

IN THE MATTER OF  
PHONE PROGRAMS, INC.

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

*Docket 9247. Complaint, May 7, 1991--Decision, December 10, 1992*

This consent order prohibits, among other things, a New York corporation from misrepresenting the ease with which a premium is obtainable and the content of any telephone information service message to children aged twelve and under. In addition, the respondent is required to include a clear statement at the beginning of each children's message giving the child a chance to hang up without charge, and is required to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

*Appearances*

For the Commission: *Richard L. Cleland, Joel Winston, and Robert C. Cheek.*

For the respondent: *Eric L. Chase, Hannock Weisman, Roseland, N.J.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Phone Programs Incorporated, a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Phone Programs Incorporated is a New York corporation with its office and principal place of business located at 919 Third Avenue, New York, New York.

PAR. 2. Respondent has advertised, offered for sale and has sold information services to consumers, including children. Accessed by the telephone through a "900" number exchange, respondent's information services for children ordinarily consist of recorded

stories featuring animated or fictional characters (such as Popeye and P.J. Funny Bunny) along with recorded promotional messages. Advertisements designed to induce consumers to purchase these services have been broadcast on television across state lines.

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

PAR. 4. Respondent has disseminated, or has caused to be disseminated, advertisements and telephone messages for various information services for children. Typical of respondent's advertisements and telephone messages, but not necessarily all-inclusive thereof, are the advertisements and telephone messages attached hereto as Exhibits A through D. Specifically, the aforesaid contain the following statements and depictions:

1. "Plus, every bunny that calls will receive a special Funny Bunny present!" (Audio, Complaint Exhibit A)
2. "Plus every caller gets a special gift." (Audio) "Every Caller Gets a Gift." (Video) (Complaint Exhibit B)
3. "Call now and celebrate Popeye's birthday." (Audio) (Complaint Exhibit B)
4. "It's Popeye's birthday, but you get the present." (Audio). [Video depicts a large birthday cake with Popeye and his friends seated on the cake] (Complaint Exhibit B)
5. "And wuld youse like to call again tomorra fer some more surprisques -- and some news about a special boithday party?" [telephone message] (Complaint Exhibit C)
6. "And I'll be in da soup, boys and goils, if you don't comes back tomorra -- fer some news about me comin' boithday party -- and anudder story" [telephone message] (Complaint Exhibit C)

PAR. 5. Through the use of the statements and depictions contained in the attached advertisements and in others not specifically set forth herein, respondent has represented, directly or by implication, that children who complete a call to respondent's information service will readily and easily obtain the premium specified in the advertisement.

PAR. 6. In truth and in fact children who complete a call to respondent's information service will not readily and easily obtain the premium specified in the advertisement, because the child must: (1)

complete a call to the information service; (2) record an address, given once at the end of the recorded message announcement, to which a request must be sent to the item; (3) obtain a copy of the telephone bill which contains the call to the information service; and (4) send a copy of the bill to the respondent at the proper address. This ordering information is given in a rapid and difficult to follow manner during the course of the recorded message.

Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the combined use of the statements and depictions contained in the attached advertisements and telephone messages and in others not specifically set forth herein, respondent has represented, directly or by implication, that children who call the "Popeye" information service will in most cases hear information about Popeye's birthday.

PAR. 8. In truth and in fact, children who call the "Popeye" information service will not in most cases hear information about Popeye's birthday, because only one of the 29 episodes in the series of "Popeye" messages contained information about Popeye's birthday. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. In its advertising for its information services for children, respondent has represented, directly or by implication, that children could easily obtain a premium by making a call to the information service. Said advertisements failed to disclose that there are material terms and conditions for obtaining the premium, including but not limited to, the need for a writing implement to transcribe the ordering information. These terms and conditions would be material to the caller in deciding whether to purchase the service. Respondent's failure to disclose these terms and conditions was, and is, a deceptive practice.

PAR. 10. In the course of advertising, promoting, and selling its information services for children, respondent has induced children to call its story service and thereby incur charges, without providing any reasonable means for persons responsible for payment of these charges to exercise control over the transaction. This practice has caused such persons to pay these charges. Respondent's conduct as set forth above has caused substantial injury to consumers that is not

outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This conduct was, and is, an unfair act or practice.

PAR. 11. The acts and practices of the respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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EXHIBIT A

**VMS**  
**VIDEO MONITORING SERVICES OF AMERICA, INC.**  
 330 WEST 42ND STREET,  
 NEW YORK, NEW YORK 10036  
 (212) 736-2010  
 A **BUNNIES** Affiliates

**PRODUCT:** P.J. FUNNY BUNNY PHONE LINE  
**LENGTH:** :30  
**MARKET:** NEW YORK  
**DATE:** 03/22/89  
**PROGRAM:** BEWITCHED  
**CODE #:** 0389-3221  
**STATION:** WNYW  
**TIME:** 2:00 PM

Complaint Exhi  
A



(BKG MUSIC)  
P.J. FUNNY BUNNY: Hey, boys and girls!



I'm P.J. Funny Bunny.



and I've got exciting news for you! Dial this number now.



and my friends and I will tell you all about our terrifically



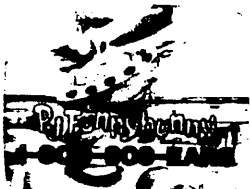
Funny Bunny adventures!



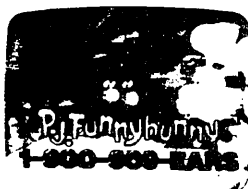
Plus, every bunny that calls



will receive a special Funny Bunny present!



So join us on our magically fun adventures.



and become a part of the Funny Bunny family, too! Don't wait! Call now!



We're hoppin' to hear from you! (GIGGLES)



FEMALE ANNCR: \$2.00 for first minute, 45 cents each additional minute.



Children, get your parents' permission before you dial. (MUSIC ENDS)

NEW YORK • LOS ANGELES • CHICAGO • PHILADELPHIA • SAN FRANCISCO • BOSTON • DALLAS • WASHINGTON • HOUSTON • MIAMI • DENVER • HARTFORD • SAN DIEGO

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Complaint

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## EXHIBIT B

"POPEYE"

Phone Programs, Inc.

AudioVideo

Popeye: Shiver me timbers, boys and girls. I gots a secret to tell you. I gots a brand new phone line story. Me, Popeye. And all me buddies, of course. A goi, goi, goi.

Call Popeye Now!  
1-900-909-4 POP

Olive Oil: Oh, Popeye.

Man with club: Yeah, boys and girls. Call now, and I'll tell you about our adventures. Plus, every caller gets a special gift.

Every Caller Gets a Gift.  
Call Popeye Now  
1-900-909-4 POP

Olive Oil: That's right. It's Popeye's birthday, but you get the present. Oh, I'm so excited.

Call Popeye Now  
1-900-909-4 POP

Voice: Remember, kids. Call now and celebrate Popeye's birthday.

Popeye: That's right, boys and girls. We're waiting to hear from you.

Other voice: \$2 the first minute. 45 cents each additional minute. Children, get your parents' permission before you dial.

Call Popeye Now  
1-900-909-4 POP  
\$2 the first minute.  
45 cents each additional  
minute.  
By 900 U.S.

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## EXHIBIT C

“POPEYE” #1 “NO TRAPEZE, PLEASE!” 1:50 LIONEL WILSONMUSIC: (POPEYE THEME)POPEYE: Shiver me timbers, boys and goils, it's your old friend, Popeye the sailor -- wit' lots o' new stories and surprisques -- like the time I takes me goil Olive to the coicus ... (MUSIC: CIRCUS MUSIC)OLIVE: Oh, joy of joys, Popeye! The show's starting!RINGMASTER: (AFTER SFX: FANFARE) And on the flying trapeze -- the one and only -- BLUTO, THE BIRDMAN! ...POPEYE: Me peepers is deceivin' me! It's that swab, Bluto!OLIVE: Popeye! He's swinging right towards US!SFX: (SLIDE WHISTLE AS TRAPEZE APPROACHES)BLUTO: Hiya, Olive cutie! How about a ride on my trapeze?OLIVE: Scram, you rude dude! I'm with my financee!POPEYE: Swing elsewhere before I decks you wit' my fisks!BLUTO: Oh, yeah! TAKE THAT! ...SFX: (POW! ... POPEYE RIPS THROUGH THE CANVAS)OLIVE: Oh, how despicable! You've knocked Popeye out of the tent!BLUTO: Let's fly, Baby-doll! Up and away!OLIVE: HELP! HELP! ... (FADES) POPEYE! ...POPEYE: What am I doin' here - at the refreshkment stand?VENDOR: Hot dogs! Spinach pie! ...POPEYE: SPINACH PIE? Gimme three! ... (MUSIC: POPEYE THEME)

Now I makes mincemeat outta dat flyin' fink! ... Hey! He's got Olive two-hundred feets in de air!

OLIVE: (AT DISTANCE) HELP! ...POPEYE: He's comin' at me again! (SFX: TRAPEZE APPROACHES)BLUTO: I thought I got rid o' you!POPEYE: I t'ought one good toin desoives anudder!SFX: (EXPLOSION AS POPEYE'S FIST CONNECTS)OLIVE: Popeye! He landed in that cannon! (SFX: CANNON SHOT)

Now he's flyin' through the top of the tent!

POPEYE: TENT nuthin' at all! Ca-ca-ca! Would youse like ta swing wit' me, Miss Oyl?OLIVE: My daring young man on the flying trapeze!POPEYE: And wuld YOUSE like to call again tomorra fer some more surprisques -- and some news about a special boithday party? ...

## EXHIBIT D

"POPEYE" #2                      "COUNT TEN, MEN!"    1:50                      LIONEL WILSON

MUSIC:                      (POPEYE THEME)  
POPEYE:                      Avast, Mateys! Popeye da two-fisted sailor here and I'm glad youse called -- 'cause I wanna tell you dat fisticuffing just ain't genteel. And dat's what I told me little nephews when I takes dem to dinner in a restaurank ... (MUSIC -- OUT) ... So remember, fellers -- ALWAYS COUNTS TEN BEFORE USIN' YOUR FISKS! ...

POOPEYE:                      Yes, Unca Popeye ...  
PIPEYE:                      Here's the waiter, Unca Popeye!  
POPEYE:                      HEY! Dat's no waiter! Dat's BLUTO!  
BLUTO:                      Welcome to Bluto's Beanery! Whaddaya want fer starters, bowlegs? Some ice cold potato soup? (SFX SPLASH!) Ooops! It slipped! (LAUGHS)

POPEYE:                      Hey! I wants to slurp me soup -- not WEAR it!  
PEEPEYE:                      Uh-UH! Count ten, Unca Popeye!  
POPEYE:                      One - two - three ...  
BLUTO:                      How about a couple o' hard-boiled eggs? Here! I'll crack 'em for ya! (SFX: EGGS CRACK ON POPEYE'S HEAD)

POPEYE:                      Oh, me delicate dome!  
PUPEYE:                      Count ten, Unca Popeye!  
POPEYE:                      ... four - five - six ...  
BLUTO:                      How about a nice fresh LOBSTER? It's so fresh, it's still ALIVE! ... (LAUGHS - SFX: LOBSTER SNAPS CLAW!)

POPEYE:                      He-e-e-ey! Dat's my nose!  
POOPEYE:                      Count ten, Unca Popeye!  
POPEYE:                      ... seven - eight - nine ...  
BLUTO:                      And here's a nice bowl of GREEN salad! ... OOPS! Now wasn't dat clumsy o' me? (LAUGHS) I guess dey'll all be callin' ya SPINACH-HEAD!

POPEYE:                      Did I hear dat name what's muskic to my ears? SPINACH?  
MUSIC:                      (POPEYE'S THEME)  
PIPEYE:                      Count ten, Unca Popeye!  
POPEYE:                      TEN!!! (SFX: "SPLAT" AS POPEYE SOCKS BLUTO -- THEN SOUND OF BLUTO CRASHING INTO TABLE NEARBY)

PUPEYE:                      Gee, Unca Popeye -- looka Bluto! He's layin' on dat table over dere covered with gravy!  
POPEYE:                      Ya might say Bluto's in a STEW! Ca-ca-ca! ... And I'LL be in da SOUP, boys and goils, if you don't comes back tomorra -- fer some news about me comin' boithday party -- and anudder story ...



## 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 respondent of all the jurisdictional facts 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 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 Secretary having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Phone Programs, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 919 Third Avenue, New York, New York.

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

For purposes of this order, the term "*children*" or "*child*" shall mean a person of age twelve or under.

For purposes of this order, the term "*information service for children*" shall mean a telephone message accessed through a num-

bered exchange (*e.g.*, "900") for which a fee is charged, consisting of live or recorded statements promoted or sold primarily to children.

For purposes of this order, the term "*premium*" shall mean any item respondent offers to send to those who call its information service for children.

For purposes of this order, the term "*information service message*" shall mean any live or recorded story, program or other communication transmitted to callers of respondent's information service for children.

For purposes of this order, the term "*video advertisement*" shall mean any advertisement intended for dissemination on television broadcast, cablecast, home video, or theatrical release.

For purposes of this order, the term "*affiliate*" includes, but is not limited to, corporations with a majority of shareholders or directors in common with respondent.

#### I.

*It is ordered*, That respondent Phone Programs Incorporated, a corporation, its successors, assigns, and affiliates, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

- A. The ease with which a premium is obtainable; and
- B. The content of any information service message for children.

#### II.

*It is further ordered*, That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any

information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing as specified below to disclose, clearly and prominently, whenever an offer of any premium is made, all the material terms, conditions and obligations upon which receipt and retention of the premium is contingent. Such terms, conditions, and obligations shall include, but not be limited to, the number of calls necessary to receive the premium, if more than one, and the need to have a writing implement and paper available to record the necessary information given during the information service message.

The disclosure shall be made in a manner understandable to children, and shall be made in the same medium in which the offer of the premium is made and, in addition, in any information service message.

### III.

*It is further ordered,* That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for an information service for children that does not include the following statement:

"KIDS, YOU MUST ASK YOUR MOM OR DAD AND GET THEIR PERMISSION BEFORE YOU CALL. THIS CALL COSTS MONEY."

The above required disclosure shall be presented in a manner designed to ensure clarity and prominence. If the disclosure is made in the manner described below, it will be considered as complying with this provision of the order.

A. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The disclosure shall appear immediately following the first video presentation of the "900" telephone number, but in any event shall begin within the first fifteen (15) seconds of the advertisement.

The audio portion shall be presented in a slow and deliberate manner. Each line of the video portion shall be at least as large as one-half of the size of the largest presentation of the "900" number that appears on the screen during the advertisement, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for the duration of the audio disclosure.

B. In any print advertisement, the disclosure shall be parallel to the base of the advertisement and shall be placed in close proximity to the 900 number. All lines of the disclosure when taken together shall be the same size or larger than the largest presentation of the 900 number, but in any event the type size of each line of the disclosure shall be no less than 12 point, bold-face type.

C. In any radio advertisement, the disclosure shall be presented in a slow and deliberate manner and shall appear immediately following the first presentation of the "900" telephone number, but in any event it shall begin within the first fifteen (15) seconds of the advertisement.

Nothing contrary to, inconsistent with, or in mitigation of the above required statement shall be used in any advertisement in any medium.

#### IV.

*It is further ordered,* That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for an information service for children that does not include a disclosure of the cost of a call to the information service. This disclosure shall be presented in a manner designed to ensure clarity and prominence. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement.

## V.

*It is further ordered*, That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, shall include, at the beginning of every information service message, an introductory preamble that states in a slow, deliberate and clear manner the following:

"THIS TELEPHONE CALL COSTS MONEY. IF YOU DO NOT HAVE YOUR MOM OR DAD'S PERMISSION, HANG UP NOW AND THERE WILL BE NO CHARGE FOR THIS CALL."

## VI.

*It is further ordered*, That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from billing or causing to be billed, or collecting any funds or causing any funds to be collected, for any call to any information service for children terminated within no less than five (5) seconds of the end of the introductory preamble, as required by paragraph V of this order.

*Provided*, in the event that any provision of a federal law or regulation of the Federal Communications Commission is in "actual conflict" with any requirement imposed by paragraphs V or VI of this order, compliance with such law or regulation shall not be deemed to be a violation of this order. As used herein, "actual conflict" shall mean that it is impossible for respondent to comply with both the law or regulation and paragraphs V and VI of this order.

## VII.

*It is further ordered*, That respondent Phone Programs Incorporated, its successors, assigns, and affiliates, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist

from inducing children to call its information service for children and thereby incur charges, without providing any reasonable means for the person responsible for payment of such charges to exercise control over the transaction. For purposes of this paragraph, if the respondent does not provide, prior to placement of any call by a child, a reasonable means for the person responsible for payment to avoid unauthorized calls, the provision of a reasonable means to exercise control over the transaction shall be the use of the respondent's best efforts to ensure that one-time refunds or credits are provided upon request for unauthorized calls made by children, as specified below. Best efforts shall include at least the following:

A. Contracting with the appropriate interstate common carrier or local exchange carrier to:

(1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "CHILD CALL";

(2) Place in all telephone bills containing charges for calls to respondent's information service for children, clearly and prominently in close proximity to the itemization of those charges, a toll-free or local telephone number specified to be used for consumer inquiries concerning charges on the telephone bill; *provided*, that a general billing inquiry telephone number for customer inquiries concerning charges on the telephone bill shall satisfy this requirement;

(3) Refer all customers who call the toll-free number inquiring about the charges for respondent's information service for children to their local exchange carrier for information regarding the availability of blocking in their jurisdiction; and

(4) Provide a one-time prompt and full credit or refund at the customer's request for all such calls, whether such request is made to the toll-free or local telephone number specified herein or in any other manner; *provided*, that respondent must contract with the carrier to provide a second prompt and full credit or refund to any customer who requests the first credit or refund during a period of the billing cycle where unauthorized calls have been made, but do not yet appear on the customer's bill, and subsequently requests a second credit or refund for any additional unauthorized calls made before the

date of the first request for a credit or refund; *provided*, that if the interstate common carrier utilized by respondent employs local exchange carriers to provide billing inquiry services, respondent shall be in compliance with subparagraphs A(3) and (4) of this paragraph if its contract with the interstate common carrier provides that the interstate common carrier notify each local exchange carrier of the interstate common carrier's policies to:

- (i) Provide the customer with information regarding the availability of blocking 900 number calls; and
- (ii) Provide upon request one-time refunds or credits for unauthorized calls by children, as provided in subparagraph A(4) of this paragraph.

B. In the event that respondent receives any information that the interstate common carrier has failed to fulfill its obligations under the contract required by subparagraph A of this paragraph, immediately notifying the interstate common carrier:

- (1) Of the existence of the alleged failure(s);
- (2) Of the carrier's responsibility to fulfill its obligations under the contract;
- (3) Of the need to investigate and correct all past failures; and
- (4) That if a pattern or practice of failures continues, respondent will terminate the use of said carrier for any information service for children; and

C. Terminating the use of said interstate common carrier for any information service for children, in the event that the interstate common carrier does not correct all past failures or continues to fail to fulfill its obligations under said contract.

D. Compliance with the requirements set forth in subparagraphs A - C of this paragraph is deemed to be satisfactory compliance with this paragraph.

*Provided*, that for purposes of this paragraph, the mere inclusion of any audio or video disclosure relating to parental authorization in advertisements or information service messages is expressly deemed not to be a reasonable means, prior to placement of any call by a

child, for the person responsible for payment to avoid unauthorized calls.

### VIII.

*It is further ordered,* That for three (3) years from the date of service of this order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying: (1) all advertisements for information services for children and all corresponding information service messages; (2) a record of all credit or refund requests made for charges billed for respondent's information services for children; (3) all documents relating to compliance with paragraph VII of this order; and (4) all consumer complaints and dispositions thereof relating to respondent's information services for children.

### IX.

*It is further ordered,* That respondent shall 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 or corporations, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

### X.

*It is further ordered,* That respondent shall forthwith distribute a copy of this order to each of its operating divisions and any carrier(s) or other entities providing billing and/or collection service for its information services for children.

### XI.

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



## IN THE MATTER OF

## AMERICAN PSYCHOLOGICAL ASSOCIATION

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

*Docket C-3406. Complaint, Dec. 16, 1992--Decision, Dec. 16, 1992*

This consent order prohibits, among other things, a Washington, D.C. association from restricting the dissemination of truthful, non-deceptive information by its members. In addition, the respondent is prohibited from banning payments by psychologists to patient-referral services. Finally, the respondent must cease its affiliation with any state, regional or other psychological association that imposes similar restrictions.

*Appearances*

For the Commission: *Elizabeth R. Hilder.*

For the respondent: *Arthur N. Lerner, Michaels & Wishner,*  
Washington, D.C.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named American Psychological Association, a corporation, hereinafter sometimes referred to as respondent, has violated 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 American Psychological Association is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its offices and principal place of business located at 1200 Seventeenth Street, N.W., Washington, D.C.

PAR. 2. Respondent is a professional and scientific association with more than 90,000 members or affiliates, who are psychologists, persons in training as psychologists, and teachers of psychology. Members and affiliates of respondent reside in and transact business in all fifty of the United States and in numerous foreign countries. A significant majority of persons licensed as psychologists in the United States are members or affiliates of respondent and a majority of such persons have received their professional training as psychologists in programs academically accredited by respondent. A majority of psychologists in the United States who are not subject to licensure requirements are members or affiliates of respondent. Respondent has the largest membership of any professional organization of psychologists in the United States. Respondent has as one of its purposes advancing psychology as a profession. A significant portion of respondent's activities furthers the pecuniary interests of its members.

PAR. 3. By virtue of the facts alleged in paragraph two, respondent is now and has at all times relevant herein been a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. Many of respondent's members provide psychological services, products, or publications for a fee. Included among these are members who provide clinical psychological services; who engage in employee evaluation, assessment, training, and management; who engage in market research and evaluation; who engage in psychological education and testing; and who lecture, train, and provide publications that enable members of the general public to help themselves in addressing various personal, career, and family problems, difficulties, and crises. Except to the extent that competition has been restrained as herein alleged, many of respondent's members have been and now are in competition among themselves.

PAR. 5. The acts and practices of respondent, including the acts and practices alleged herein, have been, or are, in or affecting commerce within the meaning of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 6. In selecting psychologist providers of services, products; and publications, prospective clients, patients, or other consumers consider factors, such as psychologists' ability, experience, and

competence; the utility and convenience of the offered services, products, and publications; and price and other terms of sale. Advertising, including the use of comparative advertisements and the use of testimonials, can enable psychologists to inform clients, patients, and other consumers better about such factors. Truthful and nondeceptive advertising benefits clients, patients, and other consumers by increasing the information available to them about the factors they employ in selecting among psychologists and by promoting competition among psychologists.

PAR. 7. In informing clients, patients, and other consumers of psychological services about their services, products and publications, some psychologists use means of communication in addition to advertising. Among these means are professional referral and marketing services. Such referral and marketing services can benefit clients, patients, and other consumers by offering comparative information to them so that they may better and more easily choose among a variety of alternative psychologists, products, and services, reducing search costs and thereby promoting competition among psychologists.

PAR. 8. Respondent has acted as a combination of its members or has conspired with at least some of its members to restrain competition in the sale and delivery of psychological services and the sale and delivery of psychologists' services, products, and publications by:

A. Prohibiting its members from engaging in certain forms of truthful, nondeceptive advertising and solicitation; and

B. Prohibiting or restricting its members' participation in patient referral services or other similar institutions or arrangements, to the extent their operation is financed, in whole or in part, through individual assessments based upon business referrals made to contracting providers by or through the institution or arrangement.

PAR. 9. Respondent has engaged in various acts and practices in furtherance of the combination or conspiracy described in paragraph eight above. These acts and practices include, among other things, adopting in 1981; enforcing until at least December 1986; and, until rescinded in June 1989, maintaining provisions in respondent's

