*

Dear Mr. Sayyed:

This responds to the Application for Approval of Proposed Divestiture ("Application") to Capella Healthcare, Inc., filed by Community Health Systems on October 14, 2014. Pursuant to the Decision and Order in Docket No. C-4427, Community requests prior Commission approval of its proposal to divest certain assets to Capella. The Application was placed on the public record for comments for thirty days, until October 20, 2014, and no comments were received.

After consideration of the Application and other available information, the Commission has determined to approve the proposed divestiture to Capella as set forth in the Application. In according its approval, the Commission has relied upon the information submitted and the representations made by Community and Capella in connection with Community's Application and has assumed them to be accurate and complete.

This also responds to Community's Petition for Extension of Time ("Petition") filed by Community dated October 14, 2014. Pursuant to Commission Rule 4.3(b), 16 C.F.R. § 4.3(b), Community requests an extension of time in which to complete

the divestiture required by the Decision and Order in this matter. Pursuant to the terms of the Decision and Order, Community was required to complete the divestiture within four months from the date the Commission issued the Order as final, or by October 14, 2014. Rule 4.3(b) provides that "the Commission, for good cause shown, may extend any time limit prescribed by the rules in this chapter or order of the Commission." Under applicable precedent, Community has the burden of demonstrating good cause, and granting an extension of time rests in the discretion of the Commission.

The Commission has reviewed this Petition, Community's compliance reports, and other information, and, after careful consideration, has determined to grant this Petition and extend the time in which Community must complete the divestiture to Capella as approved by the Commission today. Community has shown that it began its divestiture efforts immediately upon reaching the consent agreement with the Commission staff, that it has acted diligently throughout the entire divestiture period and in close communication with the Commission staff to reach a final agreement with Capella, and that the delays in completing negotiations were not due to unreasonable demands or other unreasonable conduct by Community. The Commission expects that Community will complete the divestiture promptly upon the Commission's approval.

This is not a determination as to any request for extension of time pertaining to any other divestiture required by the Order.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL
AND
STEWART ENTERPRISES, INC.

Docket No. C-4423. Order, December 17, 2014

Letter approving application to divest Lassila Funeral Chapel in Auburn, California to Claney Oatmeyer Semenyuk, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Amanda Wait, Esq.
Hunton & Williams LLP

Re: *In the Matter of Service Corporation International and Stewart Enterprises, Inc.*, Docket No. C-4423

Dear Ms. Wait:

This is in reference to the Petition For Approval of Proposed Divestiture filed by Service Corporation International ("SCI") and received on October 23, 2014 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4423 ("Order"), SCI requests prior Commission approval of its proposal to divest certain funeral home assets to Claney Oatmeyer Semenyuk, Inc. ("COS).

After consideration of the Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by SCI and COS in connection with the Petition and has assumed them to be accurate and complete.

This letter also responds to the Petition for Extension of Time ("Petition for Extension") filed by SCI on October 27, 2014, pursuant to Commission Rule 4.3(b), 16 C.F.R. § 4.3(b). Under the Order, SCI was required to complete the divestitures no later than 180 days after the Commission issued the Order, or by

October 27, 2014. Rule 4.3(b) provides that "the Commission, for good cause shown, may extend any time limit prescribed by the rules in this chapter or order of the Commission." Under applicable precedent, SCI has the burden of demonstrating good cause, and granting an extension of time rests in the discretion of the Commission.

After consideration of SCI's request, the Commission has determined to grant the Petition for Extension and extend the time in which SCI must complete the divestitures required by the Order to no later than December 29, 2014. SCI has shown that it began its divestiture efforts immediately upon reaching the consent agreement with the Commission staff, that it has acted diligently throughout the entire divestiture period and in close communication with the Commission staff, and that the delays in completing negotiations were not due to unreasonable demands or other unreasonable conduct by SCI.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

JERK, LLC D/B/A JERK.COM
AND
JOHN FANNING

Docket No. 9361. Order, December 22, 2014

Order denying Complaint Counsel's Motion to Supplement the Record on Complaint Counsel's pending Motion for Summary Decision.

ORDER EXTENDING THE TIME FOR JERK, LLC TO RESPOND TO THE MOTION FOR SUMMARY DECISION AND RESCHEDULING THE EVIDENTIARY HEARING BEFORE THE ADMINISTRATIVE LAW JUDGE

On September 29, 2014, Complaint Counsel moved for summary decision on the claims against Respondents Jerk, LLC ("Jerk") and John Fanning. The Commission extended the time for Respondents to oppose the Motion for Summary Decision to November 4, and Mr. Fanning opposed the motion but Jerk did not. On November 12, Complaint Counsel filed a reply, and Mr. Fanning filed a surreply on November 19. Subsequently, on December 8, Jerk reappeared and filed a "Motion to Extend the Time to Respond to Motion for Summary Decision, and to Reschedule the Evidentiary Hearing." Complaint Counsel has opposed this motion.

Jerk argues that it fully participated in this case until July 2014, when its prior attorney terminated her representation. Jerk asserts that it had difficulty finding another attorney and was unrepresented until December 2, 2014, when it retained new counsel. Jerk Mot. at 2. Jerk contends that the Commission should vacate any findings or admissions entered against it by default and allow it to respond to the Motion for Summary Decision on the merits. Specifically, Jerk seeks to: (1) extend the deadline for its opposition to Complaint Counsel's Motion for Summary Decision to a date on or after January 26, 2015; (2) postpone the Commission's decision until after Jerk's response; and (3) reschedule the evidentiary hearing before the Administrative Law Judge to a date on or after March 2, 2015. In the alternative, Jerk requests ten days to respond to Complaint Counsel's Motion for Summary Decision without changing the

date of the evidentiary hearing. *Id.* at 1-2, n.2. Jerk argues that no party would be unduly prejudiced by a changed schedule because it no longer operates jerk.com or any other website; thus, there would be no detriment to consumers or the public. *Id.* at 3.

Complaint Counsel opposes Jerk's motion, contending that Jerk offers no valid reason for its delay. Opp. at 3-5. Complaint Counsel observes that Jerk "effectively disappeared from the case for the majority of the discovery period, ignoring multiple deadlines, motions, and orders, including Chief Judge Chappell's express warning that 'Jerk remains a party in this case and is not entitled to ignore a discovery motion.'" *Id.* at 4. In addition, Complaint Counsel argues that it will be prejudiced because it will be forced to respond to Jerk's opposition without the benefit of discovery. *Id.* at 5-6. Complaint Counsel also asserts that permitting delay would thwart the Commission's preference for expeditious administrative litigation. *Id.* at 6-7.

Jerk's failure to respond to discovery requests and other obligations cannot be excused simply because it had a difficult time finding legal representation. However, the consequences of denying leave to file an opposition to the Motion for Summary Decision in this matter would be extraordinarily severe. In addition, we are cognizant of the preference for having disputes resolved on their merits, and believe the circumstances here justify granting a limited time for Jerk to file a response. Accordingly, to ensure that the Commission may fully consider the merits of this matter, we grant Jerk, LLC until January 5, 2015 to respond to Complaint Counsel's Motion for Summary Decision.[1] Because this will necessarily delay a decision on the motion, the hearing before the Administrative Law Judge is resecheduled to begin on March 23, 2015.

As Complaint Counsel observes, no party has sought to reopen discovery in this case. Opp. at 6. Nonetheless, Complaint Counsel has rightly questioned the fairness of having to address Jerk's opposition after Jerk was entirely unresponsive during the

1 We note that our ruling is limited to Jerk.com and should not be interpreted as an invitation for Mr. Fanning to file additional submissions. He has already filed an opposition and surreply to Complaint Counsel's Motion for Summary Decision.

discovery period. *Id.* We agree that Jerk should not be permitted to ignore its discovery obligations, particularly in light of Judge Chappell's numerous orders compelling interrogatory responses, production of documents, and appearance for depositions. Such discovery issues are properly addressed by the ALJ upon motions by the parties. In addition, the Administrative Law Judge may issue a revised scheduling order to account for the rescheduled hearing date.

Accordingly,

IT IS ORDERED THAT Respondent Jerk, LLC may file its response to Complaint Counsel's Motion for Summary Decision on or before January 5, 2015; and

IT IS FURTHER ORDERED THAT the hearing before the Administrative Law Judge of the Federal Trade Commission on the charges set forth in the Complaint will begin on March 23, 2015.

By the Commission.

RESPONSES TO PETITIONS TO QUASH OR LIMIT COMPULSORY PROCESS

SHIRE VIROPHARMA, INC.
F/K/A
VIROPHARMA, INC.

FTC File No. 121 0062 – Decision, October 29, 2014

RESPONSE TO SHIRE VIROPHARMA, INC.'S, AS SUCCESSOR TO VIROPHARMA, INC., PETITION TO QUASH SUBPOENA *AD TESTIFICANDUM* DATED SEPTEMBER 4, 2014

By McSWEENY, Commissioner:

Shire ViroPharma, Inc. ("Shire"), as successor to ViroPharma, Inc. ("ViroPharma"),[1] has petitioned to quash a subpoena ad testificandum issued to ViroPharma on September 4, 2014. For the reasons stated below, the petition to quash ("Petition") is denied.

I. BACKGROUND

On September 4, 2014, the Commission issued a Subpoena Ad Testificandum ("Subpoena") to obtain oral testimony from Shire at an investigational hearing as part of an investigation to determine whether ViroPharma may have unlawfully delayed generic competition with its branded drug, Vancocin, by filing and maintaining multiple meritless petitions to the U.S. Food & Drug Administration ("FDA") and the courts or by filing and maintaining those petitions without regard to the merits. Those petitions include, among other things, a citizen petition, amendments and supplements to that petition, Freedom of Information Act ("FOIA") requests, and lawsuits against the FDA.

1 Shire acquired ViroPharma in January 2014. Pet. at 1. We refer to ViroPharma when our discussion relates to events that predated the acquisition.

Under Section 2.7(h) of the FTC Rules of Practice and Procedure, 16 C.F.R. § 2.7(h), the Commission may obtain the testimony of a corporate entity by describing with "reasonable particularity the matters for examination." The corporate entity then "must designate one or more officers, directors, or managing agents, or designate others persons who consent, to testify on its behalf."[1] Rule 2.7(h) was added to the FTC Rules of Practice and Procedure in 2012. This rule provides a process for taking oral testimony from corporate entities that parallels the process in Federal Rule of Civil Procedure 30(b)(6).[2] Accordingly, precedent regarding Rule 30(b)(6) provides us with useful guidance in evaluating Shire's Petition.

The testimony of the designated witness presents the corporation's position on the topics and represents the collective knowledge of the corporation, not merely that of the individual witness.[3] Consistent with Rule 2.7(h)'s requirements, the Subpoena required Shire's designated witness or witnesses to testify on October 3, 2014, regarding 20 specified topics. Those topics include ViroPharma's Vancocin filings with the FDA, including its citizen petition, amended petition, and their supplements; ViroPharma's lawsuits against the FDA; studies and reports about the approval, safety, or use of Vancocin; the sales and marketing of Vancocin; and ViroPharma's analyses of the likelihood and market effect of generic Vancocin entry.

In its Petition, Shire contends that the Commission's request for oral testimony is unduly burdensome because many topics for which the Commission seeks testimony are the subject of ViroPharma's submissions in response to a Civil Investigative Demand ("CID") and its white papers.[4] In addition, Shire contends that because employees involved in ViroPharma's FDA petitioning have left the company, "[p]reparing a company

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1 16 C.F.R. §2.7(h).

2 *See* 77 Fed. Reg. 3191-01 (Jan. 23, 2012).

3 *See, e.g., QBE Ins. Corp. v. Jorda Enters., Inc.*, No. 10-21107, 2012 WL 266431, at *9 (S.D. Fla., Jan. 30, 2012).

4 Pet. at 4-5.

representative with no first-hand knowledge of the topics to attempt to answer" questions on the topics "would require a massive effort disproportionate to any new information that staff could hope to gain."[5]

II. ANALYSIS

Compulsory process is proper if the inquiry "is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant" to the investigation.[6] Here, Shire does not question the relevance of any topic identified in the Subpoena. Nor does Shire argue that the Commission failed to describe with "reasonable particularity" the topics identified in the Subpoena as required by Rule 2.7(h). Instead, Shire contends that it is unduly burdensome because of the need to prepare witnesses who "must testify about information known or reasonably available to the entity[.]"[7]

While identifying and preparing the appropriate witnesses to testify on behalf of a corporation might require substantial effort, that does not excuse a corporation from the obligation to provide relevant testimony. Courts have acknowledged that "[p]reparing a . . . designee [to provide a corporation's testimony] may be an onerous and burdensome task, but this consequence is merely an obligation that flows from the privilege of using the corporate form to do business."[8] Despite the burden, the corporation must make a conscientious, good-faith effort to prepare its designated witnesses so that they can answer fully the questions posed.[9] "[A] corporation with no current knowledgeable employees must prepare its designees by having them review available materials,

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5 Pet. at 4.

6 *United States v. Morton Salt Co*., 338 U.S. 632, 652 (1950). *See also FTC v. Invention Submission Corp*., 965 F.2d 1086, 1088 (D.C. Cir. 1992); *FTC v. Texaco, Inc.*, 555 F.2d 862, 874 (D.C. Cir. 1977).

7 16 C.F.R. §2.7(h).

8 *QBE*, 2012 WL 266431, at *11.

9 *Sprint Commc'ns Co., L.P. v. Theglobe.com, Inc.*, 236 F.R.D. 524, 528 (D. Kan. 2006).

such as fact witness deposition testimony, exhibits to depositions, documents produced in discovery, materials in former employees' files and, if necessary, interviews of former employees or others with knowledge."[10] Such an approach is necessary to ensure that those who are entrusted to carry out a law enforcement inquiry are not shifted from one corporate representative to another in a blind search for a witness who is willing and able to testify on behalf of the corporation.[11] Thus, the obligation to identify and prepare corporate designees to testify ordinarily provides no basis to excuse the testimony.

We next turn to the specific issues identified in Shire's Petition.

A. Oral Testimony is Appropriate Even Though Written Narrative Responses, Documents, or Other Parties Have Addressed the Same Topics

We reject Shire's principal contention that the Subpoena is unreasonable and unduly burdensome because staff has information available from other sources that cover the designated topics. Specifically, Shire argues that previously produced company documents address the topics enumerated in the Subpoena.[12] Shire also argues that it has previously submitted material addressing the designated topics in its white papers and responses to interrogatories.[13] Finally, Shire claims that other parties are better positioned to address certain topics covered by the Subpoena and that consequently, Shire's testimony would not be particularly beneficial.[14]

Testimony elicited at an investigational hearing is qualitatively different from documentary evidence and written

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10 *QBE*, 2012 WL 266431, at *11.

11 *See Great Am. Ins. Co. of NY v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 538 (D. Nev. 2008).

12 Pet. at 5-7.

13 Pet. at 4-7, 13-16.

14 Pet. at 9-10.

discovery.[15] An investigational hearing is iterative and live. It can elicit a more spontaneous response than written discovery. Moreover, even when a witness offers a conclusory or prepared response, an investigational hearing allows staff to probe the underlying facts, circumstances, and motivations. Consequently, "[b]y its very nature, the discovery process entails asking witnesses questions about matters that have been the subject of other discovery . . . Thus, the fact that information has been provided . . . concerning a particular category does not, in itself, make that category an impermissible subject of a 30(b)(6) deposition."[16]

Furthermore, even when a corporation has responded to document requests, oral testimony can provide a "roadmap" through the documents[17] and shed light on how the corporation

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15 *See, e.g.*, *In re Vitamins Antitrust Litig.*, 216 F.R.D. 168, 174 (D.D.C. 2003) (rejecting argument that a Rule 30(b)(6) deposition is unnecessary or duplicative by distinguishing between depositions and document production and stating that "the two forms of discovery are not equivalent."); *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989) ("Because of its nature, the deposition process provides a means to obtain more complete information [than a written response to an interrogatory] and is, therefore, favored.").

16 *Tri-State Hospital Supply Corp. v. United State*s, 226 F.R.D. 118, 126 (D.D.C. 2005). *Accord New Jersey v. Sprint Corp.*, No. 03-2071, 2010 WL 610671, at *2 (D. Kan. Feb. 19, 2010) (a party "should not be prevented from questioning a live witness in a deposition setting just because the topics proposed are similar to written requests[.] . . Such a result would essentially limit a [party] to the first form of discovery served, since the topics are bound to overlap."); *Mitsui & Co. (U.S.A.), Inc. v. Puerto Rico Water Res. Auth.*, 93 F.R.D. 62, 65 (D.P.R. 1981) (explaining 30(b)(6) deposition is "supplementary and complementary" to other discovery, including depositions of individual employees); *Ierardi v. Lorillard, Inc.*, No. 90-7049, 1991 WL 158911, at *2 (E.D. Pa. Aug. 13, 1991) (rejecting argument that other discovery procedures would cause Rule 30(b)(6) testimony to be fruitless). *See also, e.g.*, *Great Am. Ins.*, 251 F.R.D. at 541 (adequately preparing 30(b)(6) designee may require educating witness with witness testimony, exhibits, and prior submissions).

17 *See State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D 203, 208 (E.D. Pa. 2008) (noting a 30(b)(6) deposition can provide a "roadmap" in navigating large amounts of written discovery by allowing a deponent to answer questions or directing counsel to the relevant documents or interrogatory responses).

has construed them.[18] For these reasons, courts consistently reject the proposition that a corporation need not provide testimony in response to a Rule 30(b)(6) subpoena on the ground that its documents are a viable substitute.[19] In fact, oral testimony conventionally follows written submissions because it enables FTC staff to probe the details, explanations, and limitations of prior written responses. "[A] party who has received written production is entitled to explanations of the information produced, including how the information was gathered, by whom, whether or not the party adopts that information, where the information came from, [and] whether there is some additional information."[20] Where responses include ambiguities and qualifications, those "ambiguities and qualifications mean that [the party's] responses are subject to interpretation. In this situation, the . . . [investigator] should be permitted to depose [the party] regarding these qualifications and attempt to clarify these ambiguities."[21]

Many of Shire's CID submissions raise questions that are best explored only through questions propounded to a live witness in an investigational hearing. In its Petition, Shire focuses in particular on Topic 13 of the Subpoena, which seeks testimony on "[e]ach Vancocin FDA Submission."[22] Shire asserts that parts of Topic 13 seek information that Shire already provided in its responses to CID Specifications 21 through 23.[23] Yet those

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18 *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996).

19 *See, e.g., QBE*, 2012 WL 266431, at *11 (citing *Great Am. Ins.*, 251 F.R.D. at 540); *Ierardi*, 1991 WL 158911, at *2 (explaining that documents can be interpreted in various ways and 30(b)(6) witness can provide the corporation's interpretation); *Twentieth Century Fox Film Corp. v. Marvel Enters., Inc.*, Case No. 01-CIV-3016, 2002 WL 1835439, at *3 (S.D.N.Y. Aug. 8, 2002) (requiring a 30(b)(6) designee to provide the corporation's interpretation of documents and events); *In re Vitamins Antitrust Litig.*, 216 F.R.D. at 174 (rejecting argument that underlying documents provide all relevant information).

20 *United States v. Educ. Mgmt. LLC*, No. 2:07-CV-00461, 2014 WL 1391105, at *4 (W.D. Pa. Feb. 24, 2014) (quoting *State Farm*, 250 F.R.D. at 207).

21 *Educ. Mgmt.*, 2014 WL 1391105, at *5.

22 Pet. at 5.

23 *Id*.

responses were incomplete and lacking in detail,[24] or invited the Commission to request additional information.[25] Shire identifies other topics that were also the subject of the earlier CID.[26] When there are "explanations or interpretations that [the subpoena recipient] has regarding the submissions, [the investigator is]

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24 Specification 22 asks for information regarding amendments and supplements to ViroPharma's citizen petition. ViroPharma's response states, in part, "If the FTC has any particular topics that it can identify for which it would like additional details, ViroPharma will review to see what additional response it can provide." Pet. at Exh. 4. Specification 23 asks about assessments ViroPharma made to the merits of its Vancocin FDA Submissions. Shire's response to this specification states that ViroPharma "will identify any further specific non-privileged assessments as it continues its review of documents." Pet. at Exh. 3.

25 For example, ViroPharma's response to Specification 21 states:

> ViroPharma petitioned the FDA in order to raise significant scientific, legal, and regulatory issues that arose in connection with the FDA's consideration and adoption of new bioequivalence standards for approving generic versions of Vancocin. The Vancocin FDA Submissions were generally reactive to shifting FDA positions on bioequivalence standards for generic versions of Vancocin, specific FDA administrative actions (e.g., the convening of advisory committee meetings, the publication of draft guidance), and new information made available to ViroPharma by FDA (in pieces and over time) as a result of a court order following FOIA litigation, from tests performed by ViroPharma, and from the scientific community generally. With regard to the documents relating to this Specification 21, please refer to VP_00000034-23655, VP0025337-730 for the scientific, legal and regulatory issues raised by the FDA Submissions.

Pet. at 5. This response raises several questions that need to be explored through oral testimony because the response is laden with vague and nonspecific terms such as "generally." In addition, the investigation is entitled to specific answers about specific situations, such as the tests ViroPharma performed and the information ViroPharma learned from particular sources.

26 Pet. at 7-8, 13-16.

entitled to them[.]"[27] As such, Shire's earlier submissions on these issues do not excuse Shire's testimony on these topics. The investigators are "entitled to test the answers that they were provided."[28]

We also find no merit in Shire's argument that some topics identified in the Subpoena are best addressed by other parties.[29] Even if other parties do possess relevant information, that does not dispense with the Commission's need to take testimony from Shire to understand Shire's position on these issues. As for Shire's claim that it has no more helpful or relevant information, that contention is inconsistent with objections elsewhere in its Petition that Shire has produced documents on these particular topics.[30]

B. The Breadth of the Topics Identified in the Subpoena Does Not Impose Undue Burden

Although Shire does not challenge the relevance of any of the 20 designated topics or argue that the topics were described in insufficient detail, it does claim that the designated topics are overly broad. Even if we were to accept Shire's description, "broadness alone is not sufficient justification to refuse enforcement of a subpoena."[31]

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27 *In re Vitamins Antitrust Litig.*, 216 F.R.D. at 174 (citing Fed. R. Civ. P. 30(b)(6)).

28 *State Farm*, 250 F.R.D. at 208. *See also Marker*, 125 F.R.D. at 126 ("Nothing in the Federal Rules of Civil Procedure gives a party the right to not respond or inadequately respond to a Rule 30(b)(6) deposition notice or subpoena request and elect to supply the answers in a written response to an interrogatory.");
Educ. Mgmt., 2014 WL 1391105, at *4 ("Asking . . . 30(b)(6) deponent questions regarding the interrogatory responses appears to provide an efficient means" to identify and narrow issues).

29 Pet. at 9 (discussing topics such as FDA approval and clinical studies of Vancocin that occurred before ViroPharma acquired the product).

30 *See* Pet. at 7.

31 *Adams v. FTC*, 296 F.2d 861, 867 (8th Cir. 1961).

Although we recognize that considerable effort will be required to prepare a witness or witnesses to testify, the alternative – for the Commission to identify the appropriate Shire employees and agents and take their testimonies – would require a far greater expenditure of both Shire and Commission resources. For example, Shire identifies 42 "employees and agents who made important decisions or significant contributions regarding the FDA Submissions."[32] Shire is far better equipped to locate these individuals and designate its witness or witnesses than FTC staff.[33] Moreover, Shire is not limited to designating a current employee and may designate any witness or witnesses to testify on its behalf, including a former employee or employees with personal knowledge of the events covered by the Subpoena. Shire also may designate more than one witness to testify on its behalf.

Shire contends that its ability to prepare a company representative has been impaired by the departure of employees who were involved in many of the events covered by the Subpoena. That is not a valid basis for excusing Shire from its obligation to provide relevant testimony.[34] Courts recognize that it is not uncommon for a corporation to find that individuals who have first-hand knowledge of a distant event have departed its employ. "These problems do not relieve a corporation from preparing its Rule 30(b)(6) designee to the extent matters are reasonably available, whether from documents, past employees, or other sources."[35] Courts routinely reject the assertion that such testimony imposes undue burden or is unnecessary because the witness, without first-hand knowledge, could only testify about

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32 Pet. at Exh. 3.

33 *See Bracco Diagnostics Inc. v. Amersham Health Inc.*, No. 03-6025, 2005 WL 6714281, at *3-4 (D.N.J. Nov. 7, 2005) (noting a 30(b)(6) deposition puts an end to "endless buck-passing").

34 *See QBE*, 2012 WL 266431, at *11.

35 *Taylor*, 166 F.R.D. at 361. *See also QBE*, 2012 WL 266431, at *11 ("The mere fact that an organization no longer employs a person with knowledge on the specified topics does not relieve the organization of the duty to prepare and produce an appropriate designee.").

the documents that will be used to prepare the witness.[36] We live in an economic environment where corporate ownership often changes and employees are mobile. Such changes cannot be cited as a basis to frustrate a law enforcement investigation.

Finally, Shire argues that preparation of a corporate designee within 30 days, as required by the Subpoena as issued, is unduly burdensome. During the required meet and confer,[37] Shire was obligated to raise all of its objections with FTC staff. Yet Shire never sought additional time to prepare its witness or witnesses.[38] Now, however, Shire indicates it will need at least 60 days to adequately prepare a company representative if the Commission denies its Petition. While we find the request for 60 additional days excessive, in the exercise of our discretion, we grant Shire an additional 30 days from the date of this Order to prepare its designated witness or witnesses.

III. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** the Petition of Shire ViroPharma to quash the Subpoena be, and it hereby is, **DENIED**; and

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36 *In re Vitamins Antitrust Litig.*, 216 F.R.D. at 173-74. *See also Bd. of Trs. of Leland Stanford Junior Univ. v. Tyco Int'l Ltd.*, 253 F.R.D. 524, 526 (C.D. Cal. 2008) ("Even if the documents are voluminous and the review of those documents would be burdensome, the [Rule 30(b)(6)] deponents are still required to review them in order to prepare themselves to be deposed."); *Great Am. Ins.*, 251 F.R.D. at 541 ("Producing documents and responding to written discovery is not a substitute for providing a thoroughly educated Rule 30(b)(6) deponent."); *SEC v. Morelli*, 143 F.R.D. 42, 45 (S.D.N.Y. 1992) (explaining adequate preparation of Rule 30(b)(6) witness undermines need for designee's first-hand knowledge); *Sprint Commc'ns*, 236 F.R.D. at 528 (explaining that despite burden, corporation must prepare designees so that they may give complete knowledgeable answers); *Ierardi*, 1991 WL 158911, at *2 (refusing to excuse Rule 30(b)(6) testimony even though retired employee was deposed as fact witness).

37 *See* 16 C.F.R. § 2.7(k).

38 In support of its Petition, Shire states only that it discussed alternative ways for FTC staff to obtain the information they were seeking and an extension of time to file a petition to quash. Pet. at Exh. 1, ¶ 3.

IT IS FURTHER ORDERED THAT Shire ViroPharma shall appear to testify on the topics in the Subpoena on November 28, 2014, or at such mutually agreeable later date as FTC staff and Shire may designate.

By the Commission.

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