for a period of one (1) year and thereafter annually at the end of the calendar year for a period of nine (9) 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. This order shall remain in effect for twenty (20) years from its effective date.

XII

It is further ordered, That no provision contained in this order shall prohibit respondent from completely divesting itself of any interests in any leased station which is required by a Final Judgment in *United States* v. *Phillips Petroleum Company and Tidewater Oil Company*, No. 66-1154 (C.D. Cal., 1966), and that immediately after the effective date of this order only Paragraphs 2, 3, 4 and 5 of Part II of this order and Part IV of this order shall apply to the respondent's lessee dealers whose leased premises are subject to the Court's jurisdiction in the aforementioned case; *Provided, however*, That in the event respondent is permitted, following entry of a Final Judgment in the aforesaid case, to retain any of the premises presently leased to lessee dealers, thereupon after ninety (90) days all the other provisions of this order shall apply in all respects to such retained, leased premises; *Provided, further*, That no provision of this order shall be binding upon or apply to any of the leased premises of respondent sold or divested pursuant to a Final Judgment in the aforesaid case.

IN THE MATTER OF

TOMORROW'S HERITAGE, INC., TRADING AS HERITAGE, ET AL.

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

Docket C-2619. Complaint, Dec. 31, 1974—Decision, Dec. 31, 1974

Consent order requiring a Beverly Hills, Calif., seller and distributor of photograph albums, coupon books and certificates, sold in connection with photo enlargement and studio portrait plans, among other things to cease misrepresenting the business relationship between respondents and others; misrepresenting the usual and customary prices for its products or services; failing to maintain adequate records; misrepresenting special or limited offers; misrepresenting guarantees and failing to make refunds on a money-back guarantee.

Appearances

For the Commission: *Robert H. Wyman.*

For the respondents: *John H. Lavely, Jr., Schiff, Hirsch, Levine, Burk & Schreiber*, Beverly Hills, 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 Tomorrow's Heritage, Inc., a corporation, doing business as Heritage, and Ben H. Garfinkel and Robert R. Silvers, individually and as officers of said corporation, 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 Tomorrow's Heritage, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 170 North Robertson Boulevard, Beverly Hills, Calif.

Respondents Ben H. Garfinkel and Robert R. Silvers are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of photograph albums, coupon books and certificates, sold in connection with photograph enlargement plans, studio portrait plans, and combinations thereof.

Respondents' photograph enlargement plan consists of a photograph album and a coupon book containing from 50 to 125 coupons entitling the purchaser to one color or toned enlargement of negatives for each coupon plus one dollar. Respondents' studio portrait plan consists of a photograph album and certificates entitling the purchaser up to 16 studio portraits, to be taken over a period of years equal to one-half the total number of portraits allowed at the rate of 2 portraits each year at designated local photograph studios under contract with respondents. Respondents also sell, on occasion, a combination of the enlargement plan and studio portrait plan, varying both as to price and as to the number of enlargements or portraits the purchaser is entitled.

PAR. 3. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms, and individuals, in the sale of products and services of the same general kind and nature as those sold by respondents and in the collection of delinquent accounts.

Count I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, and Three hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 4. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, the aforesaid photograph albums, coupon books and certificates, when sold, to be shipped from their place of business in the State of California to purchasers thereof, located in various other States of the United States. In some instances, respondents cause, and have caused, said albums to be shipped from the supplier or manufacturer thereof to purchasers thereof, located in various States of the United States. Respondents also cause, and have caused, enlargements to be mailed from their processing and enlarging agent to purchasers of respondents' enlargement plan located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing, and which have induced, the purchase of their photograph albums, coupon books and certificates, respondents have made, and are now making, numerous statements and representations, directly and by implication, in oral sales presentations made by their salesmen to prospective purchasers. Some of these statements and representations are contained in advertising and promotional literature displayed and distributed to prospective purchasers by said sales agents or representatives which is furnished by the respondents.

PAR. 6. Among and typical of the aforesaid statements and representations, and others of similar import and meaning but not specifically set forth herein, made by respondents, directly or by implication, in connection with the sale and offer to sell photograph albums and coupons sold in connection with respondents' enlargement plan, are the following:

1. The respondents have a business relationship with Eastman Kodak Company apart from mere purchase or use of Eastman Kodak Company products;

2. The regular retail price of individual enlargements, if purchased elsewhere, would be $7 each;

3. Respondents' "everyday price" for enlargement processing is $7 per enlargement;

4. The $1 charge accompanying each enlargement request is to cover "postage and handling" only;

5. Enlargements can and will be made from any "reasonably clear colored negative;"

6. Respondents make no profit on the sale of the enlargement plan.

PAR. 7. In truth and in fact:

1. Eastman Kodak Company has no business relationship to respondents or respondents' enlargement plan except to the extent that Eastman Kodak Company products are used or purchased;

2. The regular retail price of individual enlargements, if purchased elsewhere, would not be $7. The cost of enlargements obtained elsewhere is substantially less than $7;

3. Respondents do not sell enlargement processing at $7 per enlargement. Nor do respondents make available, at any price, individual enlargement processing apart from the photograph enlargement plan;

4. The $1 charge accompanying each individual enlargement request covers most of the cost of processing, in addition to the "postage and handling;"

5. Respondents, or the processing laboratory used by respondents, have refused to enlarge certain sub-miniature and instamatic negatives. No disclosures are made at time of sale informing the purchaser that such enlargements cannot or will not be made, nor have refunds been offered in such cases;

6. Since most of the expense of servicing enlargement requests is covered by the $1 charge, the base price of the plan charged to each purchaser according to the terms of the contract amounts to a substantial profit for respondents, and covers commissions for respondents' sales agents or representatives.

Therefore, the statements and representations as set forth in Paragraph Six hereof were and are false, misleading and deceptive.

PAR. 8. When demonstrating savings to customers, respondents, through their agents and representatives, neglect to add to the base price of the plan an amount equal to $1 per enlargement which respondents charge for each enlargement picture requested. Respondents' failure to include this extra charge results in an inflation of the amount the customer might save by purchasing the plan and, therefore, constitutes a deceptive and misleading practice.

PAR. 9. Among and typical of the aforesaid statements and representations, and others of similar import and meaning but not specifically set forth herein, made by respondents, directly or by implication, in connection with the sale and offer to sell photograph albums and certificates sold in connection with respondents' studio portrait plan, are the following:

1. That the studio portrait plan entitles the customer to color portraits;

2. That there is no sitting fee or other charge exacted by the photography studio designated to take the customer's portrait.

PAR. 10. In truth and in fact:

1. In many cases, the portraits available through the studio portrait plan only come in "toned" finish and not in color, as promised by the salesman;

2. Some participating studios have charged, or attempted to charge, additional fees, undisclosed at time of sale.

Therefore, the statements and representations as set forth in Paragraph Nine hereof were and are false, misleading and deceptive.

PAR. 11. In connection with the sale of their studio portrait plan, respondents provide in their contracts that should the studio designated by them fail to perform in accordance with the terms of the contract, respondents will instead substitute another studio to fulfill the contract or allow customers to mail snapshot negatives to them for free enlargements. In practice, then, respondents either unilaterally substitute the enlargement plan or assign customers to another, often distant, studio to perform the remaining obligations of the contract. As a result of these practices, customers who contracted for professional portraits have been forced to accept the substituted enlargement plan, or an undesirable studio, when the designated studio fails to perform as agreed. Such unilateral option in respondents to control the nature of their performance when they, or their agents, are unable to perform as agreed, constitutes an unfair and deceptive practice.

PAR. 12. Among and typical of the statements and representations, and others of similar import and meaning, but not specifically set forth herein, made by respondents, directly or by implication, in connection with the sale and offer to sell photograph albums, coupon books and certificates in connection with respondents' photograph enlargement plan and studio portrait plans, and combinations thereof, are the following:

1. The person solicited has been especially selected;

2. The prices charged to the customer are promotional or reduced prices;

3. The offer being made is a special, or one-time offer, and the customer will not have any opportunity at a later date to make the identical purchase;

4. The salesman has a free gift for the prospective customer;

5. In return for purchase of any part of respondents' plan, the customer will receive, as a prize, gift, or bonus, the album, the booklet of enlargement coupons, or the portrait certificates, at either a reduced charge or without cost;

6. Customers have an unqualified, money-back guarantee;

7. Respondents' agents or representatives are either from or connected with the "Newlywed Game" television program.

8. In many instances, respondents' agents or representatives attempt to gain entry into prospective customers' homes by representations which lead customers to believe respondents' agents or representatives are considering persons for participation in the "Newlywed Game" television program.

PAR. 13. In truth and in fact:

1. Persons solicited by respondents' agents or sales representatives are not especially selected. The only selection process engaged in by respondents or their sales agents or representatives is an effort to pick persons likely to purchase respondents' enlargement plan;

2. The prices charged are not promotional or reduced prices, but are the prices usually and customarily charged. The prices at which respondent offers its various album, portrait, enlargement combinations are the only prices at which the purchase can be made;

3. The offering being made is not a special, or one-time offer, which would prevent the prospective purchaser from later taking advantage of the offer under the same or similar terms;

4. In many cases, nothing free is ever tendered without obligation. In some cases, the gift is conditioned upon making a purchase or meeting a certain schedule of payments. In other cases, the alleged "free gift" is nothing more than a paper cutout teddy bear having nominal value.

5. Neither the album, the booklet of enlargement coupons, or the portrait certificates are given to a customer at a reduced charge or without cost. The price paid reflects payment for all products and services to be received by the customer. The prize, gift or bonus is included in the total cost to the customer;

6. There is no unqualified money-back guarantee which is honored by respondents. Customers are strictly held to the terms of their written contract;

7. Respondents' only connection with the "Newlywed Game" is in the capacity of an occasional sponsor, and sales representatives and agents are not from, or connected with, such television program.

8. Respondents are not considering persons for participation in the "Newlywed Game" television program, but are attempting to enter homes for the purpose of making a sales presentation and selling respondents' merchandise.

Therefore, the statements and representations as set forth in Paragraph Twelve hereof were and are false, misleading and deceptive.

PAR. 14. In the course and conduct of their business, and for the purpose of inducing, and which have induced, the purchase of their photograph enlargement plans, studio portrait plans, and combinations thereof, respondents have represented that customers are given a money-back guarantee. However, the guarantee may only be exercised upon the following conditions:

a. the program must be used at a specified rate for four years;

b. the guarantee may only be exercised before the fifth year has elapsed from date of purchase;

c. at least 50 enlargements or 8 studio portraits must have been made;

d. the plan must have been paid for according to all terms of the contract;

e. the album, enlargements, coupons, certificates and portraits must be returned along with the request for refund.

These conditions are so burdensome, impractical, and difficult to fulfill in their entirety that the claimed guarantee is ineffectual and illusory. Therefore, the practice of representing that customers are provided such a money-back guarantee constitutes an unfair, misleading and deceptive practice.

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and 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 and representations were and are true and into the purchase of substantial quantities of respondents' products and services by reason of such erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Count II

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, and Three, hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 17. In the course and conduct of their aforesaid business, respondents now cause and for some time last past have caused, letters, forms, and various other kinds and types of documents relating to the collection of delinquent accounts to be deposited in the United States mails and transmitted to persons located in the various States of the United States, all of which constitute a part of the course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 18. In the course and conduct of their business, respondents have engaged in acts and practices in connection with the collection of accounts from customers, which are unfair, deceptive and oppressive. Among and typical of the aforesaid acts and practices, but not all inclusive, are the following:

1. Mailing notices to customers informing them that accounts have been turned over to an attorney for certain collection by legal proceeding when, in fact, no legal action is ever prosecuted by their collection attorney;

2. Threatening out-of-state customers with a lawsuit in California;

3. Using a mailed form designed to mislead the recipient into believing that such form is sent from an official or public body, by its resemblance in form, content, design, pattern or language to commonly used and recognized government checks, summons, or other official instruments;

4. Using a mailed form, the phrasing of which is designed to mislead the recipient into believing that he has a legal obligation to appear at the creditor's office or else waive any claims he may have against respondents for non-payment on the contract.

PAR. 19. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and 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 and representations were and are true and into the payment of alleged delinquent accounts by reason of said erroneous and mistaken belief.

PAR. 20. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and

practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Tomorrow's Heritage, Inc., doing business as Heritage, 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 170 N. Robertson Boulevard, city of Beverly Hills, State of California.

Respondents Ben H. Garfinkel and Robert R. Silvers are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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 respondents Tomorrow's Heritage, Inc., a corporation, doing business as Heritage, or under any other name, its successors

and assigns, and Ben H. Garfinkel and Robert R. Silvers, individually and as officers of said corporation, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of photograph albums, photograph enlargement plans, studio portrait plans, or any other type of photography plan, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, orally or in writing, that respondents have a business relationship with Eastman Kodak Company apart from the purchase or use of Eastman Kodak Company products; or misrepresenting, in any manner, the business relationship between respondents and any company, firm, organization, or individual.

2. Representing, directly or indirectly, orally or in writing, that any amount is the usual and customary retail price for products or services, whether purchased from respondents or elsewhere, unless such amount is the price at which the products or services have been usually and customarily sold at retail by respondents, or any other person or persons, for a substantial period of time in the recent and regular course of business; or misrepresenting in any manner, the value of products or services sold by respondents.

3. Failing to keep adequate records:

(a) which disclose the facts upon which any retail price claims, comparative value claims, or other representations of the type described in subparagraph 2 of this order are based; and

(b) from which the validity of any retail price claims, comparative value claims, or other representations of the type described in subparagraph 2 of this order can be determined.

4. Representing, directly or indirectly, orally or in writing, that the $1 charge, accompanying each enlargement request, covers only the cost of "postage and handling;" or misrepresenting in any manner the purpose or use of any charges exacted for products or services.

5. Representing, directly or indirectly, orally or in writing, that enlargements can and will be made from any clear negative under the terms of any agreement with respondent or respondents' representatives in cases where respondents, or respondents' agents, cannot or will not, make such enlargements under the terms of the agreement; or misrepresenting, in any manner, the services provided by respondents' enlargement plan.

6. Failing to disclose, in a clear and conspicuous manner, both in the written sales agreement entered into with purchasers and any and all written or oral communications describing the services provided by the respondents' enlargement plan, any and all conditions, qualifications, limitations or terms which would affect full use and enjoyment of the enlargement service by any purchaser entering into written agreement with respondents or respondents' representatives, including, but not limited to, the unavailability of enlargement services for certain types of cameras and negatives.

7. Representing, directly or indirectly, orally or in writing, that respondents make no profit on the sale of the enlargement plan; or misrepresenting, in any manner, the business reason for any offer made by respondent, or its representatives.

8. Failing to reveal, clearly and unqualifiedly, at the outset of the initial and all subsequent contacts or solicitations of purchasers or prospective purchasers that the purpose of such contact or solicitation is to make a sales presentation to the prospective purchaser with regard to the sale of products or services.

9. Failing to disclose any and all charges or costs to customers in the purchase of any product or service whenever respondents, or respondents' representatives, discuss any charges, costs or savings in the purchase of products or services; or misrepresenting, in any manner, the amount of savings available to purchasers of respondents' products or services.

10. Failing, clearly, conspicuously and unqualifiedly, to disclose in respondents' sales contract used in connection with the sale of their photograph enlargement plan, that any charges, in addition to the amount being financed by the customer required to obtain full use and enjoyment of the program, are not included in the credit disclosure portion of the contract and represent an additional cost over and above the "cash price" of the plan.

11. Representing, directly or indirectly, orally or in writing, that the studio portrait plan entitles the customer to color portraits unless, in fact, such studio designated by respondents offers color portraits without additional charge or expense to the customer.

12. Representing, directly or indirectly, orally or in writing, that the studio designated to perform respondents' obligations under the contract will not exact a sitting fee, service charge, or any other charge, unless, in fact, the contract for service is performed without cost or obligation whatsoever to the customer.

13. Substituting a means of performance, in cases where, due to no fault of the customer, respondents or their agents cannot per-

form their original obligation according to the original terms of the agreement, unless such substitute or alternative performance on the part of respondents is freely and voluntarily consented to by the customer at the time the substituted performance is to be made. Respondents or their agents will not be deemed to be unable to perform their obligations to a customer in those situations where the customer unilaterally and by his own decision changes his position or circumstances making performance by respondents of their original contractual obligations to the customer impossible.

14. Failing, in cases where respondents or their agents cannot perform their obligations to a customer, due to no fault of the customer, to refund pro rata, an amount equal to the unperformed portion of the contract, unless the customer freely and voluntarily elects to accept a substitute means of performance in lieu of the original contract. Such proportion used to determine the amount of refund shall be derived by dividing the unused portraits to which the customer is entitled by the total number of portraits specified in the contract, without regard to any other products or materials received by the customer. Respondents or their agents will not be deemed to be unable to perform their obligations to a customer in those situations where the customer unilaterally and by his own decision changes his position or circumstances making performance by respondents of their original contractual obligations to the customer impossible.

15. Representing, directly or indirectly, orally or in writing, that any offer to sell said products or services is being made only to specially selected persons, or is not available, on the same terms, to all persons; or misrepresenting, in any manner, the persons, or class of persons, afforded the opportunity of purchasing respondents' products or services.

16. Representing, directly or indirectly, orally or in writing, that any price of a product or service is promotional or reduced, unless such price is below the amount at which such product or service has been sold by respondents for a reasonably substantial period of time in the recent and regular course of their business.

17. Representing, directly or indirectly, orally or in writing, that the offer being made is a special, or one-time offer, or that the offer is for a limited duration; or misrepresenting, in any manner, the duration or availability of any offer.

18. Representing, directly or indirectly, orally or in writing, that any person will receive a free gift, unless respondents actually tender such gift at the time the representation is made, and make

clear that there is no condition or obligation upon the customer or prospective customer for acceptance of such item.

19. Representing, directly or indirectly, orally or in writing, that any product or service is a prize, gift, or bonus, or is being offered at a reduced cost, in connection with the purchase of, or agreement to purchase any product or service, or combination of products or services, unless this stated price of the product or service, or combination thereof, required to be purchased in order to obtain such prize, gift, bonus, or reduced cost is the same as or less than, the customary and usual price at which such product or service, or combination thereof, required to be purchased, has been sold separately from such prize, gift, bonus, or reduced cost item, for a substantial number of sales, at the stated price, for a substantial period of time in the trade area where the representation is made.

20. Failing to make a complete refund to any customers, upon request, who have received, directly or indirectly, orally or in writing, a money-back satisfaction guarantee from respondent or their representatives.

21. Representing that respondents' agents or representatives are from, or connected with, the "Newlywed Game;" or misrepresenting, in any manner, the connection between respondents and any other television or radio program.

22. Representing, directly or indirectly, orally or in writing, that respondents' agents or representatives are considering persons for participation in the "Newlywed Game" television program; or misrepresenting, in any manner, the purpose of respondents' agents or representatives contact with any prospective customer.

23. Representing, directly or indirectly, orally or in writing, that customers are being given a money-back guarantee, unless such guarantee is honored according to its terms, which must be clearly and conspicuously disclosed in writing, and is limited by no more than the following conditions:

(a) The guarantee be exercisable immediately and valid for not less than a one year period following receipt of all initial parts of the purchased package;

(b) Respondents may demand return of consideration given by them.

II

It is further ordered, That respondents Tomorrow's Heritage, Inc., a corporation, doing business as Heritage, or under any other name, its successors and assigns, and Ben H. Garfinkel and Robert R. Silvers,

individually, and as officers of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection or attempted collection of any allegedly delinquent accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, orally or in writing, that any account or alleged debt is being, or has been, transferred to any attorney with instructions to institute suit or to take any other legal step involving court process, unless respondents are able to establish by adequate records that a prior determination had been made in good faith to institute such legal action.

2. Instituting, or threatening to institute, suits except in the county where defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

3. Using forms, or any other items of printed or written matter, which mislead, or have the tendency to mislead, the recipient to believe that such form was sent by a government body or public agency.

4. Using forms, or any other items of printed or written matter, which mislead, or have the tendency to mislead, the recipient to believe that he is obligated or instructed to appear at any place in connection with the account or alleged debt, or waive any claims he may have against respondents.

III

It is further ordered, That respondents Tomorrow's Heritage, Inc., a corporation, doing business as Heritage, or under any other name, its successors and assigns, and Ben H. Garfinkel and Robert R. Silvers, individually and as officers of said corporation, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of photograph albums, photograph enlargement plans, studio portrait plans, or any other type of photography plan, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its

execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

2. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10 point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

Notice of Cancellation

(enter date of transaction)
date

You may cancel this transaction without any penalty or obligation, within 3 business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available

to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to _____ (name of seller)

at _____ (address of seller's place of business)

not later than midnight of _____ (date)

I hereby cancel this transaction.

_____ (date)

_____ (buyer's signature

3. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies of entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

4. Including in any door-to-door contract or receipt a waiver of any of the rights to which the buyer is entitled under this Section including specifically his right to cancel the sale in accordance with the provisions of this Section. Respondents further agree not to include in any door-to-door contract or receipt any confession of judgment.

5. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

6. Misrepresenting in any manner the buyer's right to cancel.

7. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to: (a) Refund all payments made under the contract or sale; (b) return any goods or property traded in, in substantially as good condition as when received by the seller; (c) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

8. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third

party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

9. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

IV

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

It is further ordered, That respondents shall:

a. provide each of their present and future branch managers, and other supervisory personnel engaged in the sale or supervision of persons engaged in the sale of respondents' products or services, written instructions with respect to the provisions of this order which are applicable to the functions of each such person;

b. require each person so described in paragraph (a) above to clearly and fully explain the applicable provisions of this order to all sales agents, representatives and other persons engaged in the sale of the respondents' products or services;

c. provide each person so described in paragraphs (a) and (b) above with a form returnable to the respondents clearly stating his intention to be bound by, and to conform his business practices to, the applicable provisions of this order, retain said statement during the period said person is so engaged and make said statement available to the Commission's staff for inspection and copying upon request;

d. inform each person described in paragraphs (a) and (b) above that respondents shall not use any third party, or the services of any third party, if such third party will not agree to so file and does not file notice with the respondents that such third party will be bound by the applicable provisions of this order;

e. if such third party will not agree to so file notice with respondents and be bound by the applicable provisions of the order, not use such third party, or the services of such third party, to sell respondents' products or services;

f. inform the persons described in paragraphs (a) and (b) above that respondents are obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order;

g. institute a reasonable program of surveillance or investigation to ascertain whether the business operations of each said person

described in paragraphs (a) and (b) above comply with the applicable provisions of this order;

h. discontinue dealing with the persons so engaged, revealed by the aforesaid program of surveillance, who continue on their own the deceptive acts or practices prohibited by the applicable provisions of this order;

i. upon receiving information or knowledge from any source concerning two or more bona fide complaints prohibited by the applicable provisions of this order against any of their sales agents or representatives during any one-month period, be responsible for either ending said practices or securing the termination of the employment of the offending sales agent or representative;

j. submit to the Commission a detailed report every six (6) months for a period of three years from the effective date of this order demonstrating the effectiveness of the steps or actions taken with regard to the aforesaid surveillance program.

It is further ordered, That respondents 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.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business and employment name and address, as well as a description of their duties and responsibilities.

It is further ordered, That the respondents herein 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.

ADVISORY OPINIONS WITH REQUESTS THEREFOR

Proposed survey by an association for its members exploring consumer and customer attitudes as to the packaging of cookware products with handles disassembled. (File No. 743 7012)

Opinion Letter

July 24, 1974

Dear Mr. Newman:

This letter is in response to your request for an advisory opinion concerning a proposed survey to be undertaken by your client, the Metal Cookware Manufacturers Association, Inc. (MCMA)

It is the Commission's understanding that various members of MCMA have expressed an interest in exploring retailer and consumer attitudes as to the packaging of their cookware products with handles disassembled. MCMA proposes to conduct a survey on behalf of those member companies who wish to participate. Each member has been invited to send to MCMA a list of customers to be contacted for the survey. Each member's list will be held in confidence and will not be made available to any other member. When the results have been received, MCMA will develop statistics which will be available to all participating members.

The Commission would not initiate proceedings against MCMA if such a program were adopted unless the survey results in an association policy on packaging which has a coercive effect on members who might elect to package their products in contravention of any such policy.

In the event that access to the aggregate data becomes essential to compete in the metal cookware industry, non-members of MCMA must be allowed to receive such aggregate data on payment of a reasonable fee.

By direction of the Commission.

Letter of Request

April 16, 1974

Dear Sir:

In accordance with Sections 1.1 through 1.4 of the Federal Trade Commission Procedures and Rules of Practice, we hereby respectfully request the Commission to advise us with respect to a course of action which we propose to pursue.

Metal Cookware Manufacturers Association, Inc. ("MCMA") is a not-for-profit corporation organized under the laws of the state of Illinois and whose principal offices are located in Fontana, Wisconsin.

MCMA is a trade association, presently composed of 21 member companies engaged in the manufacture and sale of metal cookware, ovenware and kitchen accessories. Our association includes all of the major domestic manufacturers of those products and, we estimate, that our members sales of those products in this country constitute approximately 90% of all such sales.

In the case of many products manufactured and sold by members of our association, the packing box or carton for the particular item of cookware is as much as double the size that it might otherwise be because the handle of the particular item is attached to the vessel, requiring a package of almost twice the size merely to cover a handle which is quite small by comparison to the bulk of the vessel. If the handle were detached from the vessel, it could be packed in the box or carton large enough to accommodate the vessel alone and the size of the package could be reduced by as much as 50%.

Various members of MCMA have expressed an interest in exploring customer and consumer attitudes as to the packaging of their cookware products with handles disassembled. They believe that, assuming no significant consumer or customer resistance and having solved any safety problems that may exist the shipping of their product with handles disassembled could result in significant savings in freight costs, warehouse costs and packing material costs.

The individual cost of doing the market research necessary to reach meaningful decisions is expected to be significant if each manufacturer who is interested in pursuing the question launched its own investigation. MCMA therefore proposes to conduct a survey among housewares buyers in an effort to develop and tabulate data which would be disseminated to those member companies of MCMA participating in the survey. Each member company who wishes to participate has reviewed and edited drafts of the proposed letter to houseware buyers and accompanying questionnaire form, copies of which we have enclosed. Each member has been invited to and most members have submitted to MCMA a list of names and addresses to whom the questionnaire is proposed to be mailed. Each member's list of names and addresses is held in confidence by MCMA and is not available to any other member. Following the mailing to approximately 125 housewares buyers, we propose to develop statistics concerning various responses to the questions set forth in the questionnaire and deliver the results of the survey,

in written form, to those members of MCMA that have participated in the survey.

MCMA, as an association, has taken no position regarding the advisability or unadvisability of shipping cookware with handles disassembled. Each member company will make its own decision, based upon the results of this survey and their own information independent of the conclusions reached by any other member company.

Although we do not know exactly how many members will participate in the survey, we believe that most of our members will be interested in the results of the survey and will, therefore, participate.

The proposed survey questionnaire has not been mailed and neither the survey nor MCMA is the subject of a pending investigation or other proceeding by the Commission or any other governmental agency. To our knowledge, the proposed course of action by any other trade association or organization is not under investigation nor has it been the subject of a current proceeding, order or decree initiated or obtained by the Commission or another governmental agency.

Our attorney has advised us that he believes that the proposed course of action will not violate any law or regulation within the jurisdiction of the Commission or any other governmental agency and has suggested that we submit the matter to your office for an advisory opinion with regard to the proposed course of action. We would be pleased to submit any additional information that you may require and/or to confer with the Commission or members of its staff regarding the subject matter of this request.

Should any additional information be required, we would appreciate it if you would contact our attorney:

Mr. Melvin S. Newman
Prince, Schoenberg, Fisher, Newman and Schulman
222 South Riverside Plaza
Suite 1600
Chicago, Illinois 60606
(312) 648-1600

Very truly yours,

METAL COOKWARE MANUFACTURERS ASSOCIATION, INC.,

By
Kenneth H. Johnston, Executive Secretary

PROPOSED LETTER TO HOUSEWARES BUYERS/MERCHANDISE MANAGERS

The Metal Cookware Manufacturers Association ("MCMA") is the trade association representing companies engaged in the manufacture and sale of metal cookware, ovenware and kitchen accessories. MCMA's 21 member companies include all of the major manufacturers of metal cookware, ovenware and kitchen accessories in the United States. The purposes of this Association as stated by its By-Laws are as follows —

> "To promote the welfare of the metal cookware industry and to improve its service to the public and generally to carry out activities in furtherance of the industry consistent with the public interest and recognized as lawful for trade associations."

To this end, we are seeking your help by asking you to answer several questions on the subject of packaging. The purpose of this survey is to get reactions to a concept that is designed to reduce many problems that the packaging industry has endured over the past year. The problem of rising freight costs, rising warehouse costs, and shortages of *corrugated packing materials* have been a concern to marketing concerns as well as manufacturers.

One concept which has been investigated is the shipping of metal cookware with detached handles. Initial investigation has revealed very substantial potential savings in warehousing costs, freight costs, and material costs.

1. One manufacturer realized that by shipping a cookware set with handles unattached the cubic feet was dropped from 1.014 cubic feet to .48 cubic feet of corrugated. That's less than half of the corrugated material.

2. Shipped in a conventional 40 foot "hi-cube" trailer there was an increase from 2,150 sets to 4,550 sets. That's an 111.6% increase, or applied to stockroom space, that's a reduction of 53% in stockroom space.

3. Applied to storage costs it was realized that there was a savings of 52.4%, while applied to shipping costs, there was a savings of 51.7%.

There are also many intangibles that are related to this approach.

1. For the mass merchandiser, not only is there a savings in stockroom space, but it will also mean the ability to get more selling stock on the selling floor meaning less handling and less maintenance of this selling area. Obviously, this would result in less personnel and thus added savings.

2. Smaller packages could mean that these cartons could be used for displays more effectively.

This type of money-saving suggestion in packaging has done especially well with other housewares products and certainly merits consideration for cookware products.

If these potential savings in freight costs and storage costs were figured and applied to your own operation, naturally there would be substantial savings to you.

The results of the survey will be tabulated and distributed to our members. It will enable each of our members to make their own independent evaluation, along with other information that they may have, whether or not to package all or any portion of their products with handles disassembled.

A self-addressed, stamped envelope is enclosed for your use in returning the completed questionnaire to us.

Thank you for your help and cooperation.

Sincerely,

METAL COOKWARE MANUFACTURERS ASSOCIATION
K. H. Johnston
Executive Secretary

OPINION SURVEY—COOKWARE PACKAGED WITH HANDLES DISASSEMBLED

1. Keeping in mind the potential cost savings, what is your reaction to cookware being shipped with detached handles?

_____ Good Idea
_____ Bad Idea
_____ Indifferent

2. In your own establishment, which of the two packages would you prefer to stock in your store?

_____ Current Standard Carton with Attached Handles
_____ Proposed Small Carton with Detached Handles
_____ Don't Care

3. Do you have any comments or opinions concerning this proposal?

_____
_____
_____
_____

4. Keeping in mind the shift of consumerism toward energy and material conservation, do you think the consumer would object to attaching the handles on a new cookware purchase?

_____ Yes
_____ No
_____ Not Sure
If Yes, to what extent? Strongly _____
Moderately _____

575-956 O-LT - 76 - 108

5. Do you think there would be any psychological objection to buying quality cookware in a smaller package?

_____ Yes
_____ No
_____ Not Sure
If Yes, to what extent? Strongly _____
Moderately _____

6. Do you believe that your company could effect significant savings in freight, warehousing and packaging costs if cookware products were packaged in substantially smaller packages?

_____ Yes
_____ No
_____ Not sure

7. Do you anticipate any unusual difficulties in having your floor sales people assemble the cookware for display purposes?

_____ Yes
_____ No

8. Do you have any comments or opinions concerning this proposal from a consumer's standpoint?

_____
_____
_____
_____
_____
_____

If you would like a copy of our final report on this survey, please sign below and include the correct mailing address.

_____
_____
_____
_____
_____

_____

Proposed redeemable coupon plan with no cash redemption option. (File No. 753 7001)

Opinion Letter

August 7, 1974

Dear Mr. Koster:

This is in response to your request for a Commission advisory opinion concerning whether a cash redemption option must be provided for your company's proposed redeemable coupon plan.

It is the Commission's understanding that under the proposed plan, redeemable coupons would be issued to patrons in conjunction with commercial transactions by financial institutions and financial services

(*e.g.*, brokerages) participating in the plan. These establishments would include commercial banks, savings and loan associations, mutual savings banks, insurance companies, stock brokerages, and mutual fund brokers. A commercial bank, for example, would issue coupons for opening a new account or taking out a loan. The coupons would be redeemable at participating retail establishments in a locality for all merchandise at the full retail price. In other words, they could not be applied to reduce the price of "sale" or "discount" items. Redeeming stores could also issue coupons for purchases of items marked for this purpose, at a coupon dispensation rate determined by each retailer. For example, a clothing store selling a $10.00 pare of jeans could issue to the purchaser $2.00 worth of coupons in conjunctions with a $10.00 purchase. Participating retailers could also put items on sale at a reduced price, in which case there would be no issuance of coupons.

There are no redemption centers, catalogues, or coupon-saving books involved in this plan. Consumers need not amass coupons for merchandise redemption, because under the plan they may make up the difference between the cumulative face value of the coupons they have and the regular retail price of desired merchandise by paying the difference to the redeemer. Coupons may not be applied to reduce the price of a purchase from which the coupons are obtained.

The plan would be available to all retail stores in a locality serviced by the plan. It would by available to all establishments in the financial categories, except that only (a) the commercial bank and (b) one federally-chartered savings and loan association or one state-chartered mutual savings bank (in states where these exist) could participate in the plan in each locality as members. You stated that this limitation is necessary for the plan to be acceptable to commercial banks and savings institutions.

The coupons would be in three denominations, $.05, $1.00, and $5.00, and would have a maximum two year life of redemption. All coupons for each denomination would look alike for each year, except for the specification of the community in which they are redeemable. They would not promote any particular product or manufacturer. In certain large cities, coupons might only be redeemable in a particular community. There would be no restriction on where coupons could be issued. Issuers would not be subject to any mandatory coupon dispensation rate, i.e., participants issuing coupons would be free to determine their own rate of dispensing coupons but would not vary the rate for different customers.

Merchandising Systems of America will receive fees from both issuers and redeemers. Issuers would buy the coupons at face value; they would receive a refund for any coupons they had not issued within two

years. Redeeming establishments would pay a fee each year to participate.

The purpose of the plan is to promote local retail trade. No cash redemption option would be provided.

On the basis of its understanding as outlined above, the Commission would have no objection to the implementation of this plan without a cash redemption option, provided that:

(1) A broad range of redemption choices is available to consumers; *e.g.*, a wide variety of types of merchandise and retail outlets; and

(2) A full report is submitted within nine months indicating the manner in which the plan has worked in actual practice.

The Commission adds the caveat that it would object to any use of the proposed plan as a device for concerted action to fix prices, eliminate price reductions, or otherwise restrain trade.

By direction of the Commission.

Supplemental Letter of Request

May 28, 1974

Dear Mr. Edelstein:

As requested in your letter of May 24th, Re: Redeemable Coupon Plan, I have o.k.'d the enclosed outline of our Plan. I would appreciate it if you would expedite the letter ruling from the Commission. We will keep you informed of any changes in the Plan in the future.

Thank you very much for the effective help you and others on the Commission have given us.

With best regards.

Very truly yours,

Henry S. Koster
Chairman

The Plan

By letter dated November 13, 1973, and in a telephone conversation on January 31, 1974, Mr. Henry S. Koster, Chairman, Merchandising Systems of America, Inc., requested an advisory opinion as to whether, under his proposed redeemable coupon plan, a cash redemption option must be provided for the coupons in addition to the right to redeem the coupons for merchandise. Substantial revisions in the proposed plan were communicated by Mr. Koster by telephone on May 20, 1974.

Under the presently proposed plan, redeemable coupons would be issued to patrons in conjunction with commercial transactions by financial institutions and financial services (e.g., brokerages) participating in the plan. These establishments would include commercial banks, savings and loan associations, mutual savings banks, insurance companies, stock brokerages, and mutual fund brokers. A commercial bank, for example, would issue coupons for opening a new account or taking out a loan. The coupons would be redeemable

at participating retail establishments in a locality for all merchandise at the full retail price. In other words, they could not be applied to reduce the price of sale or discounted items. Redeeming stores could also issue coupons for purchases of items marked for this purpose, at a coupon dispensation rate determined by each retailer. For example, a clothing store selling a $10.00 pair of jeans could issue to the purchaser $2.00 worth of coupons in conjunction with a $10.00 purchase. Participating retailers could also put items on sale at a reduced price, in which case there would be no issuance of coupons.

There are no redemption centers, catalogues, or coupon-saving books involved in this plan. Consumers need not amass coupons for merchandise redemption, because under the plan they may make up the difference between the cumulative face value of the coupons they have and the regular retail price of desired merchandise by paying the difference to the redeemer. Coupons may not be applied to reduce the price of a purchase from which the coupons are obtained.

The plan would be available to all retail stores in a locality serviced by the plan. It would be available to all establishments in the financial categories except that only (a) one commercial bank and (b) one federally-chartered savings and loan association or one state-chartered mutual savings bank (in states where these exist) could participate in the plan in each locality as members. Mr. Koster states that this limitation is necessary for the plan to be acceptable to commercial banks and savings institutions.

The coupons would be in three denominations, $.05, $1.00, and $5.00, and would have a maximum two year life of redemption. All coupons for each denomination would look alike for each year, except for the specification of the community in which they are redeemable. They would not promote any particular product or manufacturer. In certain large cities, coupons might only be redeemable in a particular community. There would be no restriction on where coupons could be issued. Issuers would not be subject to any mandatory coupon dispensation rate, i.e., participants issuing coupons would be free to determine their own rate of dispensing coupons but would not vary the rate for different customers.

Merchandising Systems of America will receive fees from both issuers and redeemers. Issuers would buy the coupons at face value; they would receive a refund for any coupons they had not issued within two years. Redeeming establishments would pay a fee each year to participate.

Mr. Koster states that the plan is designed to promote local retail trade. He believes that the plan would fail if a cash redemption option was required, because this would vitiate the key feature of the plan which would make it attractive to commercial establishments in a community—the encouragement of retail trade in merchandise within the community. The aim of the plan to generate local shopping would be thwarted, he states, if coupon bearers could receive a cash redemption and shop elsewhere.

I have examined this description and it is accurate.

Henry S. Koster

May 20, 1974

MEMORANDUM TO THE FILE:

Re: Merchandising Systems of America, Inc.

Revisions in the proposed redeemable coupon plan proposed by Merchandising Systems of America, Inc., were brought to my attention today by Mr. Koster in a telephone conversation.

Under the revised plan, all retail stores in a locality serviced by the plan may participate as redeemers and "limited" issuers. Coupons would

be redeemable at participating retail establishments for all merchandise at the full retail price. Redeeming stores could issue coupons for purchases of items being sold at a special discount, in the amount of the difference between the regular price and the discounted price for purposes of the plan. For example, a clothing store selling a $10.00 pair of jeans for $8.00 would issue to the purchaser $2.00 worth of coupons in conjunction with a $10.00 purchase. Participating retailers could also put items on sale, for the sale price.

"Full" issuers participating in the plan would consist of financial institutions and services. These would include commercial banks, savings and loan associations, mutual savings banks, insurance companies, stock brokerages, mutual fund brokers, and real estate agencies. Full issuers would not redeem coupons. They would issue coupons for transactions—*i.e.*, a commercial bank would issue coupons for opening a new account or taking out a loan. The plan would be available to all establishments in the categories of full issuers, except that only (a) one commercial bank and (b) one federally-chartered savings and loan association or one state-chartered mutual savings bank (in states where these exist) could participate in the plan in each locality as members. Mr. Koster states that this limitation is necessary for the plan to be acceptable to commercial banks and savings institutions.

/s/ Jeffrey S. Edelstein

January 31, 1974

MEMORANDUM TO THE FILE:

Subject: Merchandising Systems of America, Inc.

A fuller explanation of the plan proposed by Merchandising Systems of America, Inc., was provided in a telephone conversation today by Henry S. Koster, Chairman of the corporation.

Under the proposed plan, participating establishments such as retail stores, banks, and gas stations would issue redeemable coupons to customers. A supermarket, for example, could give a 5 coupon for every $5.00 purchase, and a bank could issue $2.50 in coupons for each new account. The coupons would be redeemable in merchandise from participating retailers in the community where issued. No issuers could be redeemers, and no redeemers could be issuers. There are no redemption centers involved.

The types of establishements which would be issuers are different from the types which would be redeemers. Food stores, gas stations, oil companies, and real estate agencies are examples of issuers; no establishments of this type could be redeemers. It is contemplated that the

plan would not be available to all establishments of a certain category within a community, such as food stores, after others of that type had agreed to participate. Redeemers would comprise all retail stores which are not issuers, such as clothing, stationery, book, and appliance stores, pharmacies, and boutiques.

The coupons will be in two denominations: $.05 and $1.00. All coupons for each denomination will look alike for each year, except for the specification of the community in which they are valid. They will not promote any particular product or manufacturer. They will specify the community where they are redeemable. In certain large cities, coupons may only be redeemable in the community where issued. The coupons will have a maximum two year life on redemption, and a minimum of one year.

Merchandising Systems of America will receive fees from both issuers and redeemers. Issuers will buy the coupons at face value; they will receive a refund for any coupons not redeemed within two years. Redeemers will pay a set fee per year, as well as a percentage of the value of the coupons redeemed.

Mr. Koster states that the plan is designed to promote local retail trade. He believes that the plan would fail if a cash redemption option was required, because this would vitiate the key feature of the plan which would make it attractive to commercial establishments in a community—the encouragement of retail trade in merchandise within the community. The aim of the plan to generate local shopping would be thwarted if coupon bearers could receive a cash redemption and shop elsewhere.

Jeffrey S. Edelstein

Letter of Request

November 13, 1973

Dear Mr. Collier:

We would very much appreciate your opinion with respect to the following situation.

We plan to have certain retail stores in a community, like supermarkets, issue coupons which will bear the legend that they are worth 5 cents in retail trade at full retail prices. These coupons would only be redeemable at full face value at local retail shops in the particular town or locality.

It is, of course, somewhat similar to the trading stamp companies, although the coupons issued by certain stores under our plan are only redeemable at local retail stores and not through a catalog and redemp-

tion center which is fed by an area warehouse, such as the stamp companies do.

My question is that in addition to the standard retail redemption value of our coupons (5 cents) which are redeemable at such retail value locally, do we have to put a cash value price on these coupons?

We would appreciate receiving your opinion on this matter. We expect to start the plan the first of the year and would like to have your opinion as soon as possible.

Very truly yours,
/s/ Henry S. Koster, Chairman

Supplier's incentive program providing 4 percent cash refund for 4 percent increase in resellers' purchases. (File No. 753 7003)

Opinion Letter

November 15, 1973

Dear Mr. Horwitz:

This is in response to your letters of October 16 and November 2, 1973, addressed to the Secretary of the Commission.

On behalf of Scott Paper Company, you requested an advisory opinion regarding a proposed incentive refund plan for purchasers who resell Scott products. Under this plan, each Scott purchaser/reseller would be eligible to earn a 4% refund, based upon case purchases of certain Scott brands during the specified performance period which exceeded by 4% the reseller's case purchases of the brand during a specified base period.

The Commission has carefully considered your request and has determined to decline to issue an advisory opinion.

The legality of a plan such as that proposed by Scott Paper Company must be measured by the provisions of § 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, 15 U.S.C. 13, in the same manner as any other discount or cash refund. The critical question is whether the plan will bring about a substantial lessening of competition or tend to create a monopoly in any line of commerce.

An informed decision on this question could only be made after extensive investigation of the competitive climate of the markets in which Scott and its customers compete.

For this reason, an advisory opinion is inappropriate under the Commission's Rules of Practice, § 1.1.

By direction of the Commission, Commissioner Thompson would have granted authority for implementation of the plan as requested.

Supplemental Letter Relative to Request

May 6, 1974

Dear Mr. Tobin:

Scott Paper Company presently has pending before the Commission a request for an advisory opinion in connection with the offering of promotional allowances for meeting or exceeding an established quota. In that connection I would like to herewith bring to the attention of the Commission in the event they are not already aware of it, the recent decision by the United States District Court for the Eastern District of Wisconsin in *Tosa Chrysler-Plymouth, Inc.* v. *Chrysler Motors Corp.*

The court in this case appears to have held that a quota system which is fairly established may constitute the foundation for incentive payments because it is functionally available to all competing customers.

Very truly yours,
/s/ Ellis A. Horwitz

Supplemental Letter Relative to Request

November 2, 1973

Dear Mr. Dufresne: *Re: Request for Advisory Opinion*

In accordance with our conversation we would like to request that the enclosed revised page 6 be substituted for the original in our Request for Advisory Opinion in order to avoid any possible misconceptions which may have been caused by the original draft.

Very truly yours,

/s/ Ellis A. Horwitz
Associate General Counsel

Letter of Request

October 16, 1973

Dear Sir:

Enclosed is a comprehensive description of a proposed "incentive program" which Scott Paper Company would like to initiate provided the program meets with Commission approval.

The "incentive program" is not currently in effect and to the best of my knowledge, such plan is not the subject of investigation or any other

proceeding brought by the Commission or any other governmental agency.

If you desire, we will be pleased to answer any questions you feel are necessary.

Very truly yours,
/s/ Ellis A. Horwitz
Associate General Counsel

CORPORATE INFORMATION

Scott Paper Company is a Pennsylvania corporation with its corporate headquarters located at Scott Plaza 1, Philadelphia, Pennsylvania 19113. Scott is a publicly owned corporation, with its stock traded on the New York, Philadelphia-Baltimore-Washington, and Pacific Coast Stock Exchanges. Additional detailed information concerning the Company's business and officers is contained in its most recent S.E.C. Form 10K which is enclosed herewith.

BUSINESS INFORMATION

Scott is engaged primarily in the manufacture and sale of pulp and paper products. Its products are manufactured at various locations in the United States and distributed nationally. It also has varying ownership interests in numerous foreign corporations which are engaged primarily in the manufacture and sale of paper products in many areas of the world. Scott's consumer trademarked packaged paper products include items such as facial tissue, napkins, paper towels and toilet tissue which are marketed under brand names such as "Scot Tissue," "Lady Scott," "Soft-Weve," "Scot Towels," and "Viva." Scott sells its consumer packaged products to the trade for resale to consumers. Such sales are made by Scott to grocery wholesalers, grocery retail chains and independent grocery retailers as well as drug, discount and variety outlets.

THE PROPOSED PROGRAM

Scott would like to introduce an "incentive program" through which all of its purchasers can realize equitable cash refunds for increasing their purchases of various Scott consumer packaged paper products. The market for consumer packaged paper products is highly competitive. A number of very large companies such as Proctor & Gamble, American Can, Georgia Pacific, Kimberly-Clark, and Crown Zellerbach have substantially expanded their marketing and sales of paper products in recent years and private label sales are continuing to gain in prominence. Scott's interest in such an incentive program is to assist sales of various of its brands in this highly competitive market.

Under the terms of the proposed "incentive program," each purchaser would be granted a four per cent cash refund on those case purchases of specified Scott consumer brands made during a designated performance period, which exceed by four per cent such customer's case purchases of such Scott consumer brands during a previously designated base period. The specifics of the proposed program are detailed below.

Base and Performance Periods. The base period to be used would be a designated quarter or other period of the preceding year. The performance period would be a specified quarter or another specified period of the current year.

Although there are not numerous new retailer or wholesaler entrants into the market, the proposed plan would make provision for any such new entrant to enable it to

participate in the "incentive program." The proposed plan provides that whenever a new entrant is unable to qualify for the "incentive program" because it was not in existence during the given base period, an alternate based period is to be selected. For example, the quarter preceding the performance period of the then current year could be selected. In the unusual circumstance where such an alternate base period would also be inappropriate, *e.g.*, the new customer has entered the market at the end of the quarter preceding the performance period, Scott proposes the use of an independent, fair means of determining an assumed volume of purchases during the base period. This assumed volume would be computed by some reasonable measure such as comparing purchases during such base period by other customers with the same square feet of floor space in the same trade area. This procedure would also be utilized for customers who are purchasing a participating Scott product for the first time. To ensure that an increased volume of purchases during the performance period by a direct buying retail chain or a cooperative is not due to such a customer's having opened new store units subsequent to the base period, Scott will ascribe to such stores of these customers a base period and volume of purchases during the base period as has been previously stated above.

Scott would also provide for customers whose purchase volume during the base period or performance period is below normal because of unexpected occurrences beyond its control such as floods, fires, or strikes. In these instances, more equitable base or performance periods would be substituted, as outlined above.

Four Percent Rebate. Under the terms of the proposed program, the 4% rebate is to be paid only on the cases purchased in excess of the base period quantity. It would remain a constant percentage, which will never vary or escalate. Regardless of whether a customer's purchases during the performance period exceed those of his base period by 5% or by 50%, his rebate would still be computed at the rate of 4%. Thus, all customers who are participating in the incentive program would be treated equally.

Volume of Purchases. Under the provisions of the proposed plan, the 4% rebate would be offered for purchases of designated Scott brands during the performance period which exceed by 4% such customer's purchases during the base period. The reason that the program is to be activated upon purchases in excess of 4% of the base period purchase is that Scott desires a standard which will allow for the maximum participation of its customers.

The product categories involved would all be ones which reflect a high volume of customer purchases and involve many competing manufacturers continuously and actively competing to supply the customer's product needs. Consequently, customers are constantly shifting their volume of purchases among manufacturers. Therefore, the performance requirement of purchases in excess of 4% is one which is realistically attainable by all of Scott's customers, and would not serve as an artificial and exclusionary barrier to competitors. In addition, all of Scott's competitors in this industry frequently offer promotional assistance allowances which substantially exceed 4%. Therefore, any competitor wishing to institute a progam similar to the one being proposed by Scott would not be economically precluded from doing so.

Scott's current terms of sale require a minimum purchase of 25 cases which may be of assorted brands. Since the average cost of a case is $10 this minimum order would have to be increased from $250 to $260 in order to qualify for the incentive, an obviously modest increase. As Scott offers over a dozen different brands it is quite easy for small retailers to meet the minimum order requirement. However, the majority of such retailers prefers to deal with grocery wholesalers. In order to enable these retailers to benefit from the program it would be Scott's intention to suggest to its direct wholesale customers that they pass the incentive payments along to their retailers.

Product Purchases qualifying for the Program. Scott would determine the volume of purchases during the base and performance periods according to the amount of purchases of each specific brand included in the program, rather than according to the aggregate amount of purchases of all Scott products. If the program relates only to Scott product A, incentive payments will be limited solely to product A even though the customer also purchases Scott products X, Y, and Z. Thus, if purchases of the featured product A increased by more than 4% over the given base period, while those of products X, Y, and Z decreased so much as to cause the customer's total purchases of Scott products to have decreased over the base period, the customer would still be eligible for a 4% rebate on his qualifying purchases of product A. Where Scott products A, B, and C are being featured, the customer's purchases of product A will determine whether or not he receives a rebate on product A, his purchases of product B will determine whether or not he receives a rebate on product B, etc. Thus, in no way are purchases of other Scott products tied to eligibility to receive a rebate. It is Scott's belief that this method of determining if a customer's purchases qualify for the rebate is inherently fair to all of its customers.

Market Areas

The program will be offered in specific marketing areas. In determining these areas, Scott will avoid artificially drawn boundaries. Rather, it will undertake to use its best efforts to recognize competitive realities so as to include all competing customers.

Notice of Such Program. Upon notification by the Commission of its approval of such a proposed program, Scott would notify each customer in each selected graphic area of the availability of this program by the same means.

Conclusion

It is Scott's belief that the program outlined above constitutes an incentive program to increase sales which is both theoretically and realistically available to all of its customers. Scott submits that such a program is fair to all its customers and conforms both in spirit and substance with the provisions of the Robinson-Patman Act. Scott, therefore, respectfully requests the Commission's approval of this proposed program in the form of an advisory opinion pursuant to Section 1.3 of the Commission's *Procedures and Rules of Practice.*

Proposed dollar limitation on payment to be made under cooperative advertising plans. (File No. 753 7004)

Opinion Letter

December 4, 1974

Dear Mr. Ellis:

This letter is in response to your request for an advisory opinion concerning a proposed dollar limitation on payments to be made under cooperative advertising plans operated by Levi Strauss & Company.

It is the Commission's understanding that Levi Strauss & Company operates two cooperative advertising plans under which customers located within the State of California are afforded an opportunity to be

reimbursed for 50% of the cost of qualifying radio and newspaper advertisements up to a maximum of 2% of net invoiced shipments (3% of net invoiced shipments for stores in all states except California). In the event that the above plan is not functionally available to any customers of Levi Strauss & Company, a suitable alternative such as point-of-purchase display material with the same participation and percentage limits is proposed.

The Commission understands that this plan is currently in operation and that Levi Strauss & Company now proposes to establish a maximum dollar limit on the amount of cooperative advertising payments to any one retailer. This limitation would apply to the total invoiced shipments of all branches of a retail account.

First, the Commission notes that the discrimination in percentage of reimbursement between retailers in California and those in other states may be violation of Sections 2 (d) and 2(e) of the Robinson-Patman Act should it result in discrimination against retailers located near the California borders (but inside California) who compete with retailers located outside California. The difference in percentages does not constitute proportionally equal treatment of such competing retailers within the meaning of the statute. *See* Advisory Opinion Digests 143 and 157; Guide 12 of the Commission's *Guides for Advertising Allowances and Other Merchandising Payments and Services*, as amended August 4, 1972, 16 C.F.R. § 240.12.

If Levi Strauss institutes a maximum dollar limitation of the amount of reimbursement under the cooperative advertising plans, the Commission would not challenge the plan as outlined even though the largest retailer of Levi Strauss & Company qualifying under the plan would presumably receive a disproportionately small amount of cooperative advertising funds.

The Commission is also of the opinion that once Levi Strauss & Company establishes a dollar limitation, it would have the right to change that limit from time to time as long as all competing retailers are subject to the same limitation at the same time. Similarly, the Commission is of the opinion that the maximum dollar amount of reimbursement could be fixed independently by each merchandising division of Levi Strauss & Company as long as all competing retailers are subject to the same plan and the same limitation at the same time.

You are cautioned, however, that if a low volume customer of Levi Strauss & Company (which will presumably be a large department or other chain store) in any way influences the maximum dollar limitations established by Levi Strauss & Company, the Commission will scrutinize all such transactions closely for violations of Section 5 of the Federal

Trade Commission Act and Sections 2(d), 2(e), or 2(f) of the Robinson-Patman Act.

By direction of the Commission.

Letter of Request

May 28, 1974

Dear Sir:

I am the attorney for and Assistant Secretary of Levi Strauss & Co., a Delaware corporation, having its principal place of business at Two Embarcadero Center, San Francisco, California.

An advisory opinion is requested with respect to the validity of placing a dollar limit on the aggregate amount of cooperative advertising reimbursement that will be paid by the Company to any account during a given period under the Company's LEVI'S Jeans Divison Cooperative Advertising Plan. If the Commission approves the imposition of such a limit, then an answer to the subsidiary questions set out on page 3 of this letter is likewise requested.

Levi Strauss & Co. is engaged in the business of manufacturing and selling at wholesale various articles of wearing apparel. It has four divisions, the LEVI'S Jeans Division, the Panatela Sportswear Division, the Boyswear Division and the LEVI'S for Gals Division. Each of such divisions has a separate cooperative advertising plan administered by its own advertising manager. The Company has a wholly owned subsidiary, Miller Belts Ltd., Inc., an Ohio corporation, which manufactures and sells belts and related merchandise. This subsidiary has its own cooperative advertising plan.

Because of the fact that the inquiry contained in this letter relates, at least initially, to the LEVI'S Jeans Cooperative Advertising Plan, references to the provisions of the "Plan" will be confined to the LEVI'S Jeans Cooperative Advertising Plan.

The plan is not effective throughout the entire year. For 1973-74, there were two periods during which the plan was effective, namely, May 1 through September 15, 1973 and November 15, 1973 through May 31, 1974. The plan that will shortly become effective covers the period from June 1 through September 30, 1974. Under such plan the maximum reimbursement to California customers is limited to 2% of net invoiced shipments during the effective period of the plan and the maximum reimbursement to non-California customers is 3% of such shipments. Accordingly, separate plans have been established for California and non-California accounts. A copy of each of such separate plans for the June 1 through September 30, 1974 period is enclosed herewith.

It is contemplated that in the future, the Company will have three plans to coincide with the retailers' peak selling seasons and that the plan will cover the following periods:

March through May
June through September
October through December

Within the past few years, a large number of retail stores have been opened throughout the Country which specialize in the sale of jeans, slacks and related apparel. Many of these concerns operate numerous branches. Because of the volume of business transacted by certain of these firms, a greater proportion of Levi Strauss & Co.'s available cooperative advertising funds is consequently being paid to such firms. The situation has reached the point where Levi Strauss & Co. is faced with the alternative of either placing a dollar ceiling on the aggregate amount of cooperative advertising reimbursement that will be paid to a given account or reducing the maximum allowance to a lower percentage of net invoiced shipments than the present 2% for California customers and 3% for non-California customers.

Levi Strauss & Co. proposes to establish the following limits on cooperative advertising payments to a given account under its LEVI'S Jeans Cooperative Advertising Plan:

$100,000 for the plan period from June through September (the so-called "Back to School" period)

$75,000 for the plan period from October through December

$75,000 for the plan period from March through May

The limitation would apply to the total invoiced shipments of all branches of a given retail account.

Based upon current sales, only one or two accounts would initially be affected by the proposed limit.

It is believed that the proposed dollar limit is valid under the Robinson-Patman Act because it should tend to foster rather than lessen competition by preventing large accounts from saturating the market with advertising paid for in substantial part by Levi Strauss & Co.

PLEASE COMPLETE THE REVERSE AND RETURN TO:

Jeans Advertising Department
Levi Strauss & Co.
Two Embarcadero Center
San Francisco, California

94106

Radio Advertising

1. Reimbursement will be provided for qualifying 30 and 60 second spot commercials broadcast on any FCC licensed radio station.
2. To qualify, complete scripts and schedule details **must be submitted for review in advance of air date.** Details required are:
   a. Start and end dates.
   b. Total number of spots and estimated total expected reimbursement, listed by station

   If your scripts and schedule meet the requirements of this plan, you will receive a letter assigning you an identification number. A form for submitting the required identification is included with this plan for your convenience. A new identification number is required for each co-op period. Please allow 10 days for processing.
3. All qualifying spots will be reimbursed at the rate of 50% of net time cost (inclusive of all discounts and rebates). LEVI'S will not be responsible for reimbursement of more than 50% of the applicable local spot cost.
4. Copy rules for radio advertising:
   a. Commercials must be devoted exclusively to LEVI'S Jeans items. Mention cannot be made of any other items.
   b. To help develop LEVI'S identification with your store, an appropriate level of store mention is encouraged. However, *a majority* of the commercial must be devoted to the selling of LEVI'S Jeans.
   c. Only one retailer can be featured in a LEVI'S commercial.
   d. The word LEVI'S must always be pronounced as it is spelled. The word LEVI must never be used except as part of the corporate name Levi Strauss & Co.

   Scripts and recorded commercials are available upon request from this office and your LEVI'S® Jeans representative.

Payment of Claims

1. **Newspaper:** Send a complete tearsheet to **LEVI'S Jeans Co-op, c/o Advertising Checking Bureau, P.O. Box 3419 Rincon Annex, San Francisco, California 94119.** If 50% of space costs exceed LEVI'S published rates, please submit documentation along with tearsheet as outlined in the Newspaper Advertising Section.
2. **Radio:** Send the following to ACB:
   a. A paid station invoice showing dates, cost per spot total cost and product advertised.
   b. A notarized affidavit of performance stating dates, times, and the specific spot broadcast.
   c. Radio claims must make reference to the appropriate LEVI'S Jeans ID number.
3. No advertising claim deductions may be made from merchandising invoices. The Advertising Checking Bureau will provide reimbursement by check for all qualified LEVI'S® Jeans co-operative advertising claims. Shipments of all Levi Strauss & Co.

merchandise will be suspended to all accounts who continue the practice of taking advertising deductions. Suspended shipments will not be released until outstanding deductions have been paid.

4. Claims for cooperative reimbursement from LEVI'S Jeans must be submitted within sixty days after the end of each month during which the advertising ran.

General Information

1. If none of the media that qualify in this plan is functionally available in your LEVI'S Jeans advertising, we will provide upon request a usable and suitable alternative such as special point-of-purchase display material at 50% of our net cost. The LEVI'S Jeans dollar share of such alternative is available up to the minimum dollar allowance under the current co-op plan.
2. Only first quality goods qualify for cooperative advertising.
3. No production or programming cost of any type will be reimbursed. "Barter" media purchases do not qualify for co-op.
4. In order to qualify for reimbursement, ads must be in good taste.
5. This plan is subject to change with 15 days written notice.
6. If you have any questions in regard to this plan, please contact your sales representative or write directly to:

Jeans Advertising Department
Attention: Co-op Coordinator
Levi Strauss & Co.
Two Embarcadero Center
San Francisco, CA 94106

JEANS DIVISION radio schedule coupon **LEVI'S**

We plan to run the radio schedule outlined below. All scripts to be broadcast are attached.

_____ _____
(your name) (store name)

_____ _____
(address) (city, state) (zip code)

station	start date	end date	total spots	LEVI'S cost

Identification Number_____
(do not fill in)

Send coupon & scripts to: Levi Scrauss & Co., Atten: Jeans Advertising Department, Two Embarcadero Center, San Francisco, CA 94106

Compliance with Commission order requiring La Salle Extension University to disclose that completion of its law courses does not qualify a person to sit for a bar examination. (Docket 5907)*

*Material submitted is voluminous and for reasons of economy not reproduced here; however, it is available for public inspection at the Division of Legal and Public Records, Federal Trade Commission, Wash., D. C.

Opinion Letter

December 10, 1974

Gentlemen:

The Commission has considered your request for an advisory opinion and the advertising exhibits submitted therewith.

You inquire as to whether certain proposed advertisements will comply with the Commission's modified order to cease and desist issued on June 24, 1971.

You are advised that the proposed method of making the disclosure on Exhibit 1 will not comply with the order to cease and desist which requires that in descriptive brochures and promotional material the disclosure must be made on every page which contains mention of your courses of study in law.

Exhibits 2 and 3 are approved.

Exhibits 4 is not approved for the reasons that:

1. The order requires that the disclosure be made on the cover of the brochure.
2. The disclosure is improperly comingled with other textual material.
3. Number 2 above applies equally to the disclosure appearing on page 22.
4. The disclosure should be made on page 27.

By direction of the Commission.

Letter of Request

July 19, 1974

Dear Mr. Pons:

I have your letter of July 11, 1974 to Mr. Greenman. We appreciate the consideration you have given to our submission and request that it be submitted to the Commission for an advisory opinion.

As we told you, as soon as we learned on June 3 of the denial of certiorari by the Supreme Court, we informed the management of La Salle. La Salle on the same day ceased to respond to all "leads" (*i.e.*, inquiries resulting from advertising) with respect to their law courses. Ordinarily, a course catalog and other promotional material is sent to each "lead," and the name and address of the prospective student is given to a La Salle representative; since June 3, neither of these steps has been taken with respect to any law course inquiries or "leads."

We are awaiting the Commission's opinion with respect to the mate-

rials already submitted before making detailed revisions of all La Salle promotional materials with respect to law courses. In the interim, as we have said, the courses have not been sold except to "leads" received before June 3, 1974, and will not be; La Salle is therefore in compliance by the rather brutal temporary expedient of having gone out of the business in question. We request that the due date for La Salle's compliance report be extended until 30 days after the Commission renders its advisory opinion with respect to the materials already submitted, so as to give time to make whatever revisions in promotional materials are necessary in light of the Commission's opinion.

The materials submitted to you represent an extreme effort to comply with the Commission's order. For the reasons stated in Mr. Greenman's letter of June 17, we believe that the general approach embodied in the materials fully meets the purposes of the Commission's order, to prevent the slightest misunderstanding as to the function of La Salle's law courses.

We are particularly concerned with the general form of the course catalog, Exhibit 1, and the size of the disclosure to be required in ads such as Exhibits 2 and 3. If the Commission for technical reasons should reject these aspects of these exhibits, we see no alternative at this point to the entire destruction of this part of La Salle's business. We do not believe this is the Commission's purpose.

Sincerely,
/s/ Bella L. Linden

TABLE OF COMMODITIES*

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*Commodities involved in dismissing or vacating orders are indicated by *italicized* page reference

*Covering practices and matters involved in Commission orders. References to matters involved in vacating or dismissing orders are indicated by *italics*.

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