

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

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

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

ORDER MODIFYING FINAL ORDER

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Rules of Practice, 16 C.F.R. 2.51, wherein Kraft, Inc. seeks to have the order that was issued on October 2, 1969 rescinded or modified;

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

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

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

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

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

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

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

IN THE MATTER OF
ASH GROVE CEMENT COMPANY

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

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

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

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JUNE 24, 1975

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

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

Complaint

100 F.T.C.

IN THE MATTER OF

EXXON CORPORATION, ET AL.

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

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

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

COMPLAINT

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

THE RESPONDENTS

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

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

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

THE ACQUISITION

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

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

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

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

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

TRADE AND COMMERCE

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

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

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

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

12. Reliance is a leading producer of EVSD.

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

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

EFFECTS OF THE ACQUISITION

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

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

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

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

VIOLATIONS CHARGED

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

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

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

ORDER DISMISSING COMPLAINT

On August 10, 1979, the Commission issued an administrative complaint against respondents challenging the intended acquisition of Reliance Electric Company by Exxon Corporation, through its subsidiary Enco, Incorporated. The complaint alleged that the acquisition, which was subsequently consummated pursuant to a hold-separate order¹, would eliminate Exxon as an actual potential entrant into the United States electronic variable speed industrial drives ("EVSD") market, thereby eliminating the likelihood that entry by Exxon would: (a) decrease concentration in the market; (b) increase competition in the market; or (c) increase competition in the development of EVSD technology and products. The factual premise of the complaint was that Exxon had made a breakthrough in EVSD technology and, but for the acquisition of Reliance, would enter the market either *de novo* or through the acquisition of a toehold company.

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

In their motion and accompanying papers² complaint counsel have explained in detail how recent discovery has shown that Exxon, and consequently the Commission, misjudged the commercial viability of its new technology, called "alternating current synthesis" ("ACS").

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

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

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

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

The complaint is hereby dismissed.

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

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

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

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

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

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

Appearances

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

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

COMPLAINT

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

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

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

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

COUNT I

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

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

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

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

THE
PRODUCTS
PRODUCT
BACKERS
BACK.

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

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

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

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

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

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

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

PAR. 10. In truth and in fact:

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

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

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

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

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

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

COUNT II

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

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

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

PAR. 15. In truth and in fact:

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

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

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

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

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

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

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

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



DECISION AND ORDER

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

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

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

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

ORDER

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

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

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

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

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

II.

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

III.

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

IV.

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

Modifying Order

100 F.T.C.

IN THE MATTER OF

AMERICAN DENTAL ASSOCIATION

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

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

MODIFICATION OF DECISION AND ORDER

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

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

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

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

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

ORDER

Definitions

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

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

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

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

I.

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

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

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

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

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

II.

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

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

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

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

III.

It is further ordered, That respondent American Dental Association:

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

Modifying Order

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

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

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

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

IV.

It is further ordered That respondent American Dental Association:

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

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

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

Modifying Order

100 F.T.C.

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

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

V.

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

APPENDIX A

[ADA Regular Letterhead]

Dear Doctor:

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

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

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

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

448

Modifying Order

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

Thank you for your cooperation.

Sincerely

/s/ _____

Modifying Order

100 F.T.C.

IN THE MATTER OF

HAMMERMILL PAPER COMPANY

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

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

ORDER MODIFYING DECISION AND ORDER

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

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

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

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

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

IN THE MATTER OF
XEROX CORPORATION

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

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

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

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JULY 29, 1975

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

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

XVII

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

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

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

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

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

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

IN THE MATTER OF

LITTON INDUSTRIES, INC., ET AL.

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

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

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

MODIFIED ORDER TO CEASE AND DESIST

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

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

ORDER

I

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

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

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

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

2. Failing to maintain accurate records

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

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

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

II

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

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

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

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

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

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

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

Commissioner Bailey did not participate.

Modifying Order

100 F.T.C.

IN THE MATTER OF

GODFREY COMPANY

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

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

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

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED MAY 14, 1981

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

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

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

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

Complaint

IN THE MATTER OF

THOMAS L. BAKER, INC., ET AL.

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

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

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

Appearances

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

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

COMPLAINT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PAR. 7. In truth and in fact:

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

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

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

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

Therefore, the representations set forth in Paragraph Five and

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

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

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

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

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

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

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

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

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

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

the lack of certification by a recognized independent gemological laboratory.

C. The principal resale outlets, other than respondents, available to individual investors for sale of many of these diamonds are retail jewelers. Many jewelers will not buy diamonds from an individual, and those that do will generally pay an individual substantially less than what the jeweler would have to pay his customary supplier for the same diamonds.

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

PAR. 11. In the further course and conduct of their aforesaid business, respondents have provided and are providing certificates issued by themselves attesting to certain characteristics of the diamonds sold. Respondents have represented and are representing, directly or by implication, that with these certificates the individual can readily determine the quality and value of the diamonds purchased. In truth and in fact, an individual cannot determine the quality and value of the diamonds purchased using the certificates provided by respondents.

Respondents have failed to disclose that:

A. The information provided by respondents' certificates is not sufficient to define the characteristics of the diamonds for purposes of enabling a purchaser to reliably determine the quality and value of the diamonds purchased.

B. Certificates for diamonds issued by the company selling the diamonds generally have no recognized value as certification.

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

PAR. 12. In the further course and conduct of their aforesaid business, respondents have made and are making various representations concerning the past appreciation in value of diamonds. Typical and illustrative of said representations, but not all inclusive thereof, are the following:

1. If you had invested \$10,000 in diamonds with American Diamond Company in 1975, you would have over \$50,000 today.
2. Over the past decade, the value of diamonds has increased by 800%.
3. Investment quality diamonds have appreciated 40% over the last half decade on an annualized basis.
4. No price declines in over 45 years.

PAR. 13. By and through the use of the above representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that all sizes and grades of diamonds sold by respondents have enjoyed rates of appreciation comparable to those represented in Paragraph Twelve.

In truth and in fact, diamonds of different sizes and different grades sold by respondents have not experienced rates of appreciation comparable to those set forth in Paragraph Twelve.

Therefore, the representations set forth in Paragraph Twelve and others of similar import and meaning, are false, misleading, and deceptive.

PAR. 14. Further, in making the representations set forth in Paragraph Twelve and others of similar import and meaning, respondents have failed to disclose the material facts that:

A. There are substantial differences in the past appreciation of diamonds of different carat weight, color, cut, and clarity.

B. The fact that diamonds or other gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

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

PAR. 15. In the further course and conduct of their aforesaid business, respondents have used and are using in their promotional literature certain charts and graphs purporting to demonstrate the appreciation history and economic performance of diamonds as an investment. Respondents have represented and are representing, directly or by implication, that these various charts and graphs were prepared or published by sources independent of respondents.

In truth and in fact, certain of the charts and graphs used in respondents' promotional literature and attributed to independent sources were not prepared or published by those sources. Therefore, the above representations are false, misleading, and deceptive.

PAR. 16. In the further course and conduct of their aforesaid business, respondents have made representations concerning future appreciation in the price of gemstones. For example, in August, 1980 respondents represented that their "liquidity diamonds" would appreciate 40% within the next six months. At the time this and similar representations were first made and subsequently disseminated, respondents did not possess and rely upon a reasonable basis for such claims of future performance. Thus, the dissemination of

such representations was, and is, an unfair and deceptive act or practice.

PAR. 17. In the further course and conduct of their aforesaid business, respondents have made representations concerning recent price appreciations for their "liquidity diamonds." For example, in November, 1980 respondents represented that general market demand for diamonds had caused a third 5 percent price increase within a four month period, and that the price would increase again on December 8, 1980. By and through such statements and others of similar import and meaning, respondents have represented and are representing, directly or by implication, that respondents' price increases reflect general market price increases.

In truth and in fact, respondents' price increases do not reflect general market price increases, and, at the time these representations were made, the market prices for the diamonds respondents denominate "liquidity diamonds" had not risen in the manner represented by respondents. Therefore, the above representations are false, misleading and deceptive.

PAR. 18. In the further course and conduct of their aforesaid business, respondents have represented and are representing, directly or by implication, that they are major cutters, and wholesale rough brokers who cut, finish, polish and maintain an inventory of gemstones and for this reason are able to offer their clients the lowest possible prices available to the investor.

PAR. 19. In truth and in fact, respondents are not major cutters and wholesale rough brokers. They do not cut, finish, or polish their own stones and in many instances they do not have in inventory the particular stones that they sell. Therefore, the representations set forth in Paragraph Eighteen are false, misleading, and deceptive.

PAR. 20. In the further course and conduct of their business, respondents have engaged in the following acts and practices:

A. Deposited purchasers' funds into their bank accounts upon receipt of such funds and failed either to ship the merchandise ordered or to refund money for six weeks to one year.

B. Sold gemstones not in their inventory and then failed to make a good faith effort to acquire the gemstones sold in order to effect delivery within a reasonable time.

C. Appropriated purchasers' funds received from the sale of gemstones for purposes other than effecting prompt delivery of gemstones sold.

D. In instances where purchasers' undelivered gemstones had appreciated in value after sale, attempted to persuade such purchas-

ers to accept gemstones which had not experienced as much appreciation.

E. In instances where they have resold purchasers' gemstones through their liquidation service and received the funds from such sale, failed to promptly forward the proceeds of the sale to the seller.

F. Failed to answer letters of inquiry from customers and made inadequate and untrue responses to customers who inquired about late delivery.

The acts and practices set forth above are deceptive and unfair.

PAR. 21. In the further course and conduct of their aforesaid business, respondents have represented and are representing that they could and would deliver gemstones purchased within a specific or reasonable period of time. Further, respondents have represented and are representing, directly or by implication, that they could and would deliver to purchasers a gemstone with specifically defined characteristics.

PAR. 22. In truth and in fact, in a substantial number of instances, respondents have failed to deliver purchased gemstones within the specific time represented or within a reasonable period of time. Further, in a substantial number of instances, respondents have failed to deliver to purchasers gemstones with characteristics comparable to those specified in the purchase agreement. Therefore, the representations set forth in Paragraph Twenty-One are false, misleading, and deceptive.

PAR. 23. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 24. The use by respondents of the aforementioned false, misleading, unfair and deceptive statements, representations, acts and practices, directly or by implication, and the failures of respondents to disclose the aforementioned material facts, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of respondents' gemstones by reason of said erroneous and mistaken belief.

PAR. 25. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal

Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission has initiated an investigation of certain acts and practices of the respondents Thomas L. Baker, Inc. and American Diamond Company [hereinafter referred to as respondents], and the respondents having been furnished thereafter with a copy of a draft of 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 respondents with violation of the Federal Trade Commission Act; and

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

The Commission having considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered any comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules; and

The respondents having filed a petition for reorganization under Chapter 11 of the Bankruptcy Code (11 U.S.C. 362) on October 23, 1981; and

The respondents and complaint counsel having thereafter submitted to the Commission a revised Agreement Containing Consent Order; and

The Commission having considered and accepted the revised Agreement; and

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

1. Respondent Thomas L. Baker, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4455 Morena Boulevard, San Diego, California.

Respondent American Diamond Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4455 Morena Boulevard, San Diego, California.

2. 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 respondent Thomas L. Baker, Inc., a corporation, respondent American Diamond Company, a corporation, their successors and assigns, and their officers, and respondents' agents, representatives, brokers, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the purchasing, advertising, offering for sale, sale or distribution of any diamond, ruby, or any other precious or semi-precious stone, (hereinafter gemstones) or other merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) A diamond or ruby or other gemstone is an investment which can be easily or quickly sold by an individual investor for a price substantially the same as what an individual would have to pay to purchase such gemstone from respondent(s) or another commercial source.

(b) A person can sell a diamond or ruby or other gemstone through respondent(s) as easily as he or she could sell a stock or bond through a stock broker.

(c) There is at any time an established, generally recognized market price for a diamond or other gemstone at which an individual could easily sell or exchange his or her gemstone(s).

2. Misrepresenting in any manner, directly or by implication, the ease with which an individual can resell a diamond, ruby or other gemstone or the price an individual is likely to receive upon such resale.

3. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any gemstone(s), the following information:

(a) Gemstones are not as easy to sell as many other investments. If you seek a quick sale of a gemstone you will in many instances only be able to get a price substantially lower than the current selling price of the gemstone.

(b) If you resell your gemstones through [name company] you will be required to pay liquidation/consignment fees of [insert fees].

(c) If you try to resell your gemstones through [name company] you may in some instances have to wait a substantial period of time before the gemstones are sold. In addition, a sale on consignment is not completed until thirty (30) days after the gemstones have been delivered to the new purchaser. This allows the new purchaser the right to inspect and return the gemstones.

(d) There are substantial differences in the past appreciation of gemstones of different weight, color, cut and clarity. Also, the fact that particular gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

Provided, however, That if respondents do not offer a resale service for gemstones the following disclosures shall be made in lieu of those required by Paragraphs 3(b) and (c) of this order:

(b) If you resell your gemstone through a company handling such resales, you may be required to pay substantial liquidation/consignment fees.

(c) If you try to resell your gemstones through a company handling such resales, you may in some instances have to wait a substantial period of time before the gemstones are sold.

4. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any diamond(s), ranging in size from .04 to .60 carats, the following information:

(a) [Name company] is the principal place for you to resell these diamonds. Resale for profit to other outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

(b) Resale through outlets other than [name company] may be

made more difficult by the lack of certification by a recognized independent gemological laboratory.

(c) The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell through anyone other than [name company].

Provided, however, That if respondents do not offer a resale service for gemstones the following disclosures shall be made in lieu of these required by Paragraphs 4(a), 4(b), and 4(c) of this order:

(a) The principal place for you to resell these diamonds is to outlets such as retail jewelers. Resale for profit to outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

(b) Resale of these diamonds may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

(c) The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell these diamonds.

5. Misrepresenting in any manner, directly or by implication, the past appreciation in value of any diamond(s) or other gemstone(s).

6. Making any representation, directly or by implication, concerning the past appreciation of any diamond(s), or other gemstone(s) without:

(a) Disclosing, clearly and conspicuously, the type of diamond or other gemstone, in terms of size, color, cut, clarity, or other relevant characteristic, to which the past appreciation representation relates; and

(b) Having a reasonable basis upon which to make the claim.

7. Misrepresenting in any manner directly or by implication, the source of any graph or chart or of any information depicted in any promotional material or other presentation relating to the sale of any gemstone(s).

8. Making any representation, directly or by implication, in any advertising or sales promotional material or orally during the course

of any sales presentation, concerning the future appreciation of any diamond(s) or other gemstone(s) unless at the time of such representation respondents possess and rely upon a reasonable basis for the representation.

9. Failing to maintain accurate records, which may be inspected by Commission staff members upon reasonable notice, which:

(a) Consist of documentation in support of any representation concerning the past or future appreciation of any diamond or other gemstone included in any advertising or sales promotional material disseminated by respondents, insofar as the text of such representation is prepared, or is authorized and approved, by any person who is an officer or employee of respondents or by any advertising agency engaged for such purpose by respondents; and

(b) Provide the basis upon which respondents relied as of the time the representation was made.

10. Misrepresenting in any manner, directly or by implication, that respondents' own price increases reflect general market price increases.

11. Representing, directly or by implication, that:

(a) Respondents are "sight" buyers of diamonds from DeBeers Central Selling Organization.

(b) Respondents are wholesale rough brokers of diamonds or other gemstones.

(c) Respondents maintain an inventory of the gemstones they sell unless at the time such representation was made respondents actually had in their possession or on consignment the exact gemstones about which the representation was made.

12. Misrepresenting in any manner, directly or by implication, the business activities engaged in by respondents, including how respondents' pricing compares to price levels at various positions on the gemstone distribution chain such as cutter or wholesale levels.

13. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any colored gemstone, the following information:

(a) If your gemstone is re-certified, it may receive a different grade. This may affect its value. There are two reasons for this. First, colored gemstone grading is, in part, subjective. Second, procedures used for grading colored gemstones may change.

(b) A colored gemstone which receives a higher grade on a

certificate is not necessarily more valuable than one receiving a lower grade. Dealers in colored gemstones may differ significantly in their assessment of the value of particular gemstones and will often rely on personal inspection in setting a value for a gemstone instead of relying only on a certificate.

(c) The above characteristics of colored gemstone grading and valuation are a risk you should consider before investing in colored gemstones.

14. Failing to comply with Federal Trade Commission Rule concerning Mail Order Merchandise, 16 C.F.R. 435.

15. Failing to answer, and to answer promptly, inquiries by or on behalf of any customer regarding any purchase made from respondents.

16. Failing to deliver a gemstone with the specific characteristics ordered unless a customer has agreed in writing to a substitution.

17. Failing to deliver the proceeds of a gemstone sale which the respondents have made on behalf of a previous customer or other party to such customer or party within 10 working days of completion of sale.

II.

It is further ordered, That the oral affirmative disclosures required by Paragraphs 3, 4, and 13 of this order need not be made by respondents if gemstones are sold for jewelry and in the sales agreement so identified and the following disclosure is made on the front page of the sales agreement covering each such sale:

Items designated as jewelry grade are not sold by [name of company] for investment purposes and no representation is made that such items are investment quality or suitable for investment.

III.

It is further ordered, That the written affirmative disclosures required by Paragraphs 3, 4, and 13 of this order shall be made in the manner described below:

RISK FACTORS YOU SHOULD CONSIDER IF YOU ARE PURCHASING GEMSTONES AS AN INVESTMENT

1. Gemstones are not as easy to sell as many other investments. If you seek a quick sale of a gemstone you will in many instances

only be able to get a price substantially lower than the current selling price of the gemstone.

2. There are substantial differences in the past appreciation of gemstones of different weight, color, cut and clarity. Also, the fact that particular gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

[If respondents offer a resale service for gemstones:]

3. If you resell gemstones through [name company] you will be required to pay liquidation/consignment fees of [insert fees].

4. If you try to resell your gemstones through [name company] you may in some instances have to wait a substantial period of time before the gemstones are sold. In addition, a sale on consignment if not completed until thirty (30) days after the gemstones have been delivered to the new purchaser. This allows the new purchaser the right to inspect and return the gemstones.

[If respondents do not offer a resale service for gemstones:]

3. If you resell your gemstones through a company handling such resales, you may be required to pay substantial liquidation/consignment fees.

4. If you try to resell your gemstones through a company handling such resales, you may in some instances have to wait a substantial period of time before the gemstones are sold.

FOR PURCHASERS OF DIAMONDS .04-.60 CARATS IN SIZE

[If respondents offer a resale service for gemstones:]

5. [Name company] is the principal place for you to resell these diamonds. Resale for profit to other outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

6. Resale through outlets other than [name company] may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

7. The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to

enable a purchaser to resell through anyone other than [name company].

[If respondents do not offer a resale service for gemstones:]

5. The principal place for you to resell these diamonds is to outlets such as retail jewelers. Resale for profit to outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

6. Resale of these diamonds may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

7. The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell these diamonds.

FOR PURCHASERS OF COLORED GEMSTONES

8. If your gemstone is re-certified, it may receive a different grade. This may affect its value. There are two reasons for this. First, colored gemstone grading is, in part, subjective. Second, procedures used for grading colored gemstones may change.

9. A colored gemstone which receives a higher grade on a certificate is not necessarily more valuable than one receiving a lower grade. Dealers in colored gemstones may differ significantly in their assessment of the value of particular gemstones and will often rely on personal inspection in setting a value for a gemstone instead of relying only on a certificate.

10. The above characteristics of colored gemstone grading and valuation are a risk you should consider before investing in colored gemstones.

This notice shall appear in all written advertising and promotional material used to sell any gemstone(s) except newspaper and magazine advertisements and one-page promotional material whose sole purpose is to solicit a prospective customer to request further information. The title "RISK FACTORS YOU SHOULD CONSIDER IF YOU ARE PURCHASING GEMSTONES AS AN INVESTMENT" shall be printed in no smaller than ten (10) point boldface type. The remainder of the notice shall be printed in type no smaller

than the smallest type otherwise in the advertising or no smaller than eight (8) point type, whichever is larger. The capitalization, punctuation and wording of the text and headings must be exactly as shown above.

This notice must also appear on the front page of all sales agreements or on a separate sheet of paper given to customers before they sign the sales agreement. The separate sheet may not contain any other writing. The notice required in this subparagraph shall be in the form set forth as follows:

1. At the bottom of the notice shall be the language "I have read this notice and understand what it says" and a place for the buyer's signature.

2. The text of the notice must be printed in no smaller than 9-point type and the heading "RISK FACTORS YOU SHOULD CONSIDER IF YOU ARE PURCHASING GEMSTONES AS AN INVESTMENT" must be 2 type points larger and boldface. The capitalization, punctuation and wording of the text and headings must be exactly as shown above.

3. The whole notice, from the word "RISK" to the words "what it says," must be printed in gothic, astron, avant garde, eras, frutiger, gill sans, grotesque, heldustry, helvetica, kabel, antique, optima, univers, vogue, americana, american typewriter, newtext, or quorum type in blue, blue-black, or black ink on white or buff background. If the notice is printed on the front page of a sales agreement on which other information is emphasized by the use of colored type, the notice must then be printed in the most conspicuous colored type used.

4. The whole notice from the word "RISK" to the space for the customer's signature, must be boxed with lines 2 points thick if the notice appears on the front page of a sales agreement.

The disclosures in Paragraph 4 only have to be made if the promotional material or contract relates to the sale of diamonds of .04 carats to .60 carats in size. The disclosures in Paragraph 13 only have to be made if the promotional material or contract relates to the sale of colored gemstones.

It is further ordered, That each customer be given at the time of sale a fully filled-in and legible copy of the sales agreement. Respondents shall keep a fully filled-in and legible copy of each sales agreement for three years after signing.

IV.

It is further ordered, That respondents herein shall notify the Commission at least 30 days prior to any change in the structure of any of the corporate respondents involving dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary, or any other change in the respective corporation which may affect compliance obligations arising out of this order.

V.

It is further ordered, That respondents distribute a synopsis of this order to all operating divisions of said corporations, and to present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondents secure from each such person a signed statement acknowledging receipt of said order.

VI.

It is further ordered, That respondents herein shall, within ninety (90) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
THOMAS L. BAKER

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

Docket C-3096. Complaint, Sept. 28, 1982—Decision, Sept. 28, 1982*

This consent order requires a San Diego, Calif. corporate officer to cease, among other things, misrepresenting or failing to disclose material facts regarding the purchase of gemstones as investments, or their liquidity. The respondent is prohibited from misrepresenting the source of graphs or charts used in promotional literature; failing to disclose the limitations associated with the certificates issued by the firms to accompany their gemstones; or representing that their price increases reflect general market increases. Respondent is required to disclose both orally and in writing, before the execution of any contract for the sale of gemstones, among other things, that gemstones are not as easy to sell as other investments; that there are risks involved in the purchase of colored gemstones; and that diamonds .04 to .60 carats may be difficult to resell. Further, respondent is required to comply with the FTC's Mail Order Merchandise Rule and ensure that all personnel receive a synopsis of the order.

Appearances

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

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent Thomas L. Baker [hereinafter referred to as respondent], and the respondent having been furnished with a copy of a draft of 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 respondent with violation of the Federal Trade Commission Act; and

The respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the

* Complaint previously published at 100 F.T.C. 461 (1982).

signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered any comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules; and

The Commission having determined to issue separate orders against respondent Thomas L. Baker and the corporate respondents Thomas L. Baker, Inc. and American Diamond Company named in the caption hereof and having revised the language of this order to make clear its applicability to the individual respondent alone; and

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

1. Respondent Thomas L. Baker is an officer and director of the following corporations. As such, he formulates, directs and controls the acts and practices of said corporations, and his principal office and place of business is located at the same address as that of said corporations.

Thomas L. Baker, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4455 Morena Boulevard, San Diego, California.

American Diamond Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4455 Morena Boulevard, San Diego, California.

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

ORDER

I.

It is ordered, That respondent Thomas L. Baker individually and

as an officer of Thomas L. Baker, Inc., a corporation, and American Diamond Company, a corporation, and respondent's agents, representatives, brokers, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the purchasing, advertising, offering for sale, sale or distribution of any diamond, ruby, or any other precious or semi-precious stone, [hereinafter gemstones] or other merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) A diamond or ruby or other gemstone is an investment which can be easily or quickly sold by an individual investor for a price substantially the same as what an individual would have to pay to purchase such gemstone from the respondent or another commercial source.

(b) A person can sell a diamond or ruby or other gemstone through the respondent as easily as he or she could sell a stock or bond through a stock broker.

(c) There is at any time an established, generally recognized market price for a diamond or other gemstone at which an individual could easily sell or exchange his or her gemstone(s).

2. Misrepresenting in any manner, directly or by implication, the ease with which an individual can resell a diamond, ruby or other gemstone or the price an individual is likely to receive upon such resale.

3. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any gemstone(s), the following information:

(a) Gemstones are not as easy to sell as many other investments. If you seek a quick sale of a gemstone you will in many instances only be able to get a price substantially lower than the current selling price of the gemstone.

(b) If you resell your gemstones through [name company] you will be required to pay liquidation/consignment fees of [insert fees].

(c) If you try to resell your gemstones through [name company] you may in some instances have to wait a substantial period of time before the gemstones are sold. In addition, a sale on consignment is not completed until thirty (30) days after the gemstones have been delivered to the new purchaser. This allows the new purchaser the right to inspect and return the gemstones.

(d) There are substantial differences in the past appreciation of gemstones of different weight, color, cut and clarity. Also, the fact that particular gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

4. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any diamond(s), ranging in size from .04 to .60 carats, the following information:

(a) [Name company] is the principal place for you to resell these diamonds. Resale for profit to other outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

(b) Resale through outlets other than [name company] may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

(c) The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell through anyone other than [name company].

5. Misrepresenting in any manner, directly or by implication, the past appreciation in value of any diamond(s) or other gemstone(s).

6. Making any representation, directly or by implication, concerning the past appreciation of any diamond(s), or other gemstone(s) without:

(a) Disclosing, clearly and conspicuously, the type of diamond or other gemstone, in terms of size, color, cut, clarity, or other relevant characteristic, to which the past appreciation representation relates; and

(b) Having a reasonable basis upon which to make the claim.

7. Misrepresenting in any manner, directly or by implication, the source of any graph or chart or of any information depicted in any promotional material or other presentation relating to the sale of any gemstone(s).

8. Making any representation, directly or by implication, in any advertising or sales promotional material or orally during the course of any sales presentation, concerning the future appreciation of any

diamond(s) or other gemstone(s) unless at the time of such representation respondent possesses and relies upon a reasonable basis for the representation.

9. Failing to maintain accurate records, which may be inspected by Commission staff members upon reasonable notice, which:

(a) Consist of documentation in support of any representation concerning the past or future appreciation of any diamond or other gemstone included in any advertising or sales promotional material disseminated by the respondent, insofar as the text of such representation is prepared, or is authorized and approved, by any person who is an officer or employee of the respondent or by any advertising agency engaged for such purpose by the respondent; and

(b) Provide the basis upon which the respondent relied as of the time the representation was made.

10. Misrepresenting in any manner, directly or by implication, that the respondent's own price increases reflect general market price increases.

11. Representing, directly or by implication, that:

(a) Respondent is a "sight" buyer of diamonds from DeBeers Central Selling Organization.

(b) Respondent is a wholesale rough broker of diamonds or other gemstones.

(c) Respondent maintains an inventory of the gemstones he sells unless at the time such representation was made the respondent actually had in his possession or on consignment the exact gemstones about which the representation was made.

12. Misrepresenting in any manner, directly or by implication, the business activities engaged in by the respondent, including how respondent's pricing compares to price levels at various positions on the gemstone distribution chain such as cutter or wholesale levels.

13. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any colored gemstone, the following information:

(a) If your gemstone is re-certified, it may receive a different grade. This may affect its value. There are two reasons for this. First, colored gemstone grading is, in part, subjective. Second, procedures used for grading colored gemstones may change.

(b) A colored gemstone which receives a higher grade on a certificate is not necessarily more valuable than one receiving a

lower grade. Dealers in colored gemstones may differ significantly in their assessment of the value of particular gemstones and will often rely on personal inspection in setting a value for a gemstone instead of relying only on a certificate.

(c) The above characteristics of colored gemstone grading and valuation are a risk you should consider before investing in colored gemstones.

14. Failing to comply with Federal Trade Commission Rule concerning Mail Order Merchandise, 16 C.F.R. 435.

15. Failing to answer, and to answer promptly, inquiries by or on behalf of any customer regarding any purchase made from the respondent.

16. Failing to deliver a gemstone with the specific characteristics ordered unless a customer has agreed in writing to a substitution.

17. Failing to deliver the proceeds of a gemstone sale which the respondent has made on behalf of a previous customer or other party to such customer or party within 10 working days of completion of sale.

II.

It is further ordered, That the written affirmative disclosures required by Paragraphs 3, 4, and 13 of this order shall be made in the manner described below:

RISK FACTORS YOU SHOULD CONSIDER BEFORE INVESTING IN GEMSTONES

1. Gemstones are not as easy to sell as many other investments. If you seek a quick sale of a gemstone you will in many instances only be able to get a price substantially lower than the current selling price of the gemstone.

2. If you resell gemstones through [name company] you will be required to pay liquidation/consignment fees of [insert fees].

3. If you try to resell your gemstones through [name company] you may in some instances have to wait a substantial period of time before the gemstones are sold. In addition, a sale on consignment is not completed until thirty (30) days after the gemstones have been delivered to the new purchaser. This allows the new purchaser the right to inspect and return the gemstones.

4. There are substantial differences in the past appreciation of gemstones of different weight, color, cut and clarity. Also, the fact

that particular gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

FOR PURCHASERS OF DIAMONDS .04-.60 CARATS IN SIZE

5A. [Name company] is the principal place for you to resell these diamonds. Resale for profit to other outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

5B. Resale through outlets other than [name company] may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

5C. The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell through anyone other than [name company].

FOR PURCHASERS OF COLORED GEMSTONES

6A. If your gemstone is re-certified, it may receive a different grade. This may affect its value. There are two reasons for this. First, colored gemstone grading is, in part, subjective. Second, procedures used for grading colored gemstones may change.

6B. A colored gemstone which receives a higher grade on a certificate is not necessarily more valuable than one receiving a lower grade. Dealers in colored gemstones may differ significantly in their assessment of the value of particular gemstones and will often rely on personal inspection in setting a value for a gemstone instead of relying only on a certificate.

6C. The above characteristics of colored gemstone grading and valuation are a risk you should consider before investing in colored gemstones.

A. This notice shall appear in all written advertising and promotional material used to sell any gemstone(s) except newspaper and magazine advertisements and one-page promotional material whose sole purpose is to solicit a prospective customer to request further information. The title "RISK FACTORS YOU SHOULD CONSIDER BEFORE INVESTING IN GEMSTONES" shall be printed in no smaller than ten (10) point boldface type. The remainder of the notice shall be printed in type no smaller than the

smallest type otherwise in the advertising or no smaller than eight (8) point type, whichever is larger. The capitalization, punctuation and wording of the text and headings must be exactly as shown above.

B. This notice must also appear on the front page of all sales agreements or on a separate sheet of paper given to customers before they sign the sales agreement. The separate sheet may not contain any other writing. The notice required in this subparagraph shall be in the form set forth as follows:

1. At the bottom of the notice shall be the language "I have read this notice and understand what it says" and a place for the buyer's signature.

2. The text of the notice must be printed in no smaller than 9-point type and the heading "RISK FACTORS YOU SHOULD CONSIDER BEFORE INVESTING IN GEMSTONES" must be 2 type points larger and boldface. The capitalization, punctuation and wording of the text and headings must be exactly as shown above.

3. The whole notice, from the word "RISK" to the words "what it says," must be printed in gothic, astro, avant garde, eras, frutiger, gill sans, grotesque, heldustry, helvetica, kabel, antique, optima, univers, vogue, americana, american typewriter, newtext, or quorum type in blue, blue-black, or black ink on white or buff background. If the notice is printed on the front page of a sales agreement on which other information is emphasized by the use of colored type, the notice must then be printed in the most conspicuous colored type used.

4. The whole notice from the word "RISK" to the space for the customer's signature, must be boxed with lines 2 points thick if the notice appears on the front page of a sales agreement.

The disclosures in Paragraph 4 only have to be made if the promotional material or contract relates to the sale of diamonds of .04 carats to .60 carats in size. The disclosures in Paragraph 13 only have to be made if the promotional material or contract relates to the sale of colored gemstones.

It is further ordered, That each customer be given at the time of sale a fully filled-in and legible copy of the sales agreement. Respondent shall keep a fully filled-in and legible copy of each sales agreement for three years after signing.

III.

It is further ordered, That the respondent herein shall notify the

Commission at least 30 days prior to any change in the structure of Thomas L. Baker, Inc. or American Diamond Company involving dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary, or any other change in the respective corporation which may affect compliance obligations arising out of this order.

IV.

It is further ordered, That the respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment if the business or employment is similar in nature to respondent's present employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

V.

It is further ordered, That respondent distribute a synopsis of this order to all operating divisions of said corporations, and to present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondent secure from each such person a signed statement acknowledging receipt of said order.

VI.

It is further ordered, That the respondent herein shall, within ninety (90) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Decision and Order

100 F.T.C.

IN THE MATTER OF
AMREP CORPORATION

DECISION AND ORDER REGARDING GENERAL DEVELOPMENT
CORPORATION

Docket 9018. Decision and Order, Sept. 30, 1982

This agreement contains an order as to General Development Corporation and was entered into by General Development and FTC Complaint Counsel in the Matter of AMREP Corporation, Docket 9018. The AMREP complaint alleges that AMREP and its subsidiary, Silver Springs Shores, Inc. have used unfair and deceptive practices in the sale of undeveloped land. General Development Corporation, a Miami, Fla. company which is not affiliated with AMREP and is not a party to Docket 9018, has agreed to purchase all remaining Silver Springs Shores properties conditioned upon the Federal Trade Commission's assurance that it will not be considered as a successor or assign of AMREP within the meaning of the Federal Trade Commission Act, or subject to any order or judgment stemming from Docket 9018. The agreement offers such assurance in exchange for General Development's good faith and performance of duties set forth in the accompanying order. The order requires, among other things, that General Development offer to buy back or exchange certain Silver Springs Shores lots in accordance with terms specified in the order, and emphasize in its sales representations and promotional materials that lots in Silver Springs Shores should be purchased for use by the buyer rather than as an investment. The order further requires the company to undertake a continuing surveillance program designed to ensure that unauthorized sales representations are not made in land sales presentations.

Appearances

For the Commission: *Jon R. Calhoun* and *George E. Schulman*.

For the respondent: *Wayne Allen*, in-house counsel, General Development Corp., Miami, Fla.

DECISION AND ORDER REGARDING GENERAL DEVELOPMENT
CORPORATION

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and after trial of the matter, and the Initial Decision of the Administrative Law Judge having been issued, and General Development Corporation having sought to purchase Silver Springs Shores, one of the land developments that are the subject of this matter; and

General Development Corporation, its attorney, and counsel for the Los Angeles Regional Office of the Federal Trade Commission

having thereafter executed an agreement containing an order, a statement by General Development Corporation that it does not contest the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for purposes of providing assurances to General Development Corporation that it will not be held to be a successor or assign of respondent and of providing for certain benefits to be offered by General Development Corporation to the purchasers of property at Silver Springs Shores, a statement that the agreement does not constitute an admission by General Development Corporation that the law has been violated, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the authority granted by the Federal Trade Commission Act, The Commission's Rules of Practice, and the Administrative Procedure Act [at 5 U.S.C. 554(e)], the Commission hereby makes the following jurisdictional findings and enters the following order:

1. General Development Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and is a wholly-owned subsidiary of GDV, Inc., a Delaware corporation. GDV, Inc. is a majority-owned subsidiary of City Investing Company. General Development Corporation has its office and principal place of business located at 1111 South Bayshore Drive, in the City of Miami, State of Florida.

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

ORDER

I. *It is ordered*, That, in return for General Development Corporation's good faith and substantial performance of the duties set forth in this order, General Development shall not be held or considered to be a successor or assign of AMREP Corporation or its subsidiary, Silver Springs Shores, Inc., within the meaning of the Federal Trade Commission Act or any rules or regulations adopted thereunder, and shall not be subject to any cease and desist order, other order, action, or judgment by the Commission in Docket No. 9018 by virtue of General Development purchasing property at Silver Springs Shores; and additionally, General Development shall

not be subject to any order or judgment entered in any related civil action brought by the Federal Trade Commission under Section 19 of the Federal Trade Commission Act (FTCA), 15 U.S.C. 57b.

II. *It is further ordered, That:*

A. General Development will offer to buy back the lots of Silver Springs Shores deeded lot owners at a purchase price of Two Thousand Dollars (\$2,000.00) for each single family residential lot. Lot owners will be offered their choice of the following terms: the payment by General Development of the \$2,000 principal amount over an eight (8) year period at six percent (6%) interest; payment at three percent (3%) interest over a six (6) year period; or payment over a four (4) year period with no interest. General Development will extend its initial buy-back offer without limitation to all lot owners who are original purchasers from Silver Springs Shores, Inc. and who were issued their deed by Silver Springs Shores, Inc. at least sixty (60) days prior to the date when the offer is extended. The offer to purchase will be extended annually for a period of five (5) years to those persons receiving deeds from Silver Springs Shores, Inc. after the cut-off date of the initial offering. In addition, General Development shall extend the same offer, using the same procedures, to persons who were not the original purchasers from AMREP but who purchased a lot or who executed their assignment of the installment contract for a lot prior to March 31, 1982.

A written buy-back offer will be extended to each such eligible person listed by name and address on a true and accurate list of all current and past deeded lot owners that Silver Springs Shores, Inc. is required to provide under its sales agreement with General Development. The mailing of the offer shall be by first-class mail, postage-prepaid, address correction requested, return receipt requested, with delivery to addressee only. Within sixty (60) days after the mailing, for any addressee for whom no return receipt has been received, General Development shall attempt to obtain a current or more recent address for the lot owner by examining the records of the Marion County, Florida, assessor's office. If a current or more recent address is found through these procedures, a copy of the offer shall be sent within twenty (20) days after such finding to the new address using the same means described herein.

General Development will, for informational purposes, send out a letter describing the impending repurchase offer within sixty (60) days of the closing of its purchase from Silver Springs Shores. It may include in its announcement its description of additional programs described in this agreement. General Development and Complaint

Counsel have agreed on the form of the announcement letter which is set forth in Exhibit A attached hereto. No contact shall be made by GDC with any above-listed purchaser prior to this announcement.

The actual offer to purchase will be extended initially by General Development within eighteen (18) months after the date of the closing of its purchase from Silver Springs Shores, Inc. The actual offer shall convey the terms of the offer in a neutral manner, neither recommending nor discouraging the offeree's acceptance. The offer communication shall contain the same recitation of the alternative programs that is set forth in Exhibit A; however, the offer to repurchase shall be set forth on the first page of the communication and shall be the only offer or description on that page. The communication shall not refer in any manner to the Federal Trade Commission or to this agreement or order. At least thirty (30) days prior to the proposed mailing date, GDC shall submit a draft of the communication to Commission staff for determination of its conformity to Exhibit A.

Those to whom the actual offer is extended will have a period of one hundred twenty (120) days from the date of the mailing to accept the offer of purchase. The first installment payment to those lot owners who accept the offer shall be mailed not later than ninety (90) days after the expiration of the 120 day acceptance period. Subsequent installments shall be paid annually on the anniversary of the initial payment. The buy-back program will not be available to any employees or relatives thereof of either AMREP, General Development, or any of their subsidiaries.

B. To be effective thirty (30) days after the mailing of Exhibit A, General Development will also offer to deeded lot owners at Silver Springs Shores the right to transfer their ownership of property from the lot originally purchased to an available comparable or higher priced lot in Silver Springs Shores or in General Development's projects of Port Charlotte, Port St. Lucie, Port Malabar, Port LaBelle, Vero Shores, Vero Beach Highlands, Sebastian Highlands and Port St. John. This offer shall remain effective for a period of ten years, but is limited to owners of SSS lots that were sold originally by AMREP. It is not available to those who purchase at SSS from General Development. The purchaser shall receive a credit for the principal paid in under his purchase contract, plus the difference between the price he originally paid and the current sales price for that lot. The sales price of the lot traded in and the sales price of the lot received will be set at that amount at which the respective lots are currently priced by General Development utilizing its then

current standard pricing formula which it applies equally to all properties. For example:

TRADE TO COMPARABLE NEW LOT	
Current Selling Price - Old Lot	\$10,295
Original Purchase Price - Old Lot	3,595
Lot Price Increase	\$ 6,700
Current Selling Price - New Lot	\$10,295
Less Price Increase Applied	-6,700
Less Principal Paid on Original Purchase	-3,595
BALANCE DUE ON NEW LOT	-0-
TRADE TO HIGHER PRICED NEW LOT	
Current Selling Price - New Lot	\$12,500
Less Lot Price Increase Applied	-6,700
Less Principal Paid on Original Purchase	-3,595
BALANCE DUE ON NEW LOT	\$ 2,205

C. General Development will, at all times during which it is engaged in either the sale of lots or homes at Silver Springs Shores, but in no event for less than ten (10) years from the initial date of the actual offer to purchase, extend to all deeded lot owners in Silver Springs Shores the right to trade in their lot and receive a credit of the principal paid in under their purchase contract, plus the difference between the price they originally paid and the current sales price for that lot, toward the purchase of a General Development home and lot in any available shelter building area in Silver Springs Shores. "Shelter building area" is defined for the purposes of this agreement and order as those home construction areas where General Development only sells homes and lots as a unit or package. General Development will always make available to deeded Silver Springs Shores lot owners shelter building lots in a shelter building area where there exist at least twenty-five (25) homes already constructed. In addition, General Development will extend to all deeded lot owners in Silver Springs Shores the right to trade in their lot towards a General Development home and lot in General Development's projects of Port Charlotte, Port St. Lucie, Port Malabar, Port LaBelle, Vero Beach Highland, Vero Shores, Sebastian Highlands, or Port St. John. In any trade to one of these additional projects, the lot owner will be credited for the principal paid in under his purchase contract, plus a credit for the difference between the price he originally paid and the current sales price for that lot, such latter credit not to exceed 5% of the sales price of the General Development home and lot.

For example, a trade for a home and lot in Silver Springs Shores would work as follows:

SINGLE LOT TRADE ON HOME PURCHASE IN SSS

Assumption on Lot Traded In:

Current Selling Price	\$10,295
Original Purchase Price	3,595
Increase in Selling Price	6,700
TOTAL CREDIT APPLIED	<u>\$10,295</u>

Terms of \$76,985 Home Sale (Home \$58,990, Lot \$17,995)

Deposit	\$ 1,500
Lot Credit Applied	10,295
Cash at Closing	7,490
Mortgage Loan	57,700
TOTAL	<u>\$76,985</u>

D. General Development shall provide lot owners in Silver Springs Shores a public offering statement if they desire to exchange or trade in their lot for a lot in another of General Development's projects or for one in another area of Silver Springs Shores not covered by the public offering statement they originally received.

E. General Development will, at all times during which it is engaged in either the sale of lots or homes at Silver Springs Shores, but in no event for less than ten (10) years from the initial date of the actual offer to purchase, maintain an inventory of building lots in Silver Springs Shores within one-half mile of an existing shelter building area. This inventory of building lots will be made available to outside builders and to owners of Silver Springs Shores lots who wish to trade in their current lots and use an independent builder to construct a dwelling. These building lots will contain the same provisions for water and sewage disposal as are contained in General Development's shelter building areas. The building lots will be offered at the same price placed on comparable building lots by General Development in the marketing of its home and lot packages. The trade-in credit will be computed in the same manner as in the example given above for a house and lot package at Silver Springs Shores. The sale or trade of these building lots may contain a provision mandating the commencement of construction of a home within a specified period of time, not to be less than 90 days from the consummation of the lot trade-in or purchase. General Development shall have approximately twenty five (25) of these building lots available at all times under this program. Up to a total of five

hundred (500) building lots will be made available under this program.

F. General Development shall provide to the Commission, upon request, an affidavit executed by its Chief Financial Officer certifying that lots being traded-in, and those traded-for, pursuant to this agreement, are priced under the same pricing formula General Development is using to price comparable Silver Springs Shores properties it is offering for sale. General Development will further, upon request, provide sufficient information to establish such equality of pricing. The Commission shall treat all such information provided as confidential commercial or financial information entitled to all protections against disclosure to third parties under the Freedom of Information Act.

G. Commencing thirty days after the mailing of Exhibit A, and at all times during which General Development is engaged in either the sale of lots or homes at Silver Springs Shores, but in no event for less than ten (10) years from the initial date of the actual offer to purchase, Florida Home Finders, Inc., General Development's resale subsidiary, will maintain an office in Silver Springs Shores and will actively list and market deeded lots and resale homes in Silver Springs Shores. Florida Home Finders, Inc. will maintain a block listing in the local Marion County multiple listing service indicating that it has available for resale Silver Springs Shores lots listed with it. The listing service will be maintained at no charge to Silver Springs Shores lot owners. In soliciting listings for the service, General Development shall advise the lot owners in Exhibit A and in any subsequent mailings on the subject that the current resale activity is very limited and that the solicitation should not be construed as indicating any increased demand.

H. General Development will emphasize in its sales presentations and promotional materials that the purchase of lots in Silver Springs Shores should be for use by the purchaser and will make no representation that the purchase of a lot at Silver Springs Shores should be considered an investment by the purchaser. General Development shall also continuously undertake internal surveillance programs of its marketing and sales personnel to ensure that no unauthorized investment sales representations in regard to lots are made orally by its salesmen in their presentations. General Development's current programs are described in Exhibit B attached hereto.

I. General Development shall make no use or mention of this agreement or order in any of its advertising or sales promotional literature or programs, written or oral. General Development will,

however, respond in a factual manner to any inquiries received from a customer or potential customer, or from the press. If the agreement with the Commission is required to be disclosed in any property report or other document by another government agency, General Development shall include the required information.

J. General Development will limit initial construction of shelter units in the existing shelter core areas of Silver Springs Shores to two thousand (2,000) shelter units. General Development will then go in succession to two remote areas and there develop active shelter construction and sales programs. These remote area shelter programs will be established in Units 24 and 25, and in Unit 42.

III. *It is further ordered*, That General Development Corporation shall within one (1) year after service upon it of this order, and annually thereafter until it is no longer engaged in either the sale of homesites or homes at Silver Springs Shores, but in no event for less than ten (10) years, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

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

EXHIBIT A

GDC LETTERHEAD

Dear _____ :

This letter contains important information concerning the options available to you as a Silver Springs Shores lot owner, including an offer to repurchase your lot and a variety of exchange and building options. Please read this letter carefully and completely.

General Development Corporation is pleased to announce the acquisition of Silver Springs Shores, Ocala, Florida. General Development has seven projects situated on the East and West Coasts, as well as in South Central Florida. A brief description follows.

PORT CHARLOTTE/NORTH PORT is the company's oldest and largest project. It is located on the Gulf Coast, 25 miles north of Fort Myers and 45 miles south of Sarasota. Port Charlotte has 40,000 residents; North Port 12,500. The project borders Charlotte Harbor and its two tributaries, the Peace and Myakka Rivers.

PORT LABELLE was acquired in 1973 and is General Development's newest project. It comprises 31,700 acres along the southern bank of the Caloosahatchee River in

south-central Florida. Lying 30 miles east of Fort Myers, Port Labelle currently has about 1,600 residents.

PORT ST. LUCIE'S 28,000 residents celebrated the incorporated city's 20th anniversary in 1981. This project encompasses 48,000 acres straddling the North Fork of the St. Lucie River. Port St. Lucie is located 45 miles north of West Palm Beach. The paths of Florida's Turnpike and I-95, the two major East Coast roadways, pass through the project.

PORT MALABAR'S 43,000 acres make up about 90 per cent of the city of Palm Bay. Lying south of and adjacent to Melbourne on the East Coast, Port Malabar's population totals some 20,000.

VERO SHORES/VERO BEACH HIGHLANDS are on either side of Highway U.S. 1 about a half-hour's drive north of Port St. Lucie and five miles south of Vero Beach. Vero Shores' 411 acres front on the Indian River; west of U.S. 1, Vero Beach Highlands comprises 1,175 acres. Highlands population exceeds 1,500.

SEBASTIAN HIGHLANDS also is on U.S. 1, about halfway between Vero Shores/Vero Beach Highlands and Port Malabar. Its 5,060 acres make up most of the city of Sebastian and its 3,500 residents are three-quarters of the city's population.

PORT ST. JOHN is in Brevard County north of Port Malabar. Residents total over 2,000. Composed of some 5,500 acres, Port St. John is midway between Cocoa and Titusville.

Although you did not purchase your property from us, we are happy to welcome you into the General Development family. As a result of our acquisition, we are extending to you the ability to participate fully in the programs described in this letter, which include changing the location of your lot, using your lot as an exchange towards a house and lot package, using your lot as an exchange towards a lot in our immediate building areas, listing your lot for resale, or selling your lot back to us. Of course, there is no cost or obligation on your part since these privileges are being extended to you by virtue of your previous lot purchase at Silver Springs Shores.

Site Transfer Privilege

Your first benefit is the opportunity to trade the location of your Silver Springs Shores lot for another available lot of equal or greater value, in Silver Springs Shores or in any of our projects around the state, at any time during the next ten years. If you elect to do so, you will receive full credit for payments you have made and any increase in the sales price of your lot. The following example illustrates how the cost of a trade would be calculated.

TRADE TO COMPARABLE NEW LOT

Current Lot Site Selling Price	\$10,295
Original SSS Lot Purchase Price	3,595
Sale Price Increase	6,700
Current Selling Price—New Lot	\$10,295
Less Original Lot Price Increase	-6,700
Less Principal Paid on Original Lot	-3,595
Balance Due	-0-

TRADE TO HIGHER-PRICED LOT

Current Selling Price—New Lot	\$12,500
Less Original Lot Price Increase	-6,700
Less Principal Paid on Original Lot	-3,595
Balance Due	\$ 2,205

Housing Transfer Privilege

Alternatively, for a minimum of ten years and for as long as General Development is engaged in the sale of home and lot packages at Silver Springs Shores, you may trade your Silver Springs Shores lot towards the purchase of a home and lot package in a designated housing area in Silver Springs Shores or in any of General Development's other Florida projects.

Again, a trade-in at Silver Springs Shores allows you full credit for the sale price increase on your lot plus all principal paid since the date of your purchase from Silver Springs Shores. The following example illustrates what this means to you.

TRADE FOR HOME PURCHASE AT SSS

Current SSS Lot Selling Price	\$10,295
Original SSS Lot Purchase Price	3,595
(Assumes Paid-in-full)	
Original Lot Price Increase	6,700
Total Credit Applied	\$10,295

Example of \$76,985 Home Sale (Home: \$58,990, Lot: \$17,995)

Deposit	\$ 1,500
Lot Credit (from above)	10,295
Cash at Closing	7,490
Mortgage Loan	57,700
Total	\$76,985

A trade for a home and lot package at any of General Development's other projects works the same except that the credit for the increase in the original lot selling price may be limited to 5% of the value of the house and lot package. In the example above, if this was a trade for a house and lot package at another project, the credit for the \$6,700 price increase of the original lot would be limited to 5% × \$76,985, or \$3,849.25. Thus, the total credit would be:

Original Lot Purchase Price (Paid)	\$3,595.00
Original Lot Price Increase (5% limit)	3,849.25
Total Credit	\$7,444.25

Housing Area "Independent" Trade-In

This option is also available for at least ten years or for as long as General Development is engaged in the sale of home and lot packages at Silver Springs Shores. You may trade in your Silver Springs Shores lot towards the purchase of a lot in a designated housing area at Silver Springs Shores on which you may have a home constructed by a builder of your choice. Construction must start within a specified

Decision and Order

100 F.T.C.

period of time after the trade, not to be less than ninety (90) days nor more than 180 days. The trade-in credit will be the same as in the example given above for a house and lot package at Silver Springs Shores.

Listing Service

Commencing thirty days from the date of this letter, and continuing for the time period described in the above option, General Development's resale subsidiary, Florida Home Finders, Inc., will maintain an office in Silver Springs Shores and will list and market lots and homes in Silver Springs Shores. It will maintain a block listing (not identifying individual lots) in the local Marion County multiple listing service indicating that it has available for resale Silver Springs Shores lots that have been listed with it. You may have your lot listed at no charge to you. You are cautioned that there is currently very little resale activity and our offering of this service should not be construed as an indication of increased demand.

Buy-Back Program

In addition to the programs described above, General Development Corporation will offer to buy back your lot for the sum of two thousand (\$2,000) dollars. This offer will be extended in a separate letter you will receive within the next eighteen months.

We will extend the offer to all lot owners who purchased directly from Silver Springs Shores (AMREP) and who will have had their deed issued by Silver Springs Shores at least sixty (60) days prior to the date of the offer. Additionally, we will extend the offer to persons who were not the original purchasers from Silver Springs Shores who purchased their lot or who assumed the payments on the installment contract prior to March 31, 1982. They must also be deeded as set forth above.

The offer will be extended annually for a period of five (5) years to qualified purchasers who receive deeds from Silver Springs Shores after the cutoff date of our original offering.

Once you receive the offer, you will have a period of one hundred and twenty (120) days from the date of mailing to accept the offer of repurchase. If you choose this program, you may select one of three payment plans:

- 1) Payments made to you over an eight-year period at a 6% annual interest rate—approximately \$252/year plus interest.
- 2) Payments made to you over a six-year period at a 3% annual interest rate—approximately \$336/year plus interest.
- 3) Payments made to you over a four-year period with no interest—\$500/year.

We plan to add a new dimension and stimulus to Silver Springs Shores. We welcome you to the General Development family and look forward to serving you.

We are anxious to hear from you and invite you to write or call our Customer Service Department concerning additional information you desire or questions you might have concerning your rights and privileges. You may contact us by calling:

Name
Silver Springs Shores Information Service
Telephone #

or by writing:

Director of Customer Service
General Development Corporation
1111 South Bayshore Drive
Miami, Florida 33131

Sincerely,
Robert F. Ehrling
President

Draft Notes: All amounts shown are based on 1982 prices and no representation is made that such prices or amounts will remain the same. All are subject to change to reflect prices current when the letter is issued. GDC plans to include one of its color-photo advertising brochures when mailing this letter.

[This paragraph will be omitted from the actual letter.]

EXHIBIT B

SURVEILLANCE PROGRAM

General Development's Surveillance Program utilizes a private detective agency to do surveillance on a random basis at every General Development's sales office. The program is designed to have every sales source shopped at least twice a year (every six months). Additionally, special surveillance reports are done upon request of senior management in General Development's sales offices and also in broker affiliate offices. Currently General Development is using the Burns Detective Agency.

The investigator has been trained in the elements that constitute a proper sales presentation. He is asked to comment on the sales representative's appearance, general manner, content of the presentation and specific references to areas which might be considered of a problem nature, i.e.; does the salesman offer the property on an investment basis in his sales presentation? Are there any promises to buy back the property, etc.?

When we receive a favorable report from the investigator, we award the salesman with a gift. We call this the Sales Performance Review Awards Program. Those who receive unfavorable reports are dealt with in three ways:

1. Remedial work or retraining may be required if the infraction is of a minor nature or indicates a lack of knowledge.
2. Disciplinary action—If the infraction is of a minor but serious nature, the sales representative could be suspended for a period of time.
3. Termination will be recommended in all cases where serious infractions are involved.

In addition to the Surveillance Program, General Development's Legal Department keeps abreast of complaints regarding improper activities by salesmen and regularly requests investigation of any alleged improper activity which comes to the Legal Department's attention. Through these efforts all levels of management and the sales force are made aware of the Company's strong policy against any improper sales practices.

The result of these efforts is that General has found that the great majority of sales personnel shopped have done adequate to excellent jobs in their sales presentations. Disciplinary action has been instituted in cases where abuses were found and the program appears to be accomplishing what it was set up to do in controlling improper oral sales presentations.

Modifying Order

100 F.T.C.

IN THE MATTER OF

ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT*Docket 8908. Final Order, March 9, 1976—Modifying Order, Oct. 5, 1982*

This order reopens the proceeding and modifies the Commission's order issued on March 9, 1976 (87 F.T.C. 421), *modified*, Oct. 28, 1980 (96 F.T.C. 778), by permitting the company's salespeople to use a business card to inform consumers of the reason for their visit, instead of the 3" × 5" card stating, "The purpose of this representative's visit is to solicit the sale of encyclopaedias," as previously required. Additionally, Britannica will no longer have to describe limits on potential earnings during initial interviews with prospective employees, but will be required to disclose, among other things, that these limitations exist, before an applicant accepts a sales position. The modified order also substitutes the original order's restrictions on Britannica's use of the words "free" and "regular" or "retail" price with FTC guidelines on those subjects. The modification also alters the definition of what is considered "truthful."

ORDER MODIFYING CEASE AND DESIST ORDER

The Commission issued its Final Order against respondents on March 9, 1976. The Order became effective on March 17, 1980, upon the United States Supreme Court's denial of respondents' petition for certiorari. On March 18, 1980, the Commission issued a stay of Paragraphs II.A, II.B, II.D, and II.E of the Order to allow the Commission to consider a petition from respondents to modify these provisions. On October 28, 1980, the Commission modified these four paragraphs.

On July 2, 1981, respondents filed another petition to reopen and modify the Order together with an application for a stay of the Order pending the Commission's determination of the petition. The Commission denied the stay application on August 5, 1981. On October 9, 1981, respondents filed a supplemental memorandum in support of their request to reopen the proceedings and set aside or modify the Order. Staff and respondents entered into negotiations which resulted in an agreement on proposed modifications to the Order.

In a separate petition to reopen the proceedings filed October 27, 1981, respondents also sought a permanent modification of Paragraph II.D of the Order. The petition presented persuasive evidence from a consumer survey that presentation of a business card before seeking admission to a customer's home or place of business would

communicate the sales purpose of a representative's call as well as the 3" x 5" card now required by the provision.

The Commission has considered respondents' petitions and staff's recommendations and has determined that the public interest requires that parts of the Order should now be modified.

Therefore, *it is ordered*, that the following paragraphs be modified as follows:

I.

A. Representing, directly or by implication, either orally or in writing, that:

* * * * *

(2) persons will be trained as management trainees, or for other positions of responsibility concerned with administrative office functions unless, in fact, a formal management training program is available to persons accepting employment on the basis of such representations; or misrepresenting, in any manner, the amount and type of training that will be given;

* * * * *

B. Misrepresenting, in any manner, the amount of income to be earned by any person or that may be earned by any person, the expenses that may be incurred by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person.

C. Failing clearly and conspicuously to disclose in all advertising offering employment in any way involving door-to-door sales that respondent is recruiting persons for the sole purpose of soliciting or selling.

D. Failing clearly and conspicuously to provide, both orally and in writing, to any prospective sales employee at the initial face-to-face interview, and prior to executing any employment agreement with any such person, the following information:

(1) (a) that respondent is recruiting persons for the sole purpose of soliciting or selling;

(b) that the products or services being sold are encyclopedias or services to be used in connection therewith, or in the event that encyclopedias or such related services are not being sold, the products and services being sold; and

(c) the basis for compensating persons so engaged;

(2) that conditions or limitations upon the receipt of compensation, if any, do in fact exist, together with an example of such a material condition or limitation, and that all such conditions and limitations will be stated in detail in an interview in the event an offer of employment is made to such person;

* * * * *

(4) that expenses will be incurred by such person in performing required duties, together with an example of such a material expense, and that all such expense items will be stated in detail in an interview in the event an offer of employment is made to such person;

(5) [DELETED]

(6) that such soliciting or selling will be on an "in-home" basis, if such is the fact, or will include soliciting or selling on an "in-home" basis, if such is the fact.

E. Failing clearly and conspicuously to provide, both orally and in writing, to any prospective sales employee at an interview at which an offer of employment is made and prior to executing any employment agreement with any such person, the following information:

(1) A complete and detailed description of each condition and limitation imposed upon the receipt of any compensation;

(2) a complete and detailed description of any expense or expenses any such person may incur in performing the required duties;

(3)(a) the total number of sales employees employed by the office offering the position during the most recent calendar quarter, and (b) the number of sales employees employed by the office who, during the prior calendar quarter, received net earnings equivalent to or greater than the amount represented in the advertisement to which the prospective employee is responding; *provided, however*, that if the office has been in existence for less than three months or has fewer than five sales employees, respondents shall provide the information described above pertaining to the Division in which the office is located; *provided further*, that such information need not be furnished if the prospective sales employee contacts respondents more than ten days following the dissemination of the most recent advertisement that contains representations of earnings.

Respondent shall afford any prospective sales employee an adequate

opportunity to review and consider the above information prior to requesting execution of any employment agreement.

F. Failing to furnish to persons at an interview when an offer of employment is made, and prior to executing any employment agreement with any such person, a copy of Paragraphs I, II, III and VI of this Order, together with a cover letter as set forth in Appendix A* attached hereto. Respondent shall afford any prospective sales employee an adequate opportunity to review and consider these provisions of the Order prior to requesting execution of any employment agreement.

II.

A. Representing, directly or by implication, in any advertisement or promotional material that solicits participation in any contest, drawing, or sweepstakes, or solicits any response to any offer of merchandise, service, or information, and that employs any return card, coupon, or other device to respond to such solicitation, that a person who replies as requested will not be contacted directly by a salesperson for the purpose of selling respondents' products, unless such is the fact. Such advertisements or promotional material shall comply with this Paragraph only if they meet the criteria set forth in Appendix B.

B. Failing, upon the written request of the Associate Director for Enforcement or his designee, to (1) submit any advertisement or promotional material or (2) test any such advertisement or promotional material, using the procedure set forth in Appendix B, to determine whether it complies with Paragraph II.A.

C. Failing to disclose clearly and conspicuously, during any telephone contact and before commencing any sales presentation to prospective customers, the fact that the individual making the call is either soliciting the sale, rental, or lease of publications, merchandise, or services for respondents, or is arranging for a sales solicitation to be made, and that if the prospective customer so agrees, respondents will send a salesperson to visit said prospect for the purpose of soliciting the sale, rental, or lease of said publications, merchandise, or services.

D. Visiting the home or place of business of any person for the purpose of soliciting the sale, rental or lease of any publications, merchandise or service, unless at the time admission is sought into the home or place of business of such person, a business card of at

* See 87 F.T.C. 421 at 541 (1978).

least 2 inches by 3½ inches containing only the following information is presented to such person:

- (1) the name of the corporation;
- (2) the name of the salesperson;
- (3) the term "sales representative";
- (4) an address and telephone number at which the corporation or salesperson may be contacted;
- (5) the product or the corporation logo or identifying mark.

* * * * *

F. Representing, directly or by implication, either orally or in writing that:

- (1) Any person telephoning or visiting the home of any prospective purchaser is:

* * * * *

(c) telephoning or visiting the home of said prospect for the primary purpose of delivering or disseminating prizes, gifts, gift certificates, chances in any contest, drawing, sweepstakes, educational fund, or any other merchandise or item of chance.

* * * * *

(5) any publication, merchandise, or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of respondents' publications, merchandise, or services, pursuant to any agreement to purchase, rent, or lease any other publication, merchandise, service, or combination thereof from respondent, unless respondent complies with all of the terms of the Federal Trade Commission's "Guide Concerning Use of the Word 'Free' and Similar Representations," 16 C.F.R. 251, which is hereby incorporated into this Order, and with any modifications or changes that are made to this Guide. All of the provisions of the aforesaid Guide shall be construed as mandatory and binding upon the respondents.

* * * * *

I. Representing to any person, directly or by implication, either orally or in writing that:

- (1) any price is the retail, regular, usual or words of similar import or effect, price for any publication in any binding, merchandise or service, unless such price is an actual, bona fide price for

which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time.

(2) any price is the retail, regular, usual, or words of similar import or effect, price for any set of publications in any binding and in combination with any other publication, merchandise or service, unless such price is an actual, bona fide price for which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time.

* * * * *

O. [DELETED]

P. [DELETED]

It is further ordered, That the foregoing modifications shall be effective upon service of this Order upon respondents.

Commissioner Baily voted in the negative.

APPENDIX B

This Appendix sets forth the methodology respondents shall employ to determine whether advertisements or promotional materials represent that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products, and the criteria for determining whether such advertisements or promotional materials comply with Paragraph II.A.

1. *Format*—Respondents shall test the comprehension level of advertisements or promotional material by conducting a mall-intercept test, using the questionnaire attached hereto as exhibit 1.
2. *Sample Size*—The sample shall consist of at least 150 subjects.
3. *Demographics*—Test subjects must:
 - a) be between 25 and 49 years of age;
 - b) have at least one child fifteen years of age or younger living at home;
 - c) have household incomes of at least \$15,000 per year; *provided that*, upon respondents' request, the Division of Enforcement shall increase this figure by increments of \$5,000 whenever the percentage of households earning at least the requested amount equals or exceeds the percentage of households that, according to the 1980 United States Census, have household incomes of at least \$15,000 per year. The data for future changes shall be based on the most recently published edition of the *Statistical Abstract of the United States*.
4. *Location of Markets*—The interviewing will be conducted in four geographically dispersed markets. The same central location facilities will be used wherever possible. If it is necessary to change any interviewing facility, the new facility shall have demographic characteristics similar to those of the facility it is replacing.
5. *Criteria for acceptability of new coupon copy*—New coupon copy shall comply

Modifying Order

100 F.T.C.

with Paragraph II.A if at least seventy-five percent of the test subjects answer "yes" to question 6(b) of the questionnaire (exhibit 1).

Modifications to this Appendix, including the questionnaire, may be made upon a request by respondents and the approval of the Associate Director for Enforcement.

EXHIBIT 1

Modifying Order

STUDY: COUPON COMPREHENSION STUDY

MARKETS: Cleveland ()-1 Boston ()-3 (9)
New York ()-2 Kansas City ()-4

CARD:

INTERVIEWER'S NAME: _____

DATE: _____ TIME INTERVIEW BEGINS: _____

Hello, I'm _____ from _____. Today we are conducting a survey among men and women between the ages of 25 and 49 years of age.

1. Please tell me your approximate age. (READ LIST) (11)
- | | | | |
|-------------------------|------------------|-----------------------------|------------------|
| Under 25. | <u>TERMINATE</u> | 40 to 44 years. | ()- |
| 25 to 29 years. | ()-1 | 45 to 49 years. | ()- |
| 30 to 34 years. | ()-2 | 50 years and older. | <u>TERMINATE</u> |
| 35 to 39 years. | ()-3 | Refused | <u>TERMINATE</u> |

2. Do you have any children living at home 15 years of age or younger?
- Yes. () No. () TERMINATE

3. What are the ages of your children who live at home? (CHECK AS MANY AS APPLY) (12)
- | | |
|--------------------------------|-------|
| 16 years or above. | ()-1 |
| 12 years to 15 years | ()-2 |
| 8 years to 11 years. | ()-3 |
| 4 years to 7 years | ()-4 |
| 3 years or under | ()-5 |

- 4a. Is your total family income:
- | | |
|-----------------------------|--------------------|
| \$15,000 and above. | () |
| Below \$15,000 |] <u>TERMINATE</u> |
| Refused. | |

- 4b. Sex: (12)
- Male. ()-1 Female. ()-2

<p>TAKE RESPONDENT TO A PRIVATE INTERVIEWING AREA IN YOUR CENTRAL LOCATION FACILITY FOR THE BALANCE OF THE INTERVIEW.</p>

(HOLD UP AD IN A MANNER THAT PERMITS RESPONDENT TO SEE IT - COLOR CODED WITH QUESTIONNAIRE - AND SAY:)

"Suppose you saw this ad, and the coupon that was attached to it".

(HAND COUPON CARD - COLOR CODED WITH QUESTIONNAIRE - TO RESPONDENT AND SAY:)

"Now, using your imagination for a moment, assume you want to fill in and return this coupon which would be part of this ad for ENCYCLOPAEDIA BRITANNICA".

"Read this coupon as though you were interested enough to fill it in".

(DO NOT RUSH RESPONDENT. TAKE COUPON CARD FROM RESPONDENT WHEN HE/SHE HAS FINISHED READING.)

BE SURE TEST COUPON CARD AND AD ARE OUT OF SIGHT BEFORE ASKING:

5a. Based on your reading of the coupon, what would you expect to happen if you send in the coupon? (PROBE FULLY AND CLARIFY)

- _____ (14) _____
- _____ (15) _____
- _____ (16) _____
- _____ (17) _____

5b. What else would you expect to happen? (PROBE FULLY AND CLARIFY)

- _____ (18) _____
- _____ (19) _____
- _____ (20) _____
- _____ (21) _____

5c. Is there anything else you would expect to happen?

- _____ (22) _____
- _____ (23) _____
- _____ (24) _____
- _____ (25) _____

Modifying Order

"Now, I'd like to ask you a few more questions".

(INTERVIEWER: START AT THE "X" MARKED QUESTION AND PROCEED TO NEXT ONE, AND THEN BACK TO THE FIRST ONE, ETC.)

- () 6a. Based on your reading of the coupon, would you expect to receive a free booklet, if you send in the coupon? (26)
 - Yes. ()-1
 - No ()-2
 - Don't Know . . . (VOLUNTEERED). . . . ()-3

- () 6b. Based on your reading of the coupon, would you expect a sales representative for ENCYCLOPAEDIA BRITANNICA to contact you, if you send in the coupon? (27)
 - Yes. ()-1
 - No ()-2
 - Don't Know . . . (VOLUNTEERED). . . . ()-3

- () 6c. Based on your reading of the coupon, would you expect to get a free book rack, if you send in the coupon? (28)
 - Yes. ()-1
 - No ()-2
 - Don't Know . . . (VOLUNTEERED). . . . ()-3

- () 6d. Based on your reading of the coupon, would you expect to get a free globe of the world, if you send in the coupon? (29)
 - Yes. ()-1
 - No ()-2
 - Don't Know . . . (VOLUNTEERED). . . . ()-3

IF YES TO Q. 6b

- 7. If someone sent in the coupon, how likely do you think it would be that a sales representative from ENCYCLOPAEDIA BRITANNICA would contact that person? (READ FIRST FOUR RESPONSES ONLY) (30)
 - Very Likely. ()-1
 - Fairly Likely. ()-2
 - Not Too Likely ()-3
 - Not Likely At All. ()-4
 - Don't Know . . . (VOLUNTEERED). . . . ()-5

THANK RESPONDENT FOR HIS/HER COOPERATION.

RESPONDENT'S NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE #: _____ TIME INTERVIEW ENDED: _____
 (Area Code)

VALIDATED BY: _____ (31) _____

(32) _____

(33) _____

(34) _____

Modifying Order

100 F.T.C.

IN THE MATTER OF
FRED MEYER, INC.

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

Docket C-3028. Consent Order, July 23, 1980—Modifying Order, Oct. 14, 1982

This order reopens the proceeding and modifies the Commission's order issued on July 23, 1980 (96 F.T.C. 60), by modifying Paragraphs A and B of Section IV, so as to extend from 10 to 14 days the time in which customers have to come into the store to settle their account once the layaway period has expired. The modification also extends from 11 to 15 days the time the store will wait before returning layaway merchandise to stock.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JULY 23, 1980

The Federal Trade Commission having considered the July 19, 1982, petition of Fred Meyer, Inc., a Delaware corporation, successor to Fred Meyer, Inc., an Oregon corporation, to reopen this matter and modify the consent order to cease and desist issued by the Commission on July 23, 1980, and having determined that public interest warrants reopening and modification of the order,

It is ordered, That order Paragraph A and B of Section 4 be revised as follows:

A. Mail to each layaway customer:

1. within twenty (20) days after the end of the period designated in the layaway agreement to make full payment for the merchandise,
2. if the payments received by respondent have not been returned to the customer, and
3. if the merchandise has not been delivered to the customer, and
4. before the merchandise is returned to stock and before making any entries in the layaway account which would close out the account, the following disclosure clearly and conspicuously in twelve-point or larger type, entirely on one side of a single piece of paper, separated from any other written matter:

WE OWE YOU MONEY

(Date of mailing to
be inserted here)

You haven't fully paid for your recent layaway purchase at our (name of store) store. You can fully pay for your purchase within 14 days from the above date. Or you can get a refund from us for the amount you have paid (less 35 cents handling charge).

If you want a refund, come to the department of the store where you have the layaway not later than (insert date 14 days from notice) and ask for your money. You also have the choice of getting a credit to purchase other merchandise. Please bring this notice with you. If you don't ask for a refund or a credit, we will send you a check automatically within 45 days if the amount we owe you is more than \$1.

Respondent may insert in the above notice a different handling charge that is reasonable in comparison with a 35 cent charge.

B. Defer returning layaway merchandise to stock until 15 days after the mailing of the notice specified in IV.A. and allow completion of the layaway purchase within 14 days after the mailing of the notice.

Interlocutory Order

100 F.T.C.

IN THE MATTER OF

BOISE CASCADE CORPORATION

*Docket 9133. Interlocutory Order, Oct. 15, 1982*ORDER DIRECTING GENERAL COUNSEL TO COMMENCE COURT
ENFORCEMENT OF SUBPOENA DUCES TECUM

On August 10, 1982, the administrative law judge certified to the Commission the request of respondent Boise Cascade Corporation for enforcement of specifications 8, 11-15, 18 and 19 of a subpoena issued by the ALJ on March 1, 1982, to third party Northwest Wholesale Stationers, Inc. Boise is charged in this case with having induced or received discriminatory discounts from office product suppliers in violation of Section 2(f) of the Clayton Act, as amended by the Robinson-Patman Act. Boise resells office supplies at both the wholesale and the retail levels. Northwest is a cooperative that purchases at wholesale from manufacturers and resells to its retail office supply members and to other, nonmember retail office supply outlets. Boise claims to compete with Northwest in its sales to nonmember dealers at wholesale and with Northwest's members in their sales at retail to end users. The subpoena issued by the ALJ pertains to the prices Northwest has paid to its suppliers, as well as the prices it has charged to its members and customers. The information is relevant, Boise argues, to its defense on both the issues of discrimination and injury to competition.

The Commission has consistently held that an ALJ has wide discretion in discovery matters, and his or her determinations should be reversed only for a clear abuse of discretion. *E.g., General Foods Corp.*, 95 F.T.C. 306 (1980); *Warner-Lambert Co.*, 83 F.T.C. 485 (1973). The record of pleadings and orders regarding the issuance and enforcement of the subpoena in issue here demonstrates that the ALJ has in fact carefully and reasonably exercised his authority. The subpoena first requested by Boise was substantially redrafted at his insistence to eliminate unnecessary specifications, narrow the relevant time period for many specifications, and otherwise minimize the burden on Northwest of complying. He thoughtfully considered Northwest's motion to quash and its response to Boise's motion for enforcement. He has issued a protective order that will cover confidential documents produced or made available for inspection by Northwest. There has been no abuse of discretion here. Accordingly,

It is ordered, That the General Counsel shall seek court enforcement of specifications 8, 11-15, 18, and 19 of the subpoena duces

tecum issued to Northwest on March 1, 1982, unless Northwest agrees, within ten days of receipt of this order, to produce the subpoenaed documents at its place of business for inspection and copying by Boise's attorneys.

Modifying Order

100 F.T.C.

IN THE MATTER OF
EQUIFAX INC.

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

Docket 8954. Final Order, Dec. 15, 1980—Modified Order, Oct. 18, 1982

The FTC, in accordance with a decision rendered by the Court of Appeals for the Eleventh Circuit on June 18, 1982, has modified its Final Order In the Matter of Equifax Inc., issued on Dec. 15, 1980 (96 F.T.C. 844). The modified order, effective Oct. 18, 1982, deletes Paragraphs C and D of Part I of the Order, eliminating references concerning the amount of adverse information the company's employees generate about consumers.

MODIFIED ORDER TO CEASE AND DESIST

Respondent having filed in what is now the United States Court of Appeals for the Eleventh Circuit a petition for review of the Commission's cease and desist order issued on December 15, 1980; and the Court having rendered its decision setting aside in part the Commission's order:

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

I

It is ordered, That respondent Equifax Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the collection, preparation, assembly, sale, or distribution of consumer reports, investigative consumer reports, and files, as "consumer report," "investigative consumer report," and "file" are defined in Section 603(d), (e) and (g) of the Fair Credit Reporting Act (Pub. Law No. 91-508, 15 U.S.C. 1681 *et seq.*) ("the Act") and interpreted in the opinion of the Commission which accompanied the cease and desist order issued on December 15, 1980 (except credit reports prepared by Credit Bureau, Inc. of Georgia, Credit Bureau of Montreal, Ltd., and Credit Marketing Services), shall cease and desist from:

A. Representing, directly or by implication, during the preparation of any report, that investigative personnel employed by Equifax are agents or employees of the company to which the consumer who is the subject of the report has applied for a benefit.

B. Submitting consumer report information to any of its customers who have previously received a consumer report regarding the same consumer, unless: in response to the order of a court having jurisdiction to issue such an order; in accordance with the written instructions of the consumer to whom it relates; or respondent has reason to believe the requester intends to use the information for a permissible purpose as set out in Section 604 of the Act.

C. Including in a consumer report concerning employment at an annual salary of less than \$20,000 any notice or other statement that indicates directly or indirectly by means of boilerplate language the existence of items of adverse information, the disclosure of which is prohibited by Section 605 of the Act; *provided, however*, that language notifying the customer of the statutory limitations on the reporting of adverse information may be included in the type of consumer report to which this paragraph applies if it is included in all such reports, regardless of whether a particular consumer's file contains adverse information which the statute prohibits from being reported; and *provided further*, that it is accompanied by an explanation that the notification is included in all reports of the type to which this paragraph applies and is not intended to imply the existence of obsolete adverse information which may not be reported.

D. Misrepresenting to any consumer who requests information concerning himself or herself in respondent's files, the consumer's rights to obtain disclosure by telephone under Section 610 of the Act.

E. Failing:

1. To make available to any consumer who requests information concerning himself or herself in respondent's files, in person or by mail, at the consumer's option, all forms which he or she must execute in connection with the requirements of Section 610 of the Act to receive disclosure to which the consumer is entitled under the Act and this order; and

2. To inform the consumer: that he or she has the right to disclosure upon proper identification, by telephone if he or she pays any toll charge, or in person, at the consumer's option; and what constitutes proper identification.

F. Failing to give disclosure required by Section 609 of the Act to any consumer who has requested disclosure, has provided proper identification as required by respondent under Section 610 of the Act, and has paid or accepted any charges which may be imposed under Section 612 of the Act.

G. Failing, when giving consumers disclosure, to disclose the nature and substance of all information (excluding medical informa-

tion as defined in Section 603(i) of the Act) in its files on the consumer at the time of the request, as required by Section 609 of the Act.

H. Requiring a consumer, as a prerequisite to disclosing information from the consumer's file pursuant to Section 609 of the Act, to fill out or sign a form which authorizes respondent to conduct a reinvestigation of any item the consumer may dispute, or to transmit the results of such reinvestigation to persons to whom it has previously reported the disputed information or which authorizes any business, organization, professional person or anyone else to give full information and records about said consumer to respondent; or interposing any other similar condition or requirement which exceeds those specified in Section 610 of the Act.

I. Failing within a reasonable period of time to reinvestigate any item of information in a consumer's file, the completeness or accuracy of which is disputed by the consumer, unless it has reasonable grounds to believe the dispute is frivolous or irrelevant, as required by Section 611(a) of the Act.

J. Furnishing, directly or indirectly, other than for reports prepared solely for use in the business of insurance, medical information, as defined in Section 603(i) of the Act, obtained in response to a written authorization signed by a consumer, unless the authorization clearly identifies respondent as a recipient of the medical information.

II

It is further ordered, That respondent deliver a copy of this order to all present and future employees who are engaged in the preparation of consumer reports and investigative consumer reports or who are engaged in the disclosure or reinvestigation of information required by the Act.

It is further ordered, That respondent distribute a copy of this order to each of its operating divisions and subsidiaries.

III

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

Modifying Order

IV

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

Complaint

100 F.T.C.

IN THE MATTER OF

ASSOCIATION OF INDEPENDENT DENTISTS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3097. Complaint, Oct. 22, 1982—Decision, Oct. 22, 1982*

This consent order requires a Colorado dental association to cease, among other things, inhibiting competition by restricting or advising member dentists against the truthful advertising of their services. The order bars the association and its members from coercing any third-party payer into altering the terms and conditions of any dental health care plan. Further, the association must timely repeal any provision of its by-laws which are inconsistent with the prohibitions contained in the order; mail a copy of the order together with a letter specifying the changes made to the by-laws to every member; and provide all future members with a copy of the order.

*Appearances*For the Commission: *Steven T. Kessel.*For the respondent: *Thomas E. Jagger, Pueblo, Colo.*

COMPLAINT

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

PARAGRAPH 1. Respondent Association of Independent Dentists is a corporation organized and existing under the laws of the State of Colorado, with its mailing address at P.O. Box 1924, Pueblo, Colorado.

PAR. 2. Respondent is an association of dentists practicing in Pueblo County, Colorado, which is organized in order to, among other things, preserve and promote the private dental practices of its individual members. Respondent is not affiliated with any other dental society or professional association.

PAR. 3. Members of respondent are engaged in the business of providing dental services to patients for a fee. Except to the extent that competition has been restrained as herein alleged, members of respondent have been and are now in competition among themselves

and with other dentists. At least some of the fees which respondent's members charge for their services are reimbursed, in whole or in part, by third-party payers which pay for, or administer payment of, dental expenses incurred by their subscribers.

PAR. 4. Respondent engages in substantial activities which further its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

PAR. 5. In the conduct of their businesses, members of respondent receive substantial sums of money from third-party payers for rendering dental services, which money flows across state lines, and prescribe medicines or treatment devices which are shipped in interstate commerce. The acts or practices described below are in interstate commerce, or affect the interstate activities of respondent's members, third-party payers, other third parties, and some patients of respondent's members, and are in or affect commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

PAR. 6. Respondent has restrained competition among dentists in Pueblo County, Colorado by acting as a combination of at least some of its members, or by combining or conspiring with at least some of its members, to:

- A. Restrict truthful advertising by respondent's members in their individual dental practices; and
- B. Increase or maintain the level of reimbursement paid for dental services by third-party payers.

PAR. 7. Respondent has engaged in various acts and practices in furtherance of this combination or conspiracy, including, among other things:

- A. Enacting a by-law prohibiting its members from advertising any aspect of their individual dental practices without prior approval of respondent's Board of Directors;
- B. Disciplining members who advertised their individual dental practices without prior approval of respondent's Board of Directors; and
- C. Threatening a collective refusal by its members to execute "participating dentist agreements" with a third-party payer for dental services in order to force that third-party payer to increase the levels of reimbursement for dental services rendered to its subscribers.

PAR. 8. The combination or conspiracy and the acts and practices described above have restrained, frustrated and foreclosed competition among dentists practicing in Pueblo County, Colorado, in the following respects:

A. Members of respondent have agreed not to, and do not, compete with each other by advertising the price, quality or convenience of their individual dental practices, and advertising by some individual members of respondent has been restrained; and

B. Members of respondent have agreed not to compete by independently deciding whether, and on what terms, to deal with third-party payers for dental services, and have agreed instead to deal with such third-party payers on a concerted basis, in order to increase the fees which respondent's members receive for their services.

PAR. 9. The combination or conspiracy and the acts or practices described above have deprived consumers of the benefits of competition among dentists. In particular, consumers have been deprived of information which can be obtained through truthful advertising concerning the price, quality, and convenience of respondent's members' dental practices, and have been deprived of the benefits of efforts by third-party payers to contain or limit the costs of dental services to their subscribers in Pueblo County, Colorado.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent, Association of Independent Dentists, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the draft of complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent, Association of Independent Dentists, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its mailing address at P.O. Box 1924, Pueblo, Colorado.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

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

A. *AID* means respondent Association of Independent Dentists, its directors, officers, committees, agents, employees, successors and assigns;

B. *Third-party payer* means any person, partnership, corporation, government agency or other entity which agrees to pay for or reimburse, or administer payment or reimbursement of, all or part of any expense for dental services incurred by another person or group of persons;

C. *Reimbursement* means money paid by a third-party payer for dental services.

II.

It is ordered, That AID shall cease and desist from:

A. Restricting, regulating, interfering with, or advising against the advertising or publishing by any person or organization of

information about dental services offered by that person or organization, or the manner in which such information is advertised or published; or

B. Making any express or implied threat of acts to be taken by AID or by any AID members acting in concert with AID, or engaging in any other acts, with the purpose or effect of coercing, compelling, or inducing any third-party payer to accept a position taken by AID, or AID members acting in concert with AID, concerning the amount, manner of calculating, or terms of reimbursement.

III.

It is further ordered, That AID shall:

A. Within thirty (30) days after service upon AID of this order, repeal any provision of its by-laws which is inconsistent with the provisions of Part II of this order;

B. Within forty (40) days after service upon AID of this order, mail a copy of this order, and a letter specifying the changes to AID by-laws made pursuant to Paragraph A of this Part, to every AID member;

C. Within sixty (60) days after service upon AID of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which AID has complied with this order; and

D. Provide a copy of this order to each new AID member when the member is accepted into membership.

IV.

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

IN THE MATTER OF
H & R BLOCK, INC.

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

Docket C-2162. Consent Order, March 1, 1972—Modifying Order, Nov. 2, 1982

This order reopens the proceeding and modifies Paragraphs 5 and 6 of the Commission's order issued on March 1, 1972 (80 F.T.C. 304), by substituting a new paragraph 5, so as to make the order's provisions consistent with federal tax laws. Section 7216 of the Internal Revenue Code provides a comprehensive scheme for regulating the use by tax preparers of information obtained from customers, and the Commission believes that this scheme is adequate to prevent the misuse of confidential information by petitioner in the future.

ORDER REOPENING THE PROCEEDING AND GRANTING REQUEST TO
MODIFY ORDER

On January 22, 1982, H & R Block Inc., the petitioner, filed a Request to Reopen Proceedings under Section 2.51 of the Commission's Rules of Practice. Block sought to set aside paragraphs 5 and 6 of a March 1, 1972, order against the company. On June 8, 1982, Block filed a Supplement to Modification of Request to Reopen Proceedings, seeking modification of the Order paragraphs instead of their elimination. The Order paragraphs prohibit Block from using information obtained from a customer for any purpose other than the preparation of tax returns unless, prior to obtaining any information from the customer, Block obtains the customer's written consent. The consent form used must disclose: (1) the exact information to be used, (2) the particular use to be made of such information, (3) and a description of the parties or entities to whom the information may be made available.

The petitioner contends that enactment of Section 7216 of the Internal Revenue Code, 26 U.S.C. 7216, on December 10, 1971, effective January 1, 1972, and adoption by the Internal Revenue Service of regulations 301.7216-1 through 301.7216-3 on March 24, 1974, constitute a change of the law warranting reopening the proceeding and modifying paragraphs 5 and 6 of the Commission's Order. Regulation 301.7216-3 reads in pertinent parts:

Disclosure or use only with formal consent of taxpayer.—(a) Written consent to use or disclosure—(1) Solicitation of other business. (i) If a tax return preparer has obtained from the taxpayer a consent described in paragraph (b) of this section, he may use the tax return information of such taxpayer to solicit from the taxpayer any additional current business, in matters not related to the Internal Revenue Service, which the

tax return preparer provides and offers to the public. The request for such consent may not be made later than the time the taxpayer receives his completed tax return from the tax return preparer. If the request is not granted, no follow up request may be made. This authorization to use tax return information of the taxpayer does not apply, however, for purposes of facilitating the solicitation of the taxpayer's use of any services or facilities furnished by a person other than the tax return preparer, unless such other person and the tax return preparer are members of the same affiliated group within the meaning of section 1504. Thus, for example, the authorization would not apply if the person is a corporation which is owned or controlled directly or indirectly by the same interests which own or control the tax return preparer but which is not affiliated with the tax return preparer within the meaning of section 1504(a). Moreover, this authorization does not apply for purposes of facilitating the solicitation of additional business to be furnished at some indefinite time in the future, as, for example, the future sale of mutual fund shares or life insurance, or the furnishing of future credit card services. It is not necessary, however, that the additional business be furnished in the same locality in which the tax return information is furnished.

* * * * *

(2) Permissible disclosures to third parties. If a tax return preparer has obtained from a taxpayer a consent described in paragraph (b) of this section, he may disclose the tax return information of such taxpayer to such third persons as the taxpayer may direct. However, see § 301.7216-2 for certain permissible disclosures without formal written consent.

* * * * *

(b) Form of consent. A separate written consent, signed by the taxpayer or his duly authorized agent or fiduciary, must be obtained for each separate use or disclosure authorized in paragraph (a)(1), (2), or (3) of this section and shall contain—

- (1) The name of the tax return preparer,
- (2) The name of the taxpayer,
- (3) The purpose for which the consent is being furnished,
- (4) The date on which such consent is signed,
- (5) A statement that the tax return information may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under § 301.7216-2) other than that stated in the consent, and
- (6) A statement by the taxpayer, or his agent or fiduciary, that he consents to the disclosure or use of such information for the purpose described in subparagraph (3) of this paragraph.

The Commission has considered these developments and concluded that the public interest warrants its reopening the proceeding and modifying the order substantially as requested by petitioner. Section 7216 of the Code and the regulations promulgated thereunder constitute a comprehensive scheme for regulating the use by tax preparers of information obtained from customers. The Commission believes that this scheme is adequate to prevent the misuse of confidential information by petitioner in the future. The additional requirements of the Commission's Order, which mandate more

disclosures and require that consent be obtained earlier from the customer, are not inconsistent with the regulatory scheme. However, they do impose an additional burden on respondent that the Commission has concluded is unnecessary. Accordingly,

It is ordered, That paragraphs 5 and 6 of the Order be modified by the substitution of the following new paragraph:

5. Using or disclosing any information concerning any customer of respondent, including the name and address of the customer, obtained as a result of the preparation of the customer's tax return, for any purpose which is not essential or necessary to the preparation of said tax return, except as specifically authorized by Section 7216 of the Internal Revenue Code and the regulations promulgated thereunder or by future amendments thereto.

Interlocutory Order

100 F.T.C.

IN THE MATTER OF

U.S. PIONEER ELECTRONICS CORP.

Docket C-2755. Interlocutory Order, Etc., Nov. 5, 1982

REOPENING OF ORDER AND ORDER TO SHOW CAUSE

By petition of June 30, 1982, respondent U.S. Pioneer Electronics Corp. ("Pioneer") requests that Paragraph I(11) of the Commission's order issued against Pioneer on October 24, 1975 be modified so that the order would no longer prohibit Pioneer from restricting transshipment by sellers of its products. Pursuant to Section 2.51 of the Commission's Rules of Practice the petition was placed on the public record for comment.

Upon consideration of Pioneer's petition and supporting materials and the public comments, the Commission now finds that Pioneer would likely suffer significant competitive injury unless the order is modified. However, the Commission also finds that a limited prohibition of transshipment restrictions is necessary to ensure that the order's principal purpose, the encouragement of resale price competition in relevant Pioneer products, is achieved. Therefore, *it is ordered* that the order in this matter be reopened; that Pioneer's petition to delete Paragraph I(11) of the order is denied; and pursuant to Section 3.72(b) of the Commission's Rules of Practice, that on or before the thirtieth (30) day after service of this Order to Show Cause upon it, the Respondent may show cause, if any there be, why the public interest does not require the Commission to modify Paragraph I(11) of the order in this matter so that it will read as follows:

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

SEPARATE STATEMENT OF COMMISSIONER CLANTON, IN WHICH
CHAIRMAN MILLER CONCURS

The Commission today has issued an Order requiring U.S. Pioneer to show cause why its 1975 consent decree should not be modified to ban Pioneer from restricting transshipments to retailers who meet certain yet-to-be-established criteria. I would have preferred to grant Pioneer's petition in its entirety. I have noted for the Order only because a contrary vote would have deadlocked the Commission, leaving the original consent decree in effect and affording Pioneer no relief at all.

The original consent decree prohibited Pioneer from placing any restriction on transshipments, as an ancillary measure designed to reinforce other provisions prohibiting resale price maintenance.¹ Pioneer's affidavits clearly demonstrate that transshipments are frequently made to retailers who fail to provide adequate promotion and support services (a highly important aspect of stereo component marketing), and that this undermines the efforts of authorized dealers who do provide those services. Indeed, the Commission and its Bureaus of Competition and Economics agree that the "free rider" problem in this case is significant. Even more important, Pioneer's affidavits have also demonstrated the existence of considerable price competition among its authorized dealers. A survey of advertisements of authorized Pioneer dealers (including those who will apparently remain as dealers under Pioneer's proposed modification of its distribution system) shows, for example, a Pioneer receiver advertised at prices from \$96 to \$199, and a Pioneer tape deck advertised between \$139 and \$189—in each case, a range well below the suggested list price of that item.

In short, Pioneer has clearly carried its burden of demonstrating both the existence of serious free rider problems and the presence of vigorous price competition. I am unclear as to what additional evidence my fellow Commissioners would require.

To be sure, the Commission's decision today does permit Pioneer to establish reasonable, objective criteria for dealer services, and to ban transshipments to dealers who do not meet those criteria. However, this represents a much more intrusive or "regulatory" remedy than we customarily adopt, and in my view it should be confined to cases where there is a clear need for it. The difficulties of drawing up such criteria are obvious (to say nothing of the difficulties in enforcing them), and we have heretofore been very cautious in adopting

¹ The provisions prohibiting resale price maintenance were not challenged by Pioneer's petition and will remain in effect.

analogous remedies even in litigated cases where the Commission found an antitrust violation.² In this case, by contrast, there is no evidence suggesting that this remedy is necessary (or would even be of any use) to supplement the Order's provisions banning resale price maintenance. As indicated above, all the available evidence indicates that retail prices have become extremely competitive in the seven years the Order has been in effect. There is absolutely no evidence of any noncompliance with the ban on resale price maintenance (or with any other provision of the Order), and no evidence that that ban cannot continue to be enforced without restricting Pioneer's control over transshipments.

Thus, I am voting for this Order with extreme reluctance, and do so only because it represents the lesser of two evils. In my view, a far better course would have been to grant Pioneer's petition in its entirety.

SEPARATE STATEMENT OF COMMISSIONER PERTSCHUK
REGARDING U.S. PIONEER PETITION

Pioneer petitioned to be relieved totally from a Commission order provision which prohibits it from restricting its dealers' ability to transship audio components to other retail distributors. This provision was included in a 1975 order in response to Pioneer's alleged resale price-fixing activities. The rationale of the provision was to prohibit Pioneer from continuing to prohibit transshipping in order to further its resale price-fixing scheme and to provide a means for restoring intraband competition in Pioneer products.

Pioneer has made a showing that it has suffered a decline in market share in recent years and that there is some discounting by Pioneer dealers. On the other hand, there is no real proof that Pioneer's declining market share is the result of transshipping and, in fact, some commenters argued otherwise. Moreover, while there has been discounting of Pioneer products, Pioneer is planning to reorganize substantially its distribution system and to terminate a large number of dealers, including many who are clearly discounters.

² See *Onkyo U.S.A. Corp.*, 100 F.T.C. 59, Docket No. C-3092 (Aug. 24, 1982), where we issued an Order prohibiting resale price maintenance without any restriction on the respondent's control over transshipments, and *Lenox, Inc.*, 100 F.T.C. 259, Docket No. C-8718 (July 12, 1982), where we recently modified an Order to eliminate a ban on restricting transshipments without requiring the manufacturer to set up any objective criteria for transshippers. Even after finding unlawful resale price maintenance in *Russell Stover Candies, Inc.*, 100 F.T.C. 1, Docket No. 9140 (July 1, 1982), the Commission did not attempt to set objective criteria and require the manufacturer to permit sales or transshipments to all retailers who met those criteria. The Commission did incorporate an "objective criteria" requirement into its modification of a consent order in *James B. Lansing Sound, Inc.*, 97 F.T.C. 914, Docket No. C-1785 (May 20, 1981) but in that case this was the modification specifically requested by the respondent's petition.

Under these circumstances, the Bureau of Competition has recommended that Pioneer's order be modified to allow it to set reasonable non-discriminatory criteria on transshippees, but not to prohibit totally its dealers from selling to other retailers. In view of the uncertainty about the future of intraband competition for Pioneer products, I believe this more limited modification is appropriate. It will allow Pioneer to prevent identifiable classes of retailers from dealing in its products while retaining some additional spur to intraband competition.¹

SEPARATE STATEMENT OF COMMISSIONER BAILEY

I have voted to grant partial relief to petitioner Pioneer Electronics in order to permit some control over product transshipments, as long as the standards proscribing such transshipments are reasonable and consistent with the order's main prohibition against resale price maintenance.

The Supreme Court's decision in *Continental TV Inc. v. GTE Sylvania*, 433 U.S. 36 (1977), sets out analytic principles for non-price vertical restraints that petitioner urges should be taken into account in analysis of the petition. But I also believe that a petitioner must demonstrate that a competitive injury results from the order's current operation, or that the provision in question is unnecessary to achieve the relief that was the main thrust of the order. It is in regard to a colorable demonstration of competitive injury that I believe petitioner Pioneer has succeeded where others have failed. The limited relief granted should be sufficient to correct the competitive "free rider" harms set out by Pioneer, and Pioneer has acknowledged that some of their objections to the order are met by this approach.

I did not agree, however, that the petition should be granted outright. I believe there is a continued need to assure that resale price maintenance is prevented. My caution in approaching the petition was influenced by petitioner's alteration of its distribution system following a corporate leadership reorganization, as a consequence of which at least one major class of discounters was dropped as dealers. In this regard, I took into account the public record comments of representatives of this grouping. The facts peculiar to each petition most often determine the outcome, at least to my view.

¹ A similar order modification was made in *James B. Lansing Sound, Inc.*, 97 F.T.C. 914, Docket No. C-1785, but there the modification was requested by the petitioner. In *Lenox, Inc.*, 100 F.T.C. 259, Docket No. 8718, where a restriction on transshipping bans was eliminated, the record showed discounting by Lenox dealers with no imminent termination of discounting dealers. In *Russell Stover*, 100 F.T.C. 1, Docket No. 9140, the order does not prohibit restrictions on transshipments, but that resale price maintenance scheme was based on agreements, the legal basis of which were disputed in good faith by the respondent.

As we see more and more petitions seeking release from FTC orders, I continue to believe that strict standards should be applied to these requests. If a strong showing of need to reopen an order is not presented, I tend to endorse the presumptions of finality and repose that accompany a final FTC order resolving a legal dispute. Otherwise the credibility of FTC orders will be called into question.