IN THE MATTER OF

GREAT LAKES CHEMICAL CORPORATION, ET AL.

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

Docket 9155. Complaint June 23, 1981—Decision and Order May 23, 1984.*

The Federal Trade Commission has dismissed the proceedings against Northwest Industries, Inc. and Velsicol Chemical Corp.

Appearances

For the Commission: *John V. Lacci.*

For the respondent: *William Fifield, Christian L. Campbell, Sidley & Austin,* Chicago, Ill. and *William G. Schaefer, Jr., Sidley & Austin,* Washington, D.C. for Northwest, Industries, Inc. and Velsicol Chemical Corporation.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging respondents, Great Lakes Chemical Corporation, Northwest Industries, Inc., and Velsicol Chemical Corporation, with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondents Northwest Industries, Inc. and Velsicol Chemical Corporation ("respondents"), their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreements 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The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such

* Complaint previously published at 103 F.T.C. 467.

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, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Northwest Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 6300 Sears Tower, in the City of Chicago, State of Illinois.

2. Respondent Velsicol Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 341 East Ohio Street, in the City of Chicago, State of Illinois.

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

ORDER

It is ordered, That all proceedings in Docket No. 9155 against Northwest Industries, Inc. and Velsicol Chemical Corporation shall be dismissed.

IN THE MATTER OF

KAISER ALUMINUM & CHEMICAL CORPORATION

Docket 9080. Interlocutory Order, May 25, 1984

ORDER GRANTING EXTENSION OF *IN CAMERA* TREATMENT

Various exhibits in this proceeding have been subject to *in camera* treatment, pursuant to order of Administrative Law Judge James P. Timony. This order has now expired.

Third parties to this proceeding, Basic Incorporated ("Basic"), and J. E. Baker Company and Dolomite Brick Corporation ("Baker"), have requested a continuation of *in camera* treatment, by motions dated October 13, 1981 and October 15, 1981, respectively.

In Commission proceedings, requests for *in camera* treatment must show

> that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. The showing may consist of extrinsic evidence or, in certain instances, may be inferred from the nature of the documents themselves.[1]

That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to [the applicant's] business that disclosure would result in serious competitive injury," and then balancing that factor against "the importance of the information in explaining the rationale of [Commission] decisions."[2]

The Commission agrees that an extension of *in camera* treatment for these documents is justified. These are documents detailing sales of specific lines of refractories and related products, data regarded as extremely sensitive by both firms. Even though the statistics in question are over five years old, the companies argue a serious injury would be done them by release of this information, which they have never made available to the public.

The countervailing interest in public disclosure of the information does not outweigh the likelihood of serious competitive injury. A public understanding of this proceeding does not depend on access to these data submitted by these third party firms. Moreover, as third parties, the requests of these companies deserve special solicitude. As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.

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[1] *H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *see* 16 C.F.R. 3.45(b) 1983).

[2] *General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *see Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977).

For the reasons stated above and in the referenced motions, the Commission will extend *in camera* treatment to documents submitted by these third parties, until December 31, 1985. This extension applies to CX 139E and 139H, and RX 499D and 499H.

IN THE MATTER OF

KAISER ALUMINUM & CHEMICAL CORPORATION

Docket 9080. Interlocutory Order, May 25, 1984

ORDER DEFINING THE SCOPE OF PROCEEDINGS ON REMAND

The Commission issued its complaint in this matter on April 27, 1976, alleging that Kaiser's February 28, 1974, acquisition of the Lavino Division of International Minerals and Chemicals Corporation was in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45. An Initial Decision concluding that a violation had occurred issued October 12, 1978, and, on May 17, 1979, the Commission issued its Opinion and Order affirming a violation and ordering divestiture of the acquired assets.

In *Kaiser Aluminum & Chemical Corp.* v. *FTC,* 652 F.2d 1324 (7th Cir. 1981), the United States Court of Appeals for the Seventh Circuit vacated and set aside the Commission's order and remanded the case to the Commission for further proceedings consistent with the Court's main conclusion that the Commission had improperly applied the doctrine of *United States* v. *General Dynamics Corp.,* 415 U.S. 486 (1974) to the facts of this case.

On December 21, 1981, the Commission directed the parties to file briefs as to what factual and legal issues should be determined and what further proceedings, if any, would be appropriate, following the remand of this matter to the Commission for further proceedings consistent with the Court of Appeals' opinion.[1]

Complaint counsel take the position that only one issue need be addressed by the Commission on remand: whether upon the application of the legal principles of *United States* v. *General Dynamics Corp.,* supra, as interpreted by the Court of Appeals, the acquisition in question may substantially lessen competition in the relevant markets sustained upon judicial review. Complaint counsel argue that this single issue can be decided without reopening the record, and that the only further proceeding required is briefing of this issue.

Respondent Kaiser agrees that the principal issue on remand is whether, under the rule of *General Dynamics,* complaint counsel met their burden of proving that the acquisition may substantially lessen competition in the relevant markets. Kaiser believes that the complaint should be dismissed now without further briefing. However, in

[1] Briefs were filed by Kaiser Aluminum & Chemical Corporation ("Kaiser") and complaint counsel on February 12, 1982. Answering briefs by both parties were filed March 19, 1982. Kaiser moved to file a reply brief on March 26, 1982, and complaint counsel filed an opposition to this motion on April 7, 1982.

the event that such a dismissal is regarded by the Commission as inappropriate, Kaiser argues that certain additional issues should be addressed, and that the Commission should receive limited evidence, in the form of stipulation or affidavit, about industry developments subsequent to the closing of the record in 1978.

The Commission agrees that the principal issue to be determined on remand is whether, under the principles of *General Dynamics,* the acquisition may substantially lessen competition in the relevant markets sustained by the Court of Appeals. Specifically, the issue is whether statistics establishing a *prima facie* case of violation based upon past market shares can be rebutted by other evidence casting doubt on the ability of the statistics accurately to predict future anticompetitive consequences. Among the factors to which such evidence might pertain are ease of entry into the market, the trend of the market either toward or away from concentration, and the extent of active price competition.[2] The Commission agrees with Kaiser that, given the time elapsed since the acquisition was consummated in 1974 and the closing of the record in 1978, it would be in the public interest to permit the parties to supplement the record with limited evidence concerning industry developments since the closing of the record, insofar as those developments pertain to the nonstatistical factors identified in *General Dynamics.* The evidence is to be submitted on an expedited schedule and in the form of stipulations and affidavits.[3] *See United States* v. *General Dynamics Corp.,* 415 U.S. 486, 504–06 (1974); *United States* v. *E.I. duPont deNemours & Co.,* 353 U.S. 586, 597–598 (1957).[4]

Kaiser argues that, in addition to the *General Dynamics* issue, the Commission should also consider: (1) whether complaint counsel's market shares established a *prima facie* case of violation in the markets sustained by the Court of Appeals; (2) whether the acquisition resulted in efficiencies and other benefits that made it on balance pro-competitive; and (3) whether ordering divestiture would offer a reasonable prospect of significantly increasing competition in the in-

[2] Although these factors are specifically mentioned by the Court of Appeals, they are not necessarily the only relevant ones. Other factors that may apply here could be any of those mentioned in Parts III.B and III.C of the 1982 Justice Department Merger Guidelines and Part III of the 1982 FTC Statement on Horizontal Mergers.

[3] The Commission retains the option to order evidentiary hearings if necessary to resolve disputed issues of fact arising from the affidavits of the parties.

[4] Evidence of industry developments subsequent to the closing of the record will be accepted on remand in this case because nearly six years have passed since the record was closed and because such evidence may be relevant to the *General Dynamics* issue remanded by the Court of Appeals for determination by the Commission. Although post-acquisition evidence should not be given "too much weight," *FTC* v. *Consolidated Foods Corp.,* 380 U.S. 592, 598 (1965), there is authority for relying on "the best information available" in assessing a merger as old as this one. *See Consolidated Foods Corp.,* 380 U.S. at 605–06 (Stewart, J., concurring in the judgment). Moreover, as the Supreme Court noted in *United States* v. *General Dynamics,* 415 U.S. at 504–506, the preference to avoid post-acquisition evidence is based on the recognition that merger partners might temper their competitive conduct in the face of antitrust litigation. In this case, the passage of time and the emphasis that has been placed throughout this litigation on the issue of industry conditions rather than the post-merger conduct of the parties, justify the receipt of some form of post-acquisition evidence.

dustry and be in the public interest. In this regard, the Commission has a particular concern regarding the effect on all the issues in this proceeding of the reported termination of production, on August 31, 1982, of refractory brick at the Plymouth Meeting, Pennsylvania, and on suspension of operations at Gary, Indiana, at the end of 1983.[5] Further, Kaiser has stated that it is seeking to sell both of these facilities, which may bear on relief issues in this proceeding. The Commission will permit the parties to address all the issues raised by Kaiser in their briefs, and to submit the evidence relating to those issues as discussed in the briefs.[6] Submission of such evidence shall be limited to each party's initial filing. The parties may direct challenge to the acceptance by the Commission of any such evidence submitted, consistent with the definition of the scope of remand set out in this order and in the opinion of the Court of Appeals. The Commission reserves the power to accept or reject any such additional evidence.

Kaiser proposes a procedure whereby the parties would file briefs together with limited evidence about industry developments since the record was closed, in the form of affidavits and stipulations, to be followed by oral argument. With some modification, the Commission accepts Kaiser's basic suggestion, and directs the parties to file briefs, together with any stipulations and affidavits, as set forth below. Accordingly,

It is hereby ordered, That within 40 days of Kaiser's receipt of this Order, Kaiser shall file with the Commission and serve upon complaint counsel a brief, not to exceed 60 pages, together with any stipulations or affidavits regarding industry developments occurring after the close of the record;

It is further ordered, That within 40 days of complaint counsel's receipt of Kaiser's brief and any evidentiary submissions, complaint counsel shall file with the Commission and serve upon Kaiser a brief, not to exceed 60 pages, together with any stipulations or affidavits regarding industry developments occurring after the close of the record; and

It is further ordered, That within 20 days of Kaiser's receipt of complaint counsel's brief and any evidentiary submissions, Kaiser may file with the Commission and serve on complaint counsel a reply brief, not to exceed 30 pages, limited to matters discussed in complaint

[5] Letters of Kaiser's counsel to the Commission, dated July 26, 1982, January 11, 1983, and October 11, 1983.

[6] Kaiser states that it would not now plan to brief whether the two relevant markets sustained by the Court of Appeals were supported by substantial evidence, although it would expect to raise this issue in any future review petition it might file in the Court of Appeals. Accordingly, the Commission will not receive evidentiary submissions on that issue. However, the Commission will permit the parties to brief the issue of whether recent developments in legal and economic theory, as reflected in Part II.B.1 of the 1982 Justice Department Merger Guidelines, make it appropriate for the Commission to consider production substitution in identifying the relevant market(s) in this case.

counsel's brief. No further briefs or evidentiary submissions may be filed by either party, and oral argument is not contemplated as necessary to supplement the briefs.

IN THE MATTER OF

NATIONAL ASSOCIATION OF SCHOOL MUSIC DEALERS, INC.

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

Docket C-3134. Complaint, May 31, 1984—Decision, May 31, 1984

This consent order requires a Coralville, Iowa trade association comprised of dealers specializing in the sale and servicing of school band instruments, among other things, to cease taking any action or encouraging its members to take any action which would interfere with how, or to whom a manufacturer distributes its products.

Appearances

For the Commission: *Thomas J. Keary* and *Robert G. Day*

For the respondent: *Ronald J. Dolan, Peabody, Lambert & Meyers,* Washington, D.C.

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 National Association of School Music Dealers, Inc. has violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

1. Respondent, National Association of School Music Dealers, Inc. ("NASMD") is a non-profit corporation, organized and existing under the laws of the State of West Virginia, with its principal office located at 1212 5th Street, Coralville, Iowa.

2. NASMD is composed of both voting members, who conduct retail businesses for the promotion and sale of band musical instruments to school music departments, and non-voting members, who may be manufacturers or wholesale distributors of school musical instruments or related equipment. Respondent has approximately 200 retail dealers. NASMD was organized for, and serves its members, *inter alia,* as an instrumentality that facilitates the exchange of ideas concerning improved methods for conducting business in the sale and

distribution of musical instruments. Except to the extent that competition has been restrained as herein alleged, voting members of NASMD have been and now are in competition among themselves and with other sellers of band instruments.

3. Respondent is engaged in representing the pecuniary interests of its members. By virtue of such activities, respondent is a corporation organized to carry on business for the profit of it members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

4. In the course and conduct of their business, members of respondent, among other things, purchase musical instruments which are shipped to them in interstate commerce. Members of respondent sell, at retail, musical instruments which they ship in interstate commerce. As a result of which the acts and practices hereinbelow alleged are in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and respondent is subject to the jurisdiction of the Federal Trade Commission.

5. Respondent's members predominantly sell new brass and woodwind instruments to individual consumers and to institutions, such as school systems. In 1980, total retail sales of brass and woodwind instruments in the United States were approximately $192 million.

6. Individuals and institutions typically purchase new musical instruments from retail dealers. Individual consumers normally purchase from a dealer in their local area, which they select on the basis of the dealer's price and service and the quality of the instruments offered. Institutional purchasers, such as schools, generally solicit bids from local and distant retail dealers and select the retail dealer offering the desired instruments of the desired quality at the lowest cost.

Many retail music dealers concentrate their selling efforts within their local areas. Other retail dealers, sometimes referred to as mail order dealers, both solicit business in their local areas and seek to make sales to purchasers, particularly institutional purchasers, in a broader area. When a mail order dealer makes a sale to a distant customer, the manufacturer may ship the instrument directly to the dealer's customer, rather than to the dealer's place of business.

7. Respondent's members are retail dealers who generally concentrate their selling efforts in their local areas. They face competition from mail order retail dealers, particularly for institutional purchasers. For some time past, respondent and its members have acted in concert to restrict the competition they face from mail order dealers. In furtherance of this plan, respondent and its members have acted to prevent manufacturers of musical instruments from shipping musical instruments directly to a retail dealer's customers, thereby

impeding the ability of mail order dealers to sell musical instruments to distant customers. Furthermore, respondent and its members adopted and distributed to manufacturers of musical instruments a resolution urging manufacturers to eliminate direct shipment to dealers' customers. Respondent and its members also directly or impliedly threatened to refuse to deal with manufacturers who did not comply with the resolution.

Respondent and its members have also acted to restrict competition from manufacturers selling musical instruments at retail. In furtherance of this plan, they have required as a condition of membership in the association that manufacturers agree not to engage in competition with retail dealers.

8. The acts, practices, and methods of competition alleged in paragraph seven have had, or have the tendency or capacity to have, the following effects:

(A) Restraining competition among respondent's members;

(B) Restraining competition between respondent's members and other retail dealers of musical instruments;

(C) Restraining the ability of musical instrument customers, such as school systems, to receive direct shipments from manufacturers, which restraint may tend to increase the cost of musical instruments;

(D) Restraining the ability of manufacturers of musical instruments to ship musical instruments directly to the musical instrument customers, such as school systems, which restraint, as alleged in subparagraph (C) above, may tend to increase the cost of musical instruments; and

(E) Restraining the ability of manufacturers of musical instruments to distribute musical instruments in any manner that would place the manufacturer in competition with respondent's members and other retail dealers of musical instruments.

9. The aforesaid acts and practices of respondent constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

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

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

1. Respondent National Association of School Music Dealers, Inc., sometimes hereinafter referred to as NASMD, is a non-profit corporation, organized and existing under the laws of the state of West Virginia, with its principal office located at 1212 5th Street, Coralville, Iowa.

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 NASMD, its officers, directors, representatives, agents, employees, successors and assigns, and any subsidiary, committee, division or other device shall cease and desist from:

A. Taking any action, directly or indirectly, on behalf of its members, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any musical instrument manufacturer's decision as to how or to whom it distributes its product(s).

B. Requesting, urging, recommending or suggesting that NASMD members take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any musical instrument

anufacturer's decision as to how or to whom it distributes its roduct(s).

II.

It is further ordered, That this Order shall not be construed to revent NASML from merely providing information or its members' iews to musical instrument manufacturers concerning the effects on NASMD members of the ways in which the manufacturers distribute heir products, so long as the information or views are not provided n a manner constituting an actual or threatened boycott or refusal to deal.

III.

It is further ordered, That:

A. NASMD shall mail to each of its members and to each person to whom it sent written notification of the NASMD resolution of February 9, 1982, a copy of the Commission's Order in this matter and a letter in the form shown as "Appendix A" to this Order.

B. For a period of two (2) years after the date of service of this Order, NASMD shall also provide each new NASMD member with a copy of this Order at the time the member is accepted into membership.

IV.

It is further ordered, That, for a period of three (3) years following the effective date of the Order, NASMD shall maintain in its files a copy of the minutes of each meeting of its membership and of each meeting of its board of directors and a copy of all correspondence received from, or sent to, any mail order dealer, any manufacturers of musical instruments or any association representing manufacturers of musical instruments and that such copies of minutes and correspondence be made available for inspection by representatives of the Federal Trade Commission upon written request.

V.

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

other times as the Commission may, by written notice to respondent, require.

VI.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in it, 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

(Respondent's Letterhead)

Dear _____

As you may be aware, the Federal Trade Commission (FTC) has been investigating certain activities of the National Association of School Music Dealers (NASMD) and NASMD has voluntarily entered into an agreement with the FTC which resulted in the issuance by the Commission on (date) of a complaint and the entry of a consent order. The order requires that you be sent a copy of the order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that NASMD will cease and desist from taking any action on behalf of its members, such as an actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any musical instrument manufacturer's decision as to how or to whom it distributes its products. Further, NASMD will not urge, recommend or suggest that its members take such action.

A copy of the order is enclosed.

Sincerely,

_____

President

Enclosures

IN THE MATTER OF

ADRIA LABORATORIES, INC.

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

Docket C-3135. Complaint, June 5, 1984—Decision, June 5, 1984

This consent order requires a Dublin, Ohio manufacturer and seller of over-the-counter drugs, among other things, to cease promoting "Efficin," or any other over-the-counter internal analgesic containing magnesium salicylate, by representing that the product contains no aspirin, or by comparing the product's safety to any product containing aspirin, unless representations are accompanied by prescribed disclosure warnings and substantiated by reliable and competent scientific evidence.

Appearances

For the Commission: *T. Bringier McConnell,* Washington, D.C.

For the respondent: *Alan A. Kaplan, Kleinfeld, Kaplan & Becker,* Washington, D.C., and *Bethany A. Beck,* in-house counsel, Columbus, Ohio.

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 Adria Laboratories, Inc. a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located in Dublin, Ohio.

PAR. 2. Respondent is now and for some time in the past has been engaged in the manufacture, offering for sale, and sale of over-the-counter drugs, including Efficin.

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of advertising and promo-

tional material, including, but not limited to, the advertising and labeling referred to herein, to promote the sale of Efficin.

PAR. 4. Respondent operates in various States of the United States and in the District of Columbia. Respondent's manufacture, offering for sale, sale, and distribution of over-the-counter drugs, including Efficin, mentioned herein, constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and is now, in substantial competition in or affecting commerce with firms and corporations engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondent.

PAR. 6. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements for over-the-counter drugs, including Efficin, by various means in or affecting commerce, including, *inter alia,* broadcast, national magazines, product labels, point-of-sales brochures, and other means, distributed by mail and across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products.

PAR. 7. Typical advertisements and promotional materials, disseminated as previously described, are attached hereto as Exhibits A through I. Included *inter alia* in those advertisements and promotional materials is the statement "Contains No Aspirin. . . ."

PAR. 8. Through the use, *inter alia,* of the advertisements referred to in Paragraph Seven, and other advertisements or promotional materials not specifically set forth herein, respondent has represented, and now represents, to consumers directly or by implication, one or more of the following:

(a) Efficin is not associated with most of the side effects and contraindications with which aspirin is associated.

(b) Use of Efficin poses a lesser risk of suffering the side effects associated with aspirin than does use of aspirin.

(c) The side effects associated with both aspirin and Efficin are less severe with Efficin than with aspirin.

PAR. 9. The representation in Paragraph Eight (a) is false, for the reason that Efficin is similar to aspirin, and that the ingredient in Efficin has been associated with most of the same side effects and contraindications as aspirin.

PAR. 10. Through the use of the advertisements referred to in Paragraph Seven, and other advertisements not specifically set forth herein, respondent has represented, directly or by implication, that it