

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

BANKERS LIFE AND CASUALTY COMPANY, ET AL.

Docket 9075. Interlocutory Order, Jan. 3, 1979

ORDER AFFIRMING ORDER OF ADMINISTRATIVE LAW JUDGE AMENDING COMPLAINT TO SUBSTITUTE EXECUTRIX

Administrative Law Judge Lewis F. Parker (the "ALJ") has certified for review by the Commission an order he entered on October 11, 1978, substituting as a party in this proceeding the executrix of the estate of a deceased respondent. The executrix has appealed from the ALJ's order, contending that the action against her decedent abated as a matter of law with his death and that, in any event, substitution is improper where the only relief presently sought by complaint counsel is injunctive in nature and where no determination of liability had been made by the ALJ prior to respondent's death. For the reasons set forth below, we affirm the ALJ.

Albert R. Linnick, who was named in the complaint individually and as an officer of three corporations, died in January 1978. Complaint counsel thereafter moved to amend the complaint by substituting Alice Holguin, executrix of Mr. Linnick's estate, for Mr. Linnick. Notwithstanding that the complaint itself seeks only a cease-and-desist order against Mr. Linnick, complaint counsel desire the amendment because, if they prevail herein, the complaint (Par. 25) indicates their intention to ask the Commission to file suit against respondents in U.S. District Court to obtain restitution on behalf of consumers under Section 19 of the F.T.C. Act. Accordingly, complaint counsel assert that the executrix of Mr. Linnick's estate, who is now custodian of his assets, must be substituted as a party in order to facilitate making accurate findings with respect to Mr. Linnick's conduct and in order to preserve access to his assets. To lay the foundation for such a Section 19 action, complaint counsel, on behalf of the Commission, have also filed a contingent claim against Mr. Linnick's estate in probate court.¹

We believe, as did the ALJ, that proper disposition of this case is largely controlled by the Commission's decision in *Holiday Magic*,

¹ The executrix's arguments regarding the propriety of that claim are not properly addressed to the Commission. Hence, we do not reach them here.

Inc., 84 F.T.C. 347 (1974). In that case, following the death of a respondent, the Commission ordered substitution of his executor into the litigation, specifically holding that the Section 5 cause of action had not abated because there remained a prospect of recovery of funds from his estate for the purpose of providing redress to injured consumers. The Commission assessed the Federal Survival Statute, 28 U.S.C. 2404, and the Federal common law in *Holiday Magic*, and concluded that an equitable action seeking, in part, redress to consumers did not abate. We see no reason to disturb that holding here, and we specifically find that in the instant case, amendment of the complaint will effectuate one of the Commission's initial purposes in issuing that complaint, *viz.* to reach assets with which redress may be made to consumers, assuming liability is first established. Hence, we hold that the pending action did not abate with Mr. Linnick's death.

The executrix protests, however, that two features distinguish *Holiday Magic* from this case. First, she notes that the Section 5 complaint in *Holiday Magic*, unlike the complaint in the instant case, expressly included redress to consumers as a part of the relief sought therein. Second, she notes that the ALJ in *Holiday Magic* had already entered his initial decision finding violations on the part of respondents, whereas in the instant case the trial has not yet begun. We find these distinctions to be without significance.

With respect to the first asserted distinction, the difference between the complaints is wholly a product of an amendment to the Commission's statutory scheme and does not imply a distinction with respect to complaint counsel's ultimate objectives in the two cases. The decision in *Heater v. F.T.C.*, 503 F.2d 321 (9th Cir. 1974), and the 1975 amendment of the F.T.C. Act in response thereto, led to a change in Commission procedure with respect to seeking restitution for injured consumers. *Heater* held, contrary to the Commission's argument, that Section 5 of the F.T.C. Act did not include authority for complaint counsel to seek or for the Commission to order restitution to consumers. Rather, the court said, that section limited the Commission primarily to issuance of injunctive, cease-and-desist orders.² Thereafter, the F.T.C. Act was amended by the Congress in 1975 to add Section 19, which authorizes the Commission, *inter alia*, to file suit in U.S. District Court to seek restitution, once there is outstanding against a respondent a final Commission cease-and-desist order. In light of both the amended statutory scheme and the doubts raised by *Heater*, customary Commission practice was modi-

² Certain exceptions to this principle were set out by the court at 323, n.7.

fied so that redress is now ordinarily sought only in Section 19 proceedings. Current Commission practice is thus necessarily at variance with that which was extant at the time of *Holiday Magic*, the complaint in which antedated *Heater, supra*.

We therefore reject the executrix's argument. By giving notice in the complaint that restitution may be sought under Section 19, the Commission has adequately indicated that redress is an objective. It is of no moment that the Section 5 complaint itself seeks no more than a cease-and-desist order. To be sure, the Commission's interest in restraining Mr. Linnick from engaging in continued unfair or deceptive practices ended with his death, but the same cannot be said with respect to the Commission's continued interest in assets which may have been unlawfully acquired by him as a consequence of violations of the Federal Trade Commission Act. As the ALJ noted, respondent's death does not preclude findings with respect to his activities, which findings may be the predicate for a subsequent Section 19 action, notwithstanding the absence of a cease-and-desist order specifically directed against the decedent. Accordingly, the post-1975 form of actions such as this cannot be a ground for excusing Mr. Linnick's successor in interest, his estate.

With respect to the second distinction advanced by the executrix, we find the timing of issuance of the initial decision to be without importance. Concededly, the ALJ in *Holiday Magic* had already issued an initial decision finding the decedent to have violated the law, but the absence of that factor in this case cannot be controlling. Substitution of estates as parties cannot be limited solely to those estates whose decedents have already been adjudged to have violated the law, but must encompass as well the estates of those decedents who may have violated the law, and if so, whose assets may be available to provide redress to injured consumers. Thus, the amendment to the complaint merely serves to ensure that the potential Section 19 action will not be frustrated by the death of Mr. Linnick.

The executrix raises other jurisdictional, due process and collateral objections, but we find these to be without merit and to have been adequately answered by the administrative law judge. Accordingly,

It is ordered, That Order of October 11, 1978 by Administrative Law Judge Lewis F. Parker amending the complaint by substituting Alice Holguin, executrix of the estate of Albert R. Linnick, for decedent respondent Albert R. Linnick be, and it hereby is, affirmed.

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93 F.T.C.

IN THE MATTER OF

THE ADVERTISING CHECKING BUREAU, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2947. Complaint, January 4, 1979 — Decision, January 4, 1979*

This consent order, among other things, requires a New York City administrator and auditor of cooperative advertising programs to cease designing or implementing cooperative advertising programs for their clients which limit or restrict the rights of dealers to obtain cooperative advertising allowances for merchandise they have advertised or sold at other than regular or suggested retail prices.

*Appearances*For the Commission: *Jeffrey Klurfeld.*For the respondent: *Michael W. Palmer, Baker & McKenzie, San Francisco, Calif. and Abner J. Golieb, Golieb & Golieb, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Advertising Checking Bureau, Inc. has violated the provisions of Section 5 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 as follows:

PARAGRAPH 1. Respondent The Advertising Checking Bureau, Inc. ("ACB") is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 353 Park Ave. South, New York, New York. ACB is the parent corporation of four corporate subsidiaries which respectively maintain offices in Chicago, Illinois; San Francisco, California; Memphis, Tennessee; and Columbus, Ohio.

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

"Client" is defined as any person, partnership, corporation or firm which has retained The Advertising Checking Bureau, Inc. to conduct, administer or audit, or to assist in the design or implementation of, any cooperative advertising program or portion thereof.

"Dealer" is defined as any person, partnership, corporation or firm which is eligible to participate in any client's cooperative advertising program.

PAR. 2. ACB is now and has been for many years engaged in administering or auditing cooperative advertising programs on behalf of clients; it has also assisted in the design or implementation of such programs. ACB has been retained by over 400 prominent manufacturers of branded products to perform cooperative advertising services. Sales of these clients' products represent a significant volume of commerce in such industries as wearing apparel, footwear, cosmetics and watches. Annually, ACB processes over one million claims for cooperative advertising allowances that are submitted by dealers of these clients. In addition to its cooperative advertising services, ACB monitors newspapers to determine the content and frequency of advertisements disseminated by a company's dealers and those of a competitor's dealers. In this connection, it offers a tearsheet service and prepares comprehensive retail store advertising reports.

PAR. 3. The acts and practices of ACB are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth herein, every client's dealers have been and are now in substantial competition with other dealers of the same client.

PAR. 5. ACB has assisted clients to design or implement, or has itself administered or audited on behalf of clients, cooperative advertising programs or plans which limit or restrict the rights of dealers to obtain cooperative advertising credits or allowances for any merchandise which has been:

- a. Sold or advertised at other than the dealers' regular selling price.
- b. Sold or advertised at a sale price, at a discount price, at a promotional price, at a reduced price, at an off-price, or at a mark-down.
- c. Sold or advertised at less than the suggested retail price, at less than the preticketed price, or at less than any minimum resale price.
- d. Sold or advertised using a price comparison.

PAR. 6. The administering or auditing by respondent, or respondent's assisting in the design or implementation of, cooperative advertising programs or plans with any of the limitations or restrictions described in Paragraph Five hereinabove has the capacity, tendency and effect of establishing, maintaining, fixing, stabilizing or otherwise illegally influencing the resale prices of

dealers in clients' products, and has had and still has the capacity, tendency and effect of hindering, suppressing or eliminating competition between or among those dealers selling a client's products.

PAR. 7. The aforesaid acts and practices of respondent have injured, hindered, suppressed, lessened or eliminated actual and potential competition in a wide variety of products, and thus are to the prejudice and injury of the public; and constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

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

1. Respondent The Advertising Checking Bureau, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 353 Park Ave. South, in the City of New York, State of New York.

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

ORDER

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

"Client" is defined as any person, partnership, corporation or firm which has retained The Advertising Checking Bureau, Inc. to conduct, administer or audit, or to assist in the design or implementation of any cooperative advertising program or portion thereof.

"Dealer" is defined as any person, partnership, corporation or firm which is eligible to participate in any client's cooperative advertising program.

I

It is ordered, That respondent The Advertising Checking Bureau, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the designing, implementing, conducting, administering or auditing of any cooperative advertising program, or portion thereof, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

Designing, implementing, conducting, administering or auditing any plan, program or scheme, in whole or in part, in such manner as to restrict, condition or limit the right of any dealer to obtain cooperative advertising credits or allowances because of any of the following:

- a. Selling or advertising any product at other than the dealer's regular selling price.
- b. Selling or advertising any product at a sale price, at a discount price, at a promotional price, at a reduced price, at an off-price, or at a mark-down.
- c. Selling or advertising any product at less than the suggested retail price, at less than the preticketed price, or at less than any minimum resale price.
- d. Selling or advertising any product using comparative prices.

II

Any cooperative advertising plan or program which limits or restricts any dealer from obtaining cooperative advertising credits or

allowances for the advertising of close-outs, irregulars or seconds shall not be deemed to violate this order.

III

It is further ordered, That respondent shall:

1. Within thirty (30) days after service of this order, mail under separate cover a copy of this order and complaint to every client whose cooperative advertising program is designed, implemented, conducted, administered or audited by respondent in such manner as to restrict, condition or limit the right of any dealer to obtain cooperative advertising credits or allowances because of any of the restrictions or limitations contained in Paragraph I hereinabove. An affidavit of mailing shall be sworn to by an official of respondent verifying that said mailing was performed.

2. Within sixty (60) days after service of this order, distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel and auditing personnel, and secure from each such entity or person a signed statement acknowledging receipt of said order.

IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed changes 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.

V

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

IN THE MATTER OF
KELCOR CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2948. Complaint, Jan. 8, 1979 — Decision, Jan. 8, 1979

This consent order, among other things, requires a Dallas, Tex. finance company to cease, in connection with the extension of consumer credit, failing to compute finance charges and provide relevant disclosures in the manner and form required by Federal Reserve System regulations.

Appearances

For the Commission: *Richard Gateley.*

For the respondents: *T. Kellis Dibrell, Dibrell, Dotson & Dibrell,*
San Antonio, Texas.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the regulations promulgated thereunder and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kelcor Corporation, a corporation, and C. K. Wingo, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation, 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 Kelcor Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 907 Hedrick Building, San Antonio, Texas.

Respondent Kelcor Corporation does not engage in any consumer loan transactions itself, but operates through wholly-owned subsidiary offices located in the States of Texas, Louisiana and Oklahoma. Each subsidiary is incorporated in the respective state in which it is located under such names as Family Plan Corporation, Credit Plan Corporation, Credit Plan Corporation of Houston, Credit Plan Corporation of Corpus Christi, Credit Plan Corporation of Fort Worth, Mutual Plan Corporation, Mutual Plan of Tulsa, Inc., or Mutual Plan Corporation of Shreveport.

Respondent C. K. Wingo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent and its subsidiaries, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents Kelcor Corporation and C. K. Wingo formulate and control the policies, acts and practices of each of the wholly-owned subsidiaries, including the acts and practices hereinafter set forth.

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

PAR. 2. Respondents, by and through their corporate subsidiary structure, are now and have been engaged in the offering to extend, and the extension of, consumer credit to the public including the financing and the granting of consumer loans.

COUNT I

Charging violations of Section 5 of the Federal Trade Commission Act and the Truth in Lending Act, the allegations of Paragraphs 1 and 2 hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, as aforesaid, have charged and are now charging a substantial number of consumers for credit life, accident and health insurance, written in connection with consumer loans.

Typical and illustrative, but not all inclusive, of the circumstances in which these insurance charges are incurred are the following:

A. Prior to presenting the loan disclosure statement to the consumer, respondents automatically include the cost of credit life and accident and health insurance on such statement, and unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

B. In some instances, respondents have placed a check-mark, an "x" mark or some other mark next to blank lines on the loan disclosure statement to obtain borrower's signatures for credit life and accident and health insurance and/or have placed the date in

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the designated position in the insurance disclosure portion of said statement without permission or authority of the consumer.

C. Respondents record the charges for credit life and accident and health insurance as disbursements and these charges become part of the amount financed, but are excluded from the finance charge in computing the annual percentage rate, as "finance charge" and "annual percentage rate" are defined in Regulation Z.

PAR. 5. By and through the acts and practices described in Paragraph 4, and others of similar import, meaning and consequence, but not specifically set forth herein, respondents, in a substantial number of instances, and particularly in connection with the sale of credit life and accident and health insurance, obtain consumers' signatures through acts and practices which operate, directly or indirectly, to defeat the elective language on the loan disclosure statements by obscuring from consumers knowledge about the option. In some instances, respondents lead consumers to believe that their signatures are necessary solely for the purpose of obtaining credit. In other instances, respondents allow consumers to sign the loan disclosure statement, electing insurance, in the mistaken belief that such insurance is required by respondents. Respondents also discourage the declination of the insurance coverage when it is questioned. These acts and practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain credit life and accident and health insurance.

Therefore, respondents, in a substantial number of instances, induce consumers to incur charges for credit life and accident and health insurance without said consumers making a knowing, affirmative election to have such insurance and, thereby, respondents fail to obtain from each of their customers a "specifically dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a)(5) of Regulation Z, in spite of the existence of language to the contrary in the loan disclosure statement.

PAR. 6. By and through the acts and practices described in Paragraphs 4 and 5 hereof, respondents fail to include the charges for credit life and accident and health insurance in the finance charge when a specific dated and separately signed affirmative written indication of the consumers desire for such insurance has not been obtained, as required by Section 226.4(a)(5) of Regulation Z, and thereby respondents:

A. Fail to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and

B. Fail to compute and disclose accurately the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5, as required by Section 226.8 of Regulation Z.

PAR. 7. In the further course and conduct of their business as aforesaid and particularly in connection with their extensions of consumer credit, respondents write an insurance policy that is denominated "Cash Benefit Hospital Policy." The charge for said policy is imposed directly or indirectly by respondents as an incident to or as a condition of the extension of credit. The charges or premiums are usually paid by the consumer from the proceeds of such consumer's loans to respondent C. K. Wingo, who also does business as Eustace Insurance Agency, a sole proprietorship. Respondents do not include the charge or premium for said insurance in the finance charge.

Therefore, respondents are violating Sections 226.4 and 226.8 of Regulation Z, by failing to include the charge for the "Cash Benefit Hospital" insurance in the finance charge and by failing to specifically disclose such charge as an element of the finance charge.

PAR. 8. By and through respondents' failure to include the charge for the "Cash Benefit Hospital" insurance in the finance charge as described in Paragraph 7, respondents:

A. Fail to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and

B. Fail to compute and disclose accurately the "annual percentage rate" accurately to the nearest quarter of one percent in accordance with Section 226.5, as required by Section 226.8 of Regulation Z.

PAR. 9. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z, constitute violations of that Act and, pursuant to Section 108(c) thereof, respondents have thereby violated and are violating the Federal Trade Commission Act.

COUNT II

Charging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs 1 and 2 hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. In the course and conduct of their aforesaid business, respondents now cause and have caused, monies, contracts, business

forms and other commercial paper and printed materials in connection with consumer financing and the granting of consumer loans to be sent by United States mail from respondents' principal place of business in the State of Texas to their subsidiary corporations located in various other States of the United States, and maintain and at all times have maintained a substantial course of trade in services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 11. In a substantial number of instances, respondents charge consumers for household goods-fire insurance written in connection with consumer loans. Typical and illustrative, but not all inclusive of the circumstances in which such charges are incurred are the following:

A. Prior to presenting the loan disclosure statement to the consumer, respondents' include the charge for household goods-fire insurance in the amount financed. Unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

B. Respondents do not provide a place on the loan disclosure statement for the consumer to indicate his desire to obtain the household goods-fire insurance from or through respondents.

C. Respondents represent, directly or by implication, that the consumer must obtain household goods-fire insurance from or through respondents.

D. Respondents fail to disclose the cost of such insurance clearly and conspicuously in conjunction with the insurance disclosure portion in their loan disclosure statement.

PAR. 12. By and through the acts and practices described in Paragraph 11, and others of similar import, meaning and consequence but not specifically set forth herein, respondents, in a substantial number of instances, lead consumers to believe that household goods-fire insurance must be purchased from or through respondents or that such insurance is an integral part of the entire agreement, not necessitating a separate decision, despite language to the contrary in the loan disclosure statement. These practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain household goods-fire insurance through respondents or whether to obtain it through other agents.

Therefore, the acts and practices set forth in Paragraph 10 are false, misleading, deceptive and unfair and a violation of Section 5 of the Federal Trade Commission Act.

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PAR. 13. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of services of the same general kind and nature as those sold by respondents.

PAR. 14. The use by respondents of the aforesaid unfair, false, misleading or deceptive acts and practices, and their failure to disclose certain facts, as alleged above, has had and now has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that those statements and representations were and are true and complete, and into the purchase of and payment for household goods-fire insurance written in connection with consumer loans by reasons of said erroneous and mistaken beliefs.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

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The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof and the respondents having been furnished thereafter with a copy of a draft of complaint which the Dallas Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Truth in Lending Act and the regulation promulgated thereunder and violations of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for the 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated said Acts, and that complaint should issue stating its charges in that respect and having thereupon accepted the executed

consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Kelcor Corporation is a corporation organized, existing and doing business under an by virtue of the laws of the State of Texas, with its office and principal place of business located at 907 Hedrick Building, San Antonio, Texas.

Respondent Kelcor Corporation does not engage in any consumer loan transactions itself, but operates through wholly-owned subsidiary offices located in the States of Texas, Louisiana and Oklahoma. Each subsidiary is incorporated in the respective state in which it is located under such names as Family Plan Corporation, Credit Plan Corporation, Credit Plan Corporation of Houston, Credit Plan Corporation of Corpus Christi, Credit Plan Corporation of Fort Worth, Mutual Plan Corporation, Mutual Plan of Tulsa, Inc., or Mutual Plan Corporation of Shreveport.

Respondent C. K. Wingo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent and its subsidiaries and his address is the same as that of the corporate respondent.

Respondents Kelcor Corporation and C. K. Wingo formulates, directs and controls the policies, acts and practices of each of the wholly-owned subsidiaries.

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 Kelcor Corporation, a corporation, its successors and assigns, and its officers, and C. K. Wingo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the granting of consumer loans or with any other extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to include and to itemize in the Truth in Lending disclosure statement the amount of charges for credit life, accident, health or loss of income insurance as part of the finance charge, unless the amount of such charges is excluded from the finance charge because of the option available pursuant to Section 226.4(a)(5) of Regulation Z and disclosures are made in accordance with paragraph 2 following. In the event such charges are included in the finance charge, respondents shall make the following disclosure clearly and conspicuously on the disclosure statement on the front side of the page and immediately above or adjacent to the blank for the consumer's signature which consummates the loan transaction. Said disclosure shall be in the following form and set off from the text of the instrument by a black border:

NOTICE

The charges for credit life, accident, health or loss of income insurance [as applicable] are included in the finance charge. As a result, the annual percentage rate for your loan is higher than it would be if such charges were not included.

2. Offering or presenting to any consumer optional credit life, accident, health or loss of income insurance where respondents seek to invoke the elections provided by Section 226.4(a)(5) of Regulation Z unless respondents:

A. Read to each consumer at the time of the first personal meeting the following statement. A copy of the statement shall be given to the consumer simultaneously therewith. It shall be printed in a clear and conspicuous manner in 12-point bold-faced type on one side of a single sheet of paper which does not contain the consumer credit agreement:

NOTICE

Credit life, accident, health or loss of income insurance is entirely optional. You are not required to buy any such insurance to obtain a loan and your choice regarding insurance coverage will not be considered in our decision on approving a loan.

B. Retain a copy of the statement, signed and dated by the consumer and the employee who reads the statement to the consumer, for a period of two (2) years from the date shown thereon and provide a copy of said executed statement to the consumer at the time of the first personal meeting.

C. Present to the consumer as the first document at the time of consummating the loan or other consumer credit transaction a separate, written insurance authorization form which sets forth clearly and conspicuously that:

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(i) The consumer has received credit approval up to a specified amount;

(ii) The consumer's decision with regard to the insurance available through respondents is not considered in granting the credit;

(iii) Insurance is optional and is not required to obtain the loan;

(iv) The amount of the total charge for credit life insurance, the total charge for credit accident and health insurance and/or the total charge for loss of income insurance along with the net proceeds payable in each instance;

(v) The monthly payments which would result from the consumer's election to take the loan, set forth in the following order from left to right across the document: (1) without credit life, accident and health or loss of income insurance, (2) with credit life insurance only, (3) with credit accident and health insurance only, (4) with loss of income insurance only and (5) with credit life, accident and health and loss of income insurance; and, if applicable, (6) with other available forms of credit insurance; and

(vi) A blank signature and date line for each option set forth in (v) above for the consumer to indicate his election.

(vii) The borrower authorizes respondents on behalf of the borrower to pay the insurance premiums to the insurance company for such personal insurance which has been chosen.

D. Make the disclosures in the manner and form required by subparagraph C above on a separate document which contains no other printed or written material. The disclosures required by subparagraphs (i), (ii) and (iii) above shall not be smaller than 12-point type. A form in conformance with Attachment A herein will be considered as in compliance with disclosure provisions of this subparagraph and subparagraph C. Respondent shall provide the consumer with an executed copy of the said insurance authorization form at the time a loan or other consumer credit transaction is consummated. Respondents shall retain a copy of said form for a period of two (2) years following its execution and make such copy available to the Federal Trade Commission or its staff for inspection and copying on request.

E. Cease and desist from:

(i) Failing to leave the Truth in Lending disclosure statement blank as to the cost of credit life, accident, health or loss of income insurance and all other information or amounts which are affected by the election or declination of insurance until the consumer has signed the written insurance authorization form required by subparagraph C above electing the insurance coverage.

(ii) Making any marks or otherwise instructing a consumer where

to sign or date the separate insurance authorization form required by sub-paragraph C above in advance of the consumer's free and independent choice for such insurance.

(iii) Representing, by any means, that credit life, accident, health or loss of income insurance is required to obtain an extension of credit from respondents.

(iv) Discouraging by any means the declination of credit life, accident, health or loss of income insurance.

3. Offering or presenting to any consumer the "Cash Benefit Hospital Policy" or any insurance other than credit life, accident, health, loss of income or property insurance without including the charge therefor in the finance charge.

4. Failing to tell every consumer the purpose(s) of each signature requested by respondents on any document relating to a consumer credit transaction.

5. Supplying, orally or in writing, any information to a consumer which misleads or confuses the consumer, or which contradicts, obscures or detracts from the information to be disclosed by Section I of this order or by Regulation Z.

6. Failing to compute and disclose accurately the finance charge, as required by Sections 226.4 and 226.8 of Regulation Z.

7. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent as required by Sections 226.5 and 226.8 of Regulation Z.

8. Failing in any consumer credit transaction or advertisement to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z.

II

It is further ordered. That respondents Kelcor Corporation, a corporation, its successors and assigns, and its officers, and C. K. Wingo, individually and as an officer 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 household goods-fire insurance or other property insurance incident to any extension of consumer credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing to include and to itemize the amount of charges for household goods-fire insurance or other property insurance as part of the finance charge, unless the amount of such premiums or

charges are excluded from the finance charge as allowed by Section 226.4(a)(6) of Regulation Z. In the event such insurance charges are included in the finance charge, respondents shall make the following disclosure clearly and conspicuously on the side of the page and above or adjacent to the place for the consumer's signature. Said disclosure shall be in the following form and set off from the text of the instrument by a black border:

NOTICE

The charges for household goods - fire insurance or other property insurance are included in the finance charge. As a result, the annual percentage rate for your loan is higher than it would be if such charges were not included.

2. Offering or presenting to any consumer household goods-fire insurance or other property insurance unless respondents:

A. Present to the consumer at the time of consummating the loan or other consumer credit transaction a separate, written insurance authorization form which sets forth clearly and conspicuously that:

(i) The consumer's decision of whether to purchase insurance from or through respondents is or is not considered [as applicable] in granting the credit;

(ii) Household goods-fire insurance or other property insurance is or is not required [as applicable] to obtain the loan;

(iii) The total premium for household goods-fire insurance or any other property insurance along with the net proceeds payable;

(iv) The consumer may or may not elect [as applicable] to purchase property insurance through or from respondents;

(v) The consumer may or may not elect [as applicable] to furnish respondents with an existing property insurance policy or one purchased through a third party together with a loss payable clause or endorsement naming respondents as loss payee;

(vi) The consumer has ten (10) days from the date of disclosure to exercise the election, if any, disclosed in accordance with sub-paragraphs 2(A)(iv) and 2(A)(v) of Section II of this order;

(vii) In the event such insurance is not required, a signature and date line for the consumer to indicate his election; and

(viii) In the event such insurance is required, a signature and date line for the consumer to indicate that he has read the disclosures.

B. Make the disclosures in the manner and form required by sub-paragraph A above on a separate document which contains no other printed or written material. The said disclosures shall not be smaller than 12-point type. Disclosures given in the form of Attachment B herein will be considered as in compliance with the disclosure provisions of this sub-paragraph and sub-paragraph A. Respondents

shall provide the consumer with an executed copy of the said insurance authorization form at the time the loan or other consumer credit transaction is consummated. Respondents shall retain a copy of said form for a period of two (2) years from the date shown thereon and make such copy available to the Federal Trade Commission or its staff for inspection and copying upon request.

C. In the event that household goods-fire insurance is optional, cease and desist from:

(i) Making any marks or otherwise instructing a consumer where to sign or date the separate insurance authorization form required by sub-paragraph A above in advance of the consumer's free and independent choice for such insurance.

(ii) Representing, by any means, that household goods-fire insurance or any other property insurance is required to obtain an extension of credit from respondents.

(iii) Discouraging by any means the declination of household goods-fire insurance or other property insurance.

3. Failing to tell every customer the purpose(s) of each signature requested by respondents on any document relating to a consumer credit transaction.

4. Supplying, orally or in writing, any information to a consumer which misleads or confuses the consumer, or which contradicts, obscures or detracts from the information required to be given to a consumer pursuant to Section II of this order.

III

It is further ordered, That whenever a credit transaction is principally conducted in a language other than English, e.g., Spanish, that any disclosures required by paragraphs 1 or 2 of Sections I and II of this order be given in the form and manner prescribed therein but in the same language as that principally used in the credit transaction with the consumer.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of the corporate respondent at its general offices in San Antonio and in each of its subsidiary offices engaged in any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said copy of this order from each such person and retain said statement for a period of not less than two (2) years from the date of execution.

It is further ordered, That the corporate respondent notify the Commission within thirty (30) days of any change in the corporate respondent which may affect compliance obligations with regard to

the extension of consumer credit arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his employment with Kelcor Corporation or its subsidiaries, and of his affiliation with another business or employment. In addition, the individual respondent named herein shall promptly notify the Commission of his affiliation with another business or employment whose principal activities include the granting of consumer loans or any extension of consumer credit or advertising to aid, promote or assist directly or indirectly any extension of consumer credit or his affiliation with another business or employment in which his own duties and responsibilities involve the granting of consumer loans or any extension of consumer credit or advertising to aid, promote or assist directly or indirectly any extension of consumer credit. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his 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.

ATTACHMENT A

PERSONAL CREDIT INSURANCE AUTHORIZATION

YOUR LOAN [OTHER EXTENSION OF CREDIT] HAS BEEN APPROVED IN THE AMOUNT OF _____.

CREDIT LIFE OR CREDIT ACCIDENT & HEALTH INSURANCE IS NOT REQUIRED IN CONNECTION WITH THIS EXTENSION OF CREDIT TO YOU AND YOUR DECISION WITH REGARD TO THE PERSONAL INSURANCE WILL NOT AFFECT THE TOTAL AMOUNT OF CREDIT WHICH HAS ALREADY BEEN APPROVED FOR YOU.

IF YOU ELECT CREDIT INSURANCE THESE PREMIUMS WILL BE DEDUCTED FROM THE PROCEEDS OF YOUR LOAN AND ADDED TO THE AMOUNT FINANCED.

Credit Life	\$_____ (For term of transaction)
NET PROCEEDS	\$_____
Credit Accident & Health (A&H)	\$_____ (For term of transaction)
NET PROCEEDS	\$_____

The above disclosure of personal insurance has been read to me and I have received

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a fully completed and executed copy of this form. I have reviewed the monthly repayment options set forth below and understand that if I choose a repayment option that includes any of the insurance coverages I am authorizing the lender to pay the insurance premiums on my behalf. I have voluntarily chosen the following repayment option:

Option 1 Monthly Payment Without Personal Credit Insurance	Option 2 Monthly Payment With Credit Life Only	Option 3 Monthly Payment With Credit A & H Only	Option 4 Monthly Payment With Credit Life and A & H
\$ _____	\$ _____	\$ _____	\$ _____
No. of months _____	No. of months _____	No. of months _____	No. of months _____
(Borrower)	(Insured Borrower)	(Insured Borrower)	(Insured Borrower)
(Borrower)	(Borrower)	(Borrower)	(Borrower)
(Date)	(Date)	(Date)	(Date)

ATTACHMENT B

PROPERTY INSURANCE AUTHORIZATION

YOUR LOAN [OTHER EXTENSION OF CREDIT] HAS BEEN APPROVED.

PROPERTY INSURANCE IS REQUIRED TO KEEP THE COLLATERAL OF THE LENDER INSURED AGAINST LOSS OR DAMAGE. YOU MAY ELECT TO PURCHASE THE REQUIRED PROPERTY INSURANCE THROUGH LENDER OR FURNISH LENDER WITH A COPY OF ANOTHER POLICY WHICH YOU MAY HAVE CURRENTLY OR WHICH YOU CAN PURCHASE ELSEWHERE THROUGH ANOTHER PERSON, TOGETHER WITH A LOSS PAYABLE CLAUSE OR ENDORSEMENT NAMING LENDER AS LOSS PAYEE WITHIN TEN (10) DAYS.

IF YOU ELECT PROPERTY INSURANCE FROM THE LENDER, THESE PREMIUMS WILL BE DEDUCTED FROM THE PROCEEDS OF YOUR LOAN AND ADDED TO THE AMOUNT FINANCED.

Auto Insurance Premium \$ _____ (For One Year)
 Fire Insurance Premium \$ _____ (For Term of
 Transaction) [As applicable]
 NET PROCEEDS \$ _____

THE ABOVE DISCLOSURE OF PROPERTY INSURANCE HAS BEEN READ BY ME AND I HAVE RECEIVED A FULLY COMPLETED AND EXECUTED COPY OF THIS FORM.

LENDER_____
BORROWER_____
DATE

IN THE MATTER OF

NEW JERSEY PEST CONTROL ASSOCIATION, INC.

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

Docket C-2950. Complaint, Jan. 8, 1979 — Decision, Jan. 8, 1979

This consent order, among other things, requires a West Orange, N.J. trade association, representing a number of dealers and suppliers of pest control goods and services, to cease denying membership to bona fide dealers and suppliers; establishing or maintaining prices or conditions of sale for goods and services; interfering with advertising media; or attempting by any other means to fix prices and eliminate competition in relevant markets. The association is further required to eliminate timely from its charter and by-laws any provision which is contrary to the terms of the order, and to maintain specified records for a three-year period.

Appearances

For the Commission: *Herbert S. Forsmith.*

For the respondent: *John F. Doly*, West Orange, N.J., *Edward J. Hobbie*, Chamberlin & Hobbie, Hillside, N.J. and *Arthur L. Herold*, Webster & Chamberlain, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (15 U.S.C. 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the party listed in the caption hereof, New Jersey Pest Control Association, Inc., a corporation, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent New Jersey Pest Control Association, Inc. is a non-profit incorporated trade association whose members are engaged in business for profit. It was organized in 1943, and exists and does business under and by virtue of the laws of the State of New Jersey. Respondent maintains its office and principal place of business at 475 Prospect Ave., West Orange, New Jersey.

The respondent is composed of approximately one hundred pest control applicators located within and without the State of New Jersey serving the New Jersey residential and commercial markets

for pest control goods and services designed to eliminate insects and rodents, and approximately twenty suppliers to the trade located in New Jersey and various other States of the United States.

Its members, comprising at least one fourth of pest control companies engaged in the business of pest control application in New Jersey, realized at least 50 percent of the state's approximately fifteen million dollars of trade in the pest control industry during the year 1975.

PAR. 2. The affairs of respondent association are managed by a Board of Directors and an Executive Board of Officers which are elected by a senior class of respondent's membership designated as the Active Membership. Admission to the Active Membership is restricted to pest control operators who have served a prolonged probationary period in respondent association, and who have satisfied the Active Membership that they are responsible full-service pest control operators.

Only those belonging to such Active Membership are permitted to vote upon respondent's business, to serve as respondent's officers or committee chairmen, or to advertise and disclose to those outside of the association the fact of their membership in respondent.

PAR. 3. Respondent is a well-known and well-advertised association as a result of its active and varied programs designed to provide technical training and information to its membership, and to promote such membership's reputation and financial interests.

By virtue of a number of circumstances, including action on the part of respondent association to that end, there exists a preference on the part of purchasers and prospective purchasers for members of the respondent as pest control dealers and applicators, and on the part of private and governmental persons and organizations frequently called upon to recommend pest control dealers and applicators, or to establish or approve particular pest control methods or procedures.

It therefore confers special benefits and is of substantial competitive importance to a dealer in pest control goods or services to belong to respondent association, and to be able to advertise and disclose such membership.

PAR. 4. Most of the members of the respondent purchase equipment and supplies for resale or use directly from manufacturers and distributors thereof located in various other states, and said manufacturers and distributors ship said products, when so purchased, from their respective places of business to said members in states other than the state of manufacture or storage. Further, many of the members of the respondent maintain their principal places of

business in states other than the State of New Jersey, and many of such members are engaged in the business of selling and supplying pest control materials to customers located in states other than the state in which such members are located, or without the State of New Jersey. As a result of the aforesaid transactions, and by virtue of respondent association's representation of its members, and promotion of their business, respondent association and its membership have been and are now engaged in a pattern, course of dealing, and substantial volume of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, in pest control products and services between the said members of the respondent trade association, and the purchasers of pest control goods and services located throughout several States of the United States.

PAR. 5. The pest control dealers and applicators holding membership in the respondent are in substantial competition with one another and with other members of the industry in the sale of pest control goods and services, in or affecting commerce, except insofar as that competition has been hindered, lessened, restricted and eliminated by the unfair methods of competition and unfair practices hereinafter set forth.

PAR. 6. For many years last past, and continuing in the present time, respondent has planned, adopted, placed in effect, and carried out, policies having the purpose, tendency and effect of hindering, frustrating, restraining, suppressing and eliminating competition in the offering for sale and sale of pest control goods and services in or affecting commerce.

Pursuant to and in furtherance of the above policies respondent has, alone and by means of agreements, understandings, and combinations and conspiracies with certain of its members, and with others, engaged in the following acts and practices:

(a) Denied, and restricted membership in respondent association by means of certain arbitrary rules and standards, and thereby refused substantial competitive advantages of such membership to bona fide dealers in pest control goods and services with which members of respondent association were not willing to compete upon an equal basis. Included among the reasons for such denials and restrictions are the following:

- (1) a dealer cuts prices, or offers, advertises or charges low prices or underbids its competition;
- (2) a bona fide dealer is in the pest control business on a part-time basis;

(3) a bona fide dealer is in the pest control business on less than a year-round basis;

(4) a bona fide dealer is engaged in another business or occupation as well as being in the pest control business;

(5) a bona fide dealer does not perform services designed to control both insects and rodents;

(6) a bona fide dealer has not been engaged in the pest control business, or has not served as a limited member of respondent for a requisite length of time;

(7) a bona fide dealer offers terms or conditions of sale, such as warranties, not approved by respondent association.

(b) Conspired and combined to maintain price floors, minimum charges and higher prices for pest control goods and services; to prevent through intimidation and other means, price cutting and discounting in connection with the offering and sale of pest control goods or services; and to cause the reporting to respondent association of dealers in pest control goods or services believed to be offering discounts or lower prices than those approved by respondent association or certain of its members.

(c) Denied and attempted to deny full access to advertising media to non-members and certain members of the respondent by prevailing upon such media to refuse, condition, qualify or change advertising placed or sought to be placed for reasons, among others, that such advertising contains prices, terms or conditions of sale not approved by respondent association or its members.

PAR. 7. The acts, practices and methods of competition engaged in, followed, pursued or adopted, by respondent, as hereinabove alleged, are unfair, and to the prejudice of the public because they have the purpose or tend to have the effect of hindering, lessening and restraining competition in the sale of pest control goods and services between and among pest control dealers; restrain competition between and among non-members and members of respondent trade association; raise barriers to entry of new competition in the sale of pest control goods and services; and limit and restrict channels of distribution of pest control goods and services.

Said acts, practices and methods of competition constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

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

1. Respondent New Jersey Pest Control Association, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 475 Prospect Ave., West Orange, New Jersey.

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

ORDER

It is ordered, That respondent New Jersey Pest Control Association, Inc., a non-profit corporation, and its officers, directors, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporation, subsidiary, division, committee or other device, in connection with respondent association's business, or with the offering for sale, sale, distribution or promotion of pest control goods or services, in or affecting commerce, as commerce is

defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from entering into, cooperating in, or carrying out any agreement, understanding or combination, express or implied, or unilaterally to do, adopt or perform any of the following acts, policies or practices:

1. Failing to grant equal, uniform and nondiscriminatory membership upon written application therefor, to any dealer in pest control goods or services actually doing business within the territorial limits served by respondent association; except that this order paragraph shall not prohibit the respondent from denying membership to an applicant who has not complied with state or federal laws pertaining to qualification for the practice of pest control within the territorial limits served by respondent association.

2. Fixing, maintaining, establishing, setting, or attempting to fix, maintain, establish or set, prices, terms, or conditions of sale or price floors or minimum charges to consumers for pest control goods or services.

3. Eliminating or attempting to eliminate the granting or offering of discounts, or the advertisement of prices or discounts.

4. Requesting, suggesting, encouraging, requiring or demanding the reporting to respondent of dealers believed to be engaged in price cutting, or believed to be engaged in the granting, offering or advertisement of price cuts or discounts.

5. Requesting, suggesting, requiring, demanding or prevailing upon any advertising medium to refuse, condition, qualify or change advertising placed or sought to be placed by any dealer in pest control goods or services, because such dealer is not a member of respondent, or because such advertising contains representations relating to prices, terms or conditions of sale not approved by respondent or any member of the respondent; except that this paragraph shall not be construed in such a way as to prohibit the respondent from informing advertising media that a firm is representing itself to be a member of respondent or is using respondent's logo when, in fact, such firm is not a member of respondent.

6. Restricting or preventing, or attempting to restrict or prevent, dealers in pest control goods or services from carrying on lawful courses of action, and engaging in trade and commerce by lawful methods of their own choosing.

7. Eliminating or attempting to eliminate competition between or among dealers in pest control goods and services.

8. Requiring or requesting members of, or applicants for, membership in respondent to submit or disclose prior, current or planned advertising, or prior, current or planned prices.

It is further ordered, That respondent shall within thirty (30) days of the effective date of this order:

(1) Advise in writing and by mail all dealers in pest control services discovered through the best efforts of respondent to be doing business within the territorial limits served by respondent, that all dealers so engaged, and complying with state and federal laws pertaining to qualification for engaging in pest control services within such territorial limits, are eligible to join respondent association on equal, uniform and non-discriminatory terms.

(2) Mail a copy of this order to each dealer in pest control services discovered through the best efforts of respondent to be doing business within the territorial limits served by respondent.

It is further ordered, That immediately upon completion of the above mailings, respondent obtain from the person actually performing the required mailing of each notice and order, an affidavit verifying the mailing of each such document, and specifying the particular business entity and address to which each such document had been mailed.

It is further ordered, That respondent shall within thirty (30) days after the date of service of this order, amend its charter, by-laws, rules and regulations by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this order, and that respondent shall thereafter require as a condition of membership that all present and future members of respondent act in accordance with the provisions of this order.

It is further ordered, That respondent shall keep full and complete records relating to the following and shall retain the same for 3 years:

(a) standards for admission to and retention of membership in the respondent;

(b) all denials of membership in the respondent;

(c) all expulsions or withdrawals from, or non-renewals of membership in the respondent;

(d) all correspondence and minutes, formal or informal, kept by or on behalf of the respondent and its committees.

It is further ordered, That respondent trade association 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 respondent herein shall within sixty

(60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it complied with this order including copies of all affidavits required by this order to be obtained by the respondent.

IN THE MATTER OF
CHILDREN'S ADVERTISING

TRR. 215-60. Interlocutory Order, Jan. 9, 1979

ORDER DENYING JOINT APPEAL

By letter of December 28, 1978, and motion of December 20, 1978, the Chocolate Manufacturers Association, Kellogg Company, Association of National Advertisers, and Toy Manufacturers Association have urged the Commission to review the Presiding Officer's Orders No. 39 and 41.

The Presiding Officer has declined to certify this matter to the Commission for review because it does not involve a "controlling question of law or policy as to which there is substantial ground for difference of opinion, nor has there been a showing that an immediate review of this ruling will materially advance the ultimate termination of this proceeding or that subsequent review will be an inadequate remedy." (Order No. 39, pp. 9-10)

The Commission's Rules of Practice provide that the Commission will not entertain applications for review of an uncertified Order of the Presiding Officer prior to its final review of the record, 16 C.F.R. 1.13(c)(i), except in the limited circumstances described in 16 C.F.R. 1.13(c)(2)(ii). This matter does not involve any of those circumstances.

It is ordered, That petitioners' "Joint Appeal" and letter seeking review of Presiding Officer's Orders No. 39, and 41 be denied.

Chairman Pertschuk and Commissioner Pitofsky did not participate.

IN THE MATTER OF
ART INSTRUCTION SCHOOLS, INC., ET AL.

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

Docket C-2949. Complaint, Jan. 10, 1979 — Decision, Jan. 10, 1979

This consent order, among other things, requires a Minneapolis, Minn. firm, engaged in the formulation and sale of home study courses, its subsidiary, Art Instruction Schools, Inc. (AIS), and its New York City advertising agency to cease misrepresenting the need or demand for AIS graduates; and the employment opportunities, potential earnings, and job placement assistance available to graduates. The order further prohibits misrepresentations relating to student selectivity; quality of art courses; additional costs; and penalties incurred by non-completing enrollees. The order also requires that prospective students be provided with prescribed information relating to the job success of former enrollees, and informed of their cancellation rights. Additionally, the companies must make proper restitution to former students; maintain particular records; and institute a surveillance program designed to insure compliance with the terms of the order.

Appearances

For the commission: *Alice S. Perlin.*

For the respondents: *Micheal F. Sullivan, Gray, Plant, Mooty & Anderson, Minneapolis, Minn.*

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 Bureau of Engraving, Inc., a corporation, Art Instruction Schools, Inc., a corporation, and Bozell & Jacobs, Inc., a 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 Bureau of Engraving, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its principal office and place of business located at 500 South Fourth St., Minneapolis, Minnesota.

Respondent Art Instruction Schools, Inc., (hereinafter sometimes referred to as "AIS"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 500 South

Fourth St., Minneapolis, Minnesota. It is a wholly-owned subsidiary of respondent Bureau of Engraving, Inc.

Respondent Bozell & Jacobs, Inc. is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at One Dag Hammarskjold Plaza, New York, New York.

PAR. 2. Respondent Art Instruction Schools, Inc. is now and for some time last past has been engaged in the formulation, development, promotion, offering for sale, sale, and distribution of courses of instruction to the public. Said respondent, through its own salesmen and sales representatives, have induced members of the general public to enroll in its courses of instruction.

Said respondent places into operation and implements a sales program whereby members of the general public, by means of advertisements placed in broadcast and printed media of general circulation, and by means of brochures, pamphlets and other promotional literature disseminated through the United States mail or by other means, and through the use of salesmen and sales personnel, and by means of statements, representations, acts and practices as hereinafter set forth are induced to sign contracts or enrollment agreements for a course of home study instruction for a stated cost.

Respondent Bureau of Engraving, Inc. indirectly benefits from sales made by Art Instruction Schools, Inc. and derives substantial income therefrom. Bureau of Engraving, Inc. further knew or had reason to know of the activities engaged in by AIS and its employees.

PAR. 3. Respondent Bozell & Jacobs, Inc. has been and is now the advertising agency for Art Instruction Schools Inc., and has prepared and placed for publication and broadcast, and caused the dissemination of, advertising material, including but not limited to advertising as hereinafter set forth to promote the sale of respondent AIS' courses of instruction.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have disseminated and caused the dissemination of certain advertisements concerning their courses of instruction by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, including, but not limited to, advertisements inserted in newspapers and magazines of interstate circulation, and by means of commercial announcements over television transmitted across state lines, and by means of brochures, pamphlets and other promotional materials disseminated through the United States mail, for the purpose of obtaining leads or prospects for the sale of such courses of instruction, and for the

purpose of inducing the purchase of such courses of instruction. Each of said respondents' volume of business in commerce is substantial.

Respondent Art Instruction Schools, Inc., from its principal place of business located in Minnesota, utilizes the services of sales representatives and causes said sales representatives to visit prospective purchasers located in various other States of the United States who respond to respondents' advertisements and commercial announcements for the purpose of inducing the purchase of such courses of instruction by such prospective purchasers.

Respondents transmit and receive and cause to be transmitted and received, in the course of advertising, offering for sale, sale and distribution of such courses of instruction, advertising and promotional materials, sales contracts, invoices, billing statements, checks, monies and other business papers and documents, to and from their principal places of business operated by said respondents located as aforesaid and to prospective purchasers and purchasers thereof 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 or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of Art Instruction Schools, Inc.'s aforesaid business for the purpose of obtaining leads or prospects for the sale of such courses of instruction, and for the purpose of inducing members of the general public to purchase such courses of instruction, respondents Art Instruction Schools, Inc. and Bozell & Jacobs, Inc. have made numerous statements and representations in newspaper advertisements, television commercials, brochures, and other printed materials and sales aids and through oral sales presentations made by respondent AIS' salespersons and other representatives, with respect to employment opportunities, salaries available, placement assistance and other benefits available to students who complete respondent AIS' courses of instruction. The following are typical and illustrative of the aforesaid statements and representations, but not all inclusive thereof:

A. Magazine and newspaper advertisements:

YOU BE THE JUDGE

Have you ever thought an art career is the career for me? Do you sometimes doodle or draw? If so, you may have the talent for a profitable and exciting career in art . . . make up your mind whether or not you want to learn more about the great opportunities in the art field, . . . We'll send you a copy of your free Art Talent Test. It's colorful, interesting and it may lead to a rewarding and challenging art career.

B. Television advertisements:

Complaint

... In a moment I'll tell you how to find out, *Free*, if you have the basic talent needed to help you become a successful working artist. Here are just a few fields where good artists are usually needed. Advertising, Calendar Art, Fashion Illustration, Greeting Card Design, Magazine Illustration, Motion Picture Art, Newspaper Cartooning, Television Art . . . New talent is welcome in the art field. . . .

C. Video Tape Sales Aid:

... We've been training commercial artists since 1914 . . . we already know some important things about *you*. We've seen your art work. We know of your interest in art. In fact, *if we didn't think you have something special we wouldn't be here*. . . .

D. Statements from Letters, Pamphlets and Brochures:

... This may be your big opportunity to take that first step toward being a successful advertising artist, illustrator, painter or cartoonist. The enclosed brochures tell of the success of just two of our well known former students — Charles Schultz, creator of the famous "Peanuts" cartoon strip, and Les Kouba, successful wildlife illustrator.

Our artist appraiser feels that you have artistic ability which should be trained . . . we would not encourage any person to invest in our practical art training unless we were convinced that he had the desire and determination to succeed in this expanding and interesting profession. . . .

E. Oral Statements by Sales Representatives:

AIS students encounter little difficulty obtaining employment as artists in the field of commercial art.

* * * * *

AIS graduates are entitled to life time job placement in the field of commercial art.

* * * * *

AIS graduates earn salaries between \$15,000 - \$25,000 annually.

PAR. 6. By and through the use of the aforementioned statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents represent or have represented directly or by implication, that:

- 1) Respondent AIS provides a placement service which will secure jobs for its graduates who want to work in the field of art or related areas.
- 2) The courses of instruction offered by respondent AIS are equivalent to studio art courses offered by accredited colleges or universities.
- 3) The total enrollment fee as listed on respondent AIS' Enroll-

ment Agreement includes the cost of all books, supplies and materials that students will have to bear.

4) Students of AIS may withdraw from or cancel courses of instruction at any time without paying additional monies or charges.

5) Prospective students of AIS must enroll at the time of the sales representative's visit or they will lose their opportunity for acceptance into the courses of instruction.

PAR. 7. In truth and fact:

1) No placement service is provided by respondent AIS for its graduates who want to secure jobs in the field of art or related areas.

2) The courses of instruction offered by respondent AIS are not substantially equivalent to studio art courses offered by accredited colleges and universities.

3) The total enrollment fee as listed on respondent AIS' Enrollment Agreement does not include the total cost of all books, supplies and materials that students will have to bear.

4) Students of AIS may not withdraw from or cancel courses of instruction at any time without paying additional monies or charges, but are bound to the terms of the Withdrawal provisions of the Enrollment Agreement.

5) Prospective students of AIS will not lose their opportunity for acceptance into the courses of instruction if they do not enroll at the time of the sales representative's visit, and are free to enroll at any future date.

Therefore, the statements and representations in Paragraphs Five and Six hereof were and are, false, misleading, unfair or deceptive acts or practices.

PAR 8. In the further course and conduct of its business of selling or inducing the sale of said courses of instruction, as aforesaid, and by means of the statements and representations set out in Paragraphs Five and Six hereof, respondents made the following additional statements and representations, directly or indirectly, to prospective students in said courses of instruction:

1) Respondent AIS is very selective and will only accept applications for its courses of instruction that have artistic talent and ability.

2) Respondent AIS had a reasonable basis from which to conclude that there is now or will be a significant or substantial need or demand in the field of art for persons who complete its courses of instruction.

3) AIS graduates who want to work will experience little or no

difficulty in securing employment in positions in the field of art after graduating from said courses.

4) AIS graduates will be qualified thereby for employment in the field of art without further training or experience.

5) Respondent AIS had a reasonable basis from which to conclude that its graduates earn \$15,000 to \$25,000 annually or any other stated amount in the field of art.

PAR. 9. In truth and in fact:

1) Respondent AIS is not selective in accepting applicants for their courses of instruction, imposing few qualifications on prospective enrollees and accepts most persons for enrollment in such courses who are willing to execute a contract and pay the required tuition for the course of training.

2) Respondent AIS had no reasonable basis from which to conclude that there is now or will be a significant or substantial need or demand in the field of art for persons who complete its courses of instruction.

3) AIS graduates who want to work have in many instances experienced substantial difficulty in securing employment in positions in the field of art.

4) AIS graduates are not qualified thereby for employment in the field of art without further training or experience.

5) Respondent AIS had no reasonable basis from which to conclude that its graduates have earned or can earn \$15,000 to \$25,000 annually or any other stated amount in the field of art.

Therefore, the statements and representations set forth in Paragraphs Five and Eight hereof were and are, false, misleading, unfair, or deceptive acts or practices.

PAR. 10. Through the use of the aforesaid advertisements, television commercials, brochures, pamphlets, oral representations and otherwise, respondent Art Instruction Schools, Inc. has represented directly or by implication, that there is or will be a significant or substantial need or demand for all or most graduates of respondent AIS in positions for which they are trained; and that graduates of respondent AIS are placed in jobs and earn \$15,000 to \$25,000 annually or other stated amounts in the field of art. Respondent had at the time of said representations no reasonable basis adequate to support the representations. Therefore, the aforesaid acts and practices were and are, unfair acts or practices.

PAR. 11. In the further course and conduct of its business and in the furtherance of its purpose of inducing students to pay delinquent accounts, respondent AIS has sent to its students collection letters

stating that failure to pay the amount claimed as owing within a stated period of time will result in immediate legal action. To the contrary, no lawsuit has ever been filed to collect a delinquent account on a student's failure to pay upon receipt of such a letter. Therefore, said statements and representations made by respondents were and are unfair, false, misleading or deceptive acts or practices.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Art Instruction Schools, Inc. has offered, and is now offering for sale courses of instruction purporting to prepare purchasers thereof for positions in the field of art without disclosing in advertising or through their sales representatives: (1) the recent percentage of persons who have completed the courses of instruction who were able to obtain the employment for which they were trained; (2) the salary any such persons can earn; and (3) the percentage of recent enrollees of each course offered that have failed to complete their course of instruction. Knowledge of such facts by prospective purchasers of courses of instruction of respondents AIS would indicate the possibility of securing future employment upon completion of the courses, and the nature of such employment. Thus, said respondent has failed to disclose a material fact which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were and are, false, misleading, deceptive or unfair acts or practices.

PAR. 13. In the further course and conduct of its business and in the furtherance of its purpose of enrolling students in its courses of instruction, respondents have advertised free Art Talent Tests and sponsored periodic drawing contests without disclosing that their primary purpose was to obtain leads to prospective students who could be visited by respondent AIS' sales representatives and induced to enroll in an \$845 home study art course. Therefore, the aforesaid acts and practices are deceptive or unfair.

PAR. 14. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 15. In the course and conduct of their business, and at all times mentioned herein, respondents Bureau of Engraving, Inc. and Art Instruction Schools, Inc. have been and are now in substantial competition, in commerce, with corporations, firms, and individuals engaged in the sale of courses of instruction covering the same or similar subjects.

In the course and conduct of its business, and at all times

mentioned herein, respondent Bozell & Jacobs, Inc. has been and is now in substantial competition in commerce, with corporations, firms and individuals engaged in the advertising of home study schools' courses of instruction covering the same or similar subjects.

PAR. 16. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and induce a substantial number thereof to purchase courses of instruction from respondent AIS by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents Bureau of Engraving, Inc., Art Instruction Schools, Inc., and Bozell & Jacobs, Inc., as herein alleged, were and are all to the prejudice and injury of the public and said respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

The Commission having hereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record

for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bureau of Engraving, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its principal office and place of business located at 500 South Fourth St., Minneapolis, Minnesota.

Respondent Art Instruction Schools, Inc., (hereinafter sometimes referred to as AIS), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 500 South Fourth St., Minneapolis, Minnesota. It is a wholly-owned subsidiary of respondent Bureau of Engraving, Inc.

Respondent Bozell & Jacobs, Inc. is a corporation organized and doing business under and by virtue of the State of Delaware, with its principal office and place of business at One Dag Hammarskjold Plaza, New York, New York.

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, Bureau of Engraving, Inc., and Art Instruction Schools, Inc., hereinafter sometimes referred to as "AIS", their successors and assigns, and their 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 courses of study, training or instruction in the field of art or in any other subject, trade or vocation in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, visually, in writing or in any other manner, directly or by implication that:

(A) A placement service is provided which will or may secure a position in the field of art for graduates of respondent AIS courses of instruction;

(B) Respondent AIS courses of instruction are equivalent to college level art courses in specialized studio art subjects offered by accredited colleges or universities;

(C) Respondent AIS students are not contractually bound, or by

the nature of the course not required, to bear any expenses or costs in addition to those set out in the enrollment agreement or is otherwise stated prior to enrollment;

(D) Respondent AIS students will be entitled to withdraw from the courses of instruction without having to adhere to the withdrawal payment schedule contained in the contract or without paying any undisclosed charges in addition thereto;

(E) Respondent AIS prospective students must enroll at the time of the sales representative's visit, or that they will have no other opportunity to enroll.

2. Misrepresenting orally, visually, in writing or in any other manner, directly or by implication:

(A) That enrollees in respondent AIS courses of art instruction will be required to qualify under highly selective procedures, or that enrollment is limited or that other significant limiting criteria are applicable;

(B) (i) that there is a great need or great demand or need or demand of any size for persons completing any of AIS courses of instruction;

(ii) that AIS graduates will experience little or no difficulty in securing employment in positions for which they were trained; or

(iii) the employment or earning prospects of AIS graduates in positions for which they have been trained;

(C) That graduates of respondent AIS will be qualified thereby for full or part time positions in the field of art utilizing their artistic skills without further training or experience;

(D) That respondents will initiate legal action against delinquent students.

3. Failing to furnish written notice to the person to be contacted, prior to initial contact by a sales representative, that a sales representative of respondent AIS may contact persons who respond to the free Art Talent Tests or drawing contests.

4. Failing orally to direct each prospective enrollee's attention, at the time he or she signs a contract or agreement for the sale of any course of instruction to the provisions of the contract or agreement which set forth his or her contractual right to cancel.

5. Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this order, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of art, or any other course offered to the public in any field in

commerce, for which representation respondent AIS has no reasonable basis prior to the making or dissemination thereof.

6. *It is further ordered*, That respondent Bozell & Jacobs, Inc., a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device on behalf of AIS in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of art or any other subject, trade or vocation or of any other product or service in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

(A) Misrepresenting orally, visually, in writing or in any other manner, directly or by implication, that;

(i) enrollees in respondent AIS courses of art instruction will be required to qualify under highly selective procedures, or that enrollment is limited or that other significant limiting criteria are applicable;

(ii) graduates of respondent AIS will be qualified thereby for full or part time positions in the field of art utilizing their artistic skills without further training or experience;

(iii) there is a great need or great demand or need or demand of any size for persons completing any of AIS courses of instruction;

(iv) AIS graduates will experience little or no difficulty in securing employment in positions for which they are trained; or

(B) Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this order, in connection with the advertising, promoting, or offering for sale of respondent AIS courses of study, training or instruction in the field of art or any other course offered to the public in any field in commerce, for which respondent has no reasonable basis prior to the making or dissemination thereof.

(C) Failing to deliver a copy of this order to cease and desist to all present and future personnel of respondent Bozell & Jacobs engaged in preparing, creating or reviewing advertisements on behalf of any client engaged in the home study and correspondence school business, and secure from each such person a signed statement acknowledging receipt of said order.

II

1. *It is further ordered*, That respondents Bureau of Engraving, Inc. and Art Instruction Schools, Inc.:

(A) Deliver, or cause to be delivered, a copy of this decision and

order to licensees, employees, sales representatives, agents, solicitors, independent contractors, or to any other person, who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this order.

(B) Provide each person or entity so described in Paragraph 1(A) of Part II of this order with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this order, retain said statement during the period said person or entity is so engaged, and make said statement available to the Commission's staff for inspection and copying upon request.

(C) Inform each person so described in Paragraph 1(A) above that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this order.

(D) If such party as described in Paragraph 1(A) above will not agree to file the notice set forth in Paragraph 1(B) above with the respondents and be bound by the provisions of this order, the respondents shall not use or engage or continue to use the engagement of such party to promote, offer for sale, sell or distribute any course of instruction included within the scope of this order.

(E) Inform the persons or entities in Paragraph 1(A) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this order.

(F) Institute a program of continuing affirmative compliance review reasonably designed to establish whether the business practices of each said person or entity described in Paragraph 1(A) above conform to the requirements of this order.

(G) Discontinue dealing with or terminate the use or engagement of any person described in Paragraph 1(A) above as revealed by the aforesaid compliance review programs, who continues on his or her own any act or practice prohibited by this order.

III

1. *It is further ordered,* That for the purposes of Part III the following definitions shall apply:

(A) The term "Relevant Period" shall mean the four year period commencing January 1, 1972 and continuing through December 31, 1975 in respect to the "Graduate List," and commencing March 1,

1973 and continuing through October 1, 1976 in respect to "Non-Completing Students."

(B) The term "Graduate List" shall mean the list of names and addresses of students, who reside in the United States, of any individual course of instruction offered for sale by respondent AIS in the field of art, who within the "Relevant Period" have completed the number of lessons required by respondent AIS for completion of individual courses, irrespective of the date of such students' enrollment in or commencement of such course, and irrespective of the amount of tuition paid by such students.

(C) The term "Non-Completing Student" shall mean students, who reside in the United States (other than those whose names appear on the "Graduate List"), who have enrolled in a course of instruction of respondent AIS in the field of art on or after March 1, 1973, (1) who, after completing one-half (1/2) or more of respondent AIS program of art instruction, have during the "Relevant Period" affirmatively notified respondent AIS in writing of his or her intention to terminate or not to complete the program of instruction or have been terminated as a student by respondent AIS, or (2) who, after completing two-thirds (2/3rds) or more of respondent AIS program of art instruction, have not submitted a lesson during any continuous twelve (12) month period during the "Relevant Period" without the student having requested and been granted an extension of time in which to complete the program. For purposes of this order, "two-thirds" of the AIS program shall mean completion of 18 lessons in the 27 lesson program or 10 lessons in the 14 lesson program, as the case may be.

(D) The term "Non-Completion List" shall include each "Non-Completing Student" of any individual course of instruction offered for sale by AIS in the field of art.

2. *It is further ordered*, That respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc., shall within sixty (60) days from the date of acceptance of this order by the Federal Trade Commission, compile two (2) separate lists. The first list shall be entitled "Graduate List" and shall contain the last known names and addresses of all students who qualify for inclusion therein pursuant to the criteria set forth in Part III, Paragraph 1(B), and shall also contain the names and addresses of such students' nearest relative(s) whose addresses appear on any document in respondents' files relating to said students. The second list shall be entitled "Non-Completion List" and shall contain the last known names and addresses of all "Non-Completing Students" who qualify for inclusion therein pursuant to the criteria set forth in Part III, Paragraph

1(C) and shall also contain the names and addresses of such students' nearest relative(s) whose addresses appear on any document in respondents' files relating to said student. Respondent shall prepare the "Graduate List" and "Non-Completion List" from respondents' records in their respective possession, custody or control. The "Graduate List" and "Non-Completion List" shall be supplemented by a list of persons in the same respective categories compiled by the Federal Trade Commission and transmitted to said respondents within one hundred five (105) days from the date of acceptance of this order by the Federal Trade Commission.

3. *It is further ordered,* That respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc., shall jointly, within sixty (60) days from the effective date of this order, retain an independent contractor acceptable to the Commission, and give to said independent contractor, within one hundred ten (110) days from the date of acceptance of this order by the Federal Trade Commission, the "Graduate List," "Non-Completion List" and the list of persons in the same respective categories provided to respondents by the Federal Trade Commission. Said independent contractor shall review the lists, strike out any duplication of names and addresses of students set forth in such lists, and determine the due qualification of each student listed to be included in such lists under the criteria hereinabove referred to. Said independent contractor shall be granted access to respondents' records in order to prepare a final "Graduate List" and a final "Non-Completion List." Students whose names appear on the final lists in each category as compiled by the independent contractor are to receive one or more of the Appendices A, B, C, D and E in accordance with the following provisions of Part III of this order. No student shall be included or retained on any final list compiled by the independent contractor who, in the good faith judgment of the independent contractor, on the basis of respondents' records, is manifestly not entitled to participate in the restitution contemplated by the order by reason of not meeting the substantive criteria therefore established in Part III, Paragraphs 6 and 9 below.

Graduate List

4. (A) *It is further ordered,* That said independent contractor shall make an inquiry in writing on the one hundred thirtieth (130) day after the effective date of this order to all students whose names and addresses appear on the "Graduate List," in the language, manner and form shown in Appendices A and D, by first class mail and with a self-addressed postage prepaid return envelope. Said inquiry shall be known as the "first mailing." With respect to all

students whose "first mailing" is returned unopened on or prior to the two hundredth (200) day after the effective date of this order, said independent contractor shall within three (3) days after such "first mailing" is returned unopened attempt by reasonable mailed inquiry to establish contact with such students by requesting by mail new addresses from the students' nearest relative(s) whose addresses appear on any document supplied to the independent contractor through which a student may be located. Said independent contractor upon securing a new address from the aforementioned source shall initiate the "first mailing" procedure to the new address of the student.

(B) Said independent contractor shall make a second inquiry in writing on the one hundred seventieth (170) day after the effective date of this order to all students whose names and addresses appear on the "Graduate List" and have not responded to the "first mailing" of the independent contractor by such date. The second inquiry in writing by first class mail and with a self-addressed postage prepaid return envelope shall be known as the "second mailing" and be in the language, manner and form shown in Appendix B.

(C) Said independent contractor shall make a third inquiry in writing on the two hundredth (200) day after the effective date of the order to all students whose names and addresses appear on the final "Graduate List" and have not responded to the "first mailing" or "second mailing" of the independent contractor by such date. The third inquiry in writing by first class mail and with a self-addressed postage prepaid return envelope shall be known as the "third mailing" and shall be in the language, manner and form shown in Appendix C.

5. *It is further ordered, That:*

(A) At the expiration of forty-five (45) days after the independent contractor mails the "third mailing," and in any event two hundred forty-five (245) days after the effective date of this order, said contractor shall transmit to respondents all Appendix D responses it has received by such date; and

(B) Respondents' obligation to make restitution shall extend to those persons whose names appeared on the final "Graduate List" compiled by the independent contractor and whose Appendix D responses have been received by the independent contractor on or before the expiration of said forty-five (45) day period and whose eligibility is certified by the independent contractor pursuant to Paragraph 5(C) of Part III of this order below; and

(C) The independent contractor shall certify to respondents the identity of all students eligible to receive restitution on the basis of

their Appendix D responses. The independent contractor shall be the final judge in good faith of such eligibility based upon the criteria set forth in Part III, Paragraphs 1, 5 and 6 of this order.

6. *It is further ordered.* That on the thirtieth (30) day following the close of the forty-five (45) day period described in Part III, Paragraph 5(A) of this order, and in any event two hundred seventy-five (275) days after the effective date of this order, respondents shall refund to those students of AIS courses identified by the independent contractor as eligible therefore an amount equal to twenty-five percent (25%) of an amount equal to the gross tuition paid by each student to respondent AIS for any such course, less any previous refunds. With respect to each such student on the "Graduate List" deemed eligible to receive a refund of tuition, respondents shall forward to each such person together with the refund check a notice in the following language:

This refund check is tendered in satisfaction of all claims by you against Art Instruction Schools, Inc., Bureau of Engraving, Inc., and the officers, directors, employees and agents of either of them. Upon acceptance of the refund check each of the foregoing shall be released from all such claims by you arising out of the payment of tuition for any Art Instruction Schools, Inc., course of instruction, and you shall be released from all claims by Art Instruction Schools, Inc., or Bureau of Engraving, Inc., against you.

In addition to the refund of the percentage of gross tuition specified herein, respondents shall also refund to each student on the "Graduate List" who qualifies hereunder for a refund, the amount of tuition payments made by said student to respondents between the effective date of this order and a date not more than ten (10) days prior to the date the refund check is due to be mailed to said student under the foregoing schedule. In order for any student on the "Graduate List" to be eligible to receive a refund of tuition, such student must satisfy the following criteria, in addition to the procedural requirements of Part III, Paragraph 4 of this order:

(A) The student enrolled in an AIS course of instruction for the purpose of obtaining employment in the field of art utilizing his or her artistic skills or to improve his or her level of employment as an artist by virtue of training received from such course of instruction; and

(B) (i) sought employment in the field of art utilizing his or her artistic skills, or

(ii) for reasons relating to the lack of sufficiency or quality of AIS training, or lack of relevant employment opportunity, elected not to seek such employment; and

(C) Did not obtain employment in the field of art or did not

improve his or her level of employment, notwithstanding the training received from AIS.

Non-Completion List

7. (A) *It is further ordered*, That the independent contractor shall make an inquiry in writing on the one hundred thirtieth (130) day after the effective date of this order to all students whose names and addresses appear on the final "Non-Completion List" compiled by the independent contractor, in the language, manner and form shown in Appendices A and E by first class mail and with a self-addressed postage prepaid return envelope. Said inquiry shall be known as the "first mailing." With respect to all students whose "first mailing" is returned unopened on or prior to the two hundredth (200) day after the effective date of this order said independent contractor shall, within three (3) days after such "first mailing" is returned unopened, attempt by reasonable mailed inquiry to establish contact with such students by requesting by mail new addresses from the students' nearest relative(s) whose addresses appear on any document supplied to the independent contractor through which a student may be located. Said independent contractor upon securing a new address from the aforementioned source shall initiate the "first mailing" procedure to the new address of the student.

(B) Said independent contractor shall make a second inquiry in writing on the one hundred seventieth (170) day after the effective date of this order to all students whose names and addresses appear on the final "Non-Completion List" and have not responded to the "first mailing" of the independent contractor by such date. The second inquiry in writing by first class mail and with a self-addressed postage prepaid return envelope shall be known as the "second mailing" and be in the language, manner and form shown in Appendix B.

(C) Said independent contractor shall make a third inquiry in writing on the two hundredth (200) day after the effective date of this order to all students whose names and addresses appear on the final "Non-Completion List" and have not responded to the "first mailing" or "second mailing" of the independent contractor by such date. The third inquiry in writing by first class mail and with a self-addressed postage prepaid return envelope shall be known as the "third mailing" and be in the language, manner and form shown in Appendix C.

8. *It is further ordered*, That:

(A) At the expiration of forty-five (45) days after the independent

contractor mails the "third mailing," and in any event two hundred forty-five (245) days after the effective date of this order, said contractor shall transmit to respondents all Appendix E responses it has received by such date; and

(B) Respondents' obligation to make restitution shall extend to those persons whose names appeared on the final "Non-Completion List" compiled by the independent contractor and whose Appendix E responses have been received by the independent contractor on or before the expiration of said forty-five (45) day period and whose eligibility is certified by the independent contractor pursuant to Paragraph 8(C) of Part III of this order below; and

(C) The independent contractor shall certify to respondents the identity of all students eligible to receive restitution on the basis of their Appendix E responses. The independent contractor shall be the final judge in good faith of such eligibility based upon the criteria set forth in Part III, Paragraphs 1, 8 and 9 of this order.

9. *It is further ordered,* That on the thirtieth (30) day following the close of the forty-five (45) day period described in Part III, Paragraph 8(A) of this order, and in any event two hundred seventy-five (275) days after the effective date of this order, respondents shall refund to those students of AIS courses identified by the independent contractor as eligible therefore an amount equal to twenty percent (20%) of an amount equal to the gross tuition paid by each student to respondent AIS for any such course, less any previous refunds. With respect to each such student on the "Non-Completion" deemed eligible to receive a refund of tuition, respondents shall forward to each such person together with the refund check a notice in the following language:

This refund check is tendered in satisfaction of all claims by you against Art Instruction Schools, Inc., Bureau of Engraving, Inc., and the officers, directors, employees and agents of either of them. Upon acceptance of the refund check each of the foregoing shall be released from all such claims by you arising out of the payment of tuition for any Art Instruction Schools, Inc., course of instruction, and you shall be released from all claims by Art Instruction Schools, Inc., or Bureau of Engraving, Inc., against you.

In order for any student on the final "Non-Completion List" to be eligible to receive a refund of tuition such student must satisfy the following criteria, in addition to the procedural requirements of Part III, Paragraph 8 of this order:

(A) The student enrolled in an AIS course of instruction for the purpose of obtaining, during the conduct of the course of instruction, employment in the field of art utilizing his or her artistic skills, or during the conduct of the course to improve his or her level of

employment as an artist by virtue of training received from such course of instruction; and

(B) (i) sought employment in the field of art utilizing his or her artistic skills, or (ii) for reasons relating to the lack of sufficiency or quality of AIS training, or lack of relevant employment opportunity, elected not to seek such employment; and

(C) Did not during the conduct of the course or thereafter obtain employment in the field of art or did not during the conduct of the course or thereafter improve his or her level of employment, notwithstanding the training received from AIS.

10. *It is further ordered.* That notwithstanding any provision of Part III, Paragraphs 1 through 9 to the contrary, any amount payable as restitution thereunder shall be remitted to the person appearing on the records of respondents as the person who actually paid the tuition being refunded if such person is different from the qualifying student who enrolled in such course(s).

IV

It is further ordered. That respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc., maintain in their respective student files all documents and writings relating to inquiries or complaints from any source relating to acts or practices prohibited by this order for a period of two (2) years after the effective date of this order, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

V

It is further ordered. That respondents Bureau of Engraving, Inc. and Art Instruction Schools, Inc. shall forthwith distribute a copy of this order to each of their operating divisions.

VI

It is further ordered. That respondents Bureau of Engraving, Inc., Art Instruction Schools, Inc. and Bozell & Jacobs, Inc. shall notify the Commission at least thirty (30) days prior to any proposed change in respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in respondents which may affect compliance obligations arising out of this order.

VII

It is further ordered, That in the event the Federal Trade Commission promulgates a final Trade Regulation Rule on Advertising, Disclosure, Cooling-Off and Refund Requirements Concerning Proprietary, Vocational and Home-Study Schools, then such trade regulation rule shall completely supercede and replace the provisions of this order set forth in Part I, Paragraphs 2 through 4 *provided,* that if no provision of the trade regulation rule relates in whole or in part to any matter covered by provisions of one of the aforesaid paragraphs of this order, the said provisions of said paragraph shall remain in full force and effect.

VIII

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

IX

It is further ordered, That each respondent herein named shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth the manner and form in which each has complied with this order, and respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc., shall, within two hundred seventy (270) days after the independent contractor first mails the "first mailings" referred to in Part III above, file with the Commission a report in writing setting forth the manner and form in which they have complied with Part III of this order.

APPENDIX A

Important Notice

(Name of Addressee)
(Address of Addressee)

Subject: Your enrollment in Art Instruction Schools, Inc.

Dear _____:

Decision and Order — 93 F.T.C.

We would like you to help us by filling out the enclosed short questionnaire.

The Federal Trade Commission has directed us to get certain facts and information from you concerning your association and relationship with our school. We have asked (name of independent contractor) to get this information from the questionnaire. Art Instruction Schools, Inc. will use the gathered information to meet important legal obligations to former students such as yourself.

It is very important that you promptly provide the information requested. Please fill out the questionnaire and return it in the enclosed return envelope. If you have any questions about this letter or the questionnaire, please contact (name of person, independent contractor, address, and telephone number).

Sincerely yours,

Roy O. Stuart
President
Art Instruction Schools, Inc.

APPENDIX B

Important Notice

(Name of Addressee)
(Address of Addressee)

Subject: Your enrollment in Art Instruction Schools, Inc.

Dear _____:

Approximately one month ago we asked you to fill out a questionnaire about your association and relationship with Art Instruction Schools, Inc. We have not received your response.

The information requested is *very* important in order to fulfill important legal obligations to our former students such as yourself. Please help us by filling out the questionnaire and returning it in the enclosed envelope.

If you have any questions regarding this letter please contact (name of person, independent contractor, address, and telephone number).

Sincerely yours,

Roy O. Stuart
President
Art Instruction Schools, Inc.

APPENDIX C

Important Notice

(Name of Addressee)
(Address of Addressee)

Subject: Your enrollment in Art Instruction Schools, Inc.

Dear _____:

Twice during the past two months we asked you to fill out an important

questionnaire regarding your association and relationship with Art Instruction Schools, Inc. We have not received your response.

The Federal Trade Commission has directed the School to compile this information to meet important legal obligations to former students such as yourself. The only method to determine the existence and scope of such legal obligations to former students is by you filling out the questionnaire. Please do so as soon as possible and return it in the enclosed envelope. If you have any questions please contact (name of person, independent contractor, address, and telephone number).

Sincerely yours,

Roy O. Stuart
President
Art Instruction Schools, Inc.

APPENDIX D

Subject: Your enrollment in Art Instruction Schools, Inc. ("AIS") Minneapolis, Minnesota.

1. Is your current address correctly shown on the envelope?
Yes () No () If not, what is your address?
2. (a) About when did you sign up for the AIS course?

Month and Year

- (b) About when did you make your first payment to AIS?

Month and Year

3. What was the name of the course?
2. (a) Did you finish the course in which you enrolled?
Yes () No ()
- (b) If you finished the course, about when did you do so?

Month and Year

5. What was the total amount of money you paid for your course?
(Total amount paid: \$_____)
6. People take a correspondence course for various reasons. Which *one* of the reasons listed below best fits your own reason for taking the course? (Read all reasons first before you check *ONE*.)
 - (a) To get personal satisfaction from developing my interests in art
 - (b) To learn a hobby
 - (c) To supplement my high school studies
 - (d) To get a job in the field of art using my artistic skills
 - (e) To do my current job in the field of art better
 - (f) To increase my appreciation or understanding of art
 - (g) Other:
(Please Describe) _____

7. After you signed up for the AIS course, did you ever make a sincere and good faith effort to get a job using your artistic skills in the field of art?
Yes () No ()
(If "yes", skip to question 9; if "no", please answer question 8.)
8. Answer this question **ONLY** if you answered question 7 "no".) Please give the

most important reason why you did *not* try to get a job in the field of art. (Read all reasons first before you check *ONE*.)

- (a) I took the course for advancement or improvement in my current job and not to get a new job in the field of art using my artistic skills, and I either;
 - (i) Got improvement or advancement; or
 - (ii) Did not get improvement or advancement
- (b) I took the course mainly for self-improvement or self-fulfillment
- (c) I preferred, already had, or got a job in another field unrelated to art
- (d) I decided I didn't want a job in the field of art
- (e) I decided I wouldn't be able to find a job in the field of art using my artistic skills since I had no on-the-job experience
- (f) I decided I wouldn't be able to find a job in the field of art using my artistic skills since I hadn't enough training
- (g) I decided I wouldn't be able to find a job in the field of art using my artistic skills because there was no demand for my talents
- (h) I married or started a family
- (i) I was drafted or enlisted in the military service
- (j) I was going to high school or went on to college, vocational-technical, or other schooling
- (k) I never wanted a job in the field of art in the first place
- (l) Art is a hobby or recreational activity with me
- (m) Other:
(Please Describe) _____

- 9. (Answer this question *ONLY* if your answer to question 7 is "yes".) Did you ever get a job in the field of art or sell a substantial amount of free lance art work as a result of your training at Art Instruction School?
Yes () No ()
- 10. Do you feel that the course was worthwhile to you?
Yes () No ()
- 11. Would you recommend the course you took to a friend?
Yes () No ()
- 12. (a) What was your age when you signed up for the Art Instruction School course? _____
(b) What is your age today? _____
- 13. What was your job or main activity when you signed up for the course (such as "high school student", or "mechanic" or "housewife")? _____
- 14. Please attach to this form copies of any documents, if available, that show you paid any amount of money for any course of instruction offered by Art Instruction Schools.

This form must be signed and mailed in the enclosed self-addressed return envelope.

I CERTIFY THAT THE ABOVE ANSWERS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

[Note: It is a federal crime for anyone to knowingly and willfully make a false, fictitious or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Section 1001.]

DATE

STUDENT'S SIGNATURE

Decision and Order

SOCIAL SECURITY NUMBER

PRINT NAME HERE

HOME ADDRESS:

Number Street Apt.
City State Zip Code

HOME TELEPHONE:

BUSINESS ADDRESS:

Employer's Name
Number Street
City State Zip Code

BUSINESS TELEPHONE:

APPENDIX E

Subject: Your enrollment in Art Instruction Schools, Inc. ("AIS") Minneapolis, Minnesota.

1. Is your current address correctly shown on the envelope?
Yes () No () If not, what is your address?

2. (a) About when did you sign up for the AIS course?

Month and Year

- (b) About when did you make your first payment to AIS?

Month and Year

3. What was the name of the course?

4. (a) Did you finish the course you signed up for?

Yes () No ()

- (b) If you dropped out of the course, about when did you do so?

Month and Year

- (c) How many lessons of the total course did you finish?

Total lessons finished _____

Total lessons in course _____

5. As of today what is the total amount of money you have actually paid to AIS for your course?

Total amount paid: \$ _____

6. People take a correspondence course for various reasons. Which *one* of the reasons listed best fits your own reasons for taking the art course? (Read all reasons first before you check *ONE*.)

(a) To get personal satisfaction from developing my interests in art

(b) To learn a hobby

(c) To supplement my high school studies

(d) To get a job during the course in the field of art using my artistic skills

(e) To do my current job in the field of art better

(f) To increase my appreciation or understanding of art

(g) Other:

(Please Describe) _____

7. After you signed up for the AIS course, did you ever make a sincere and good faith effort to get a job using your artistic skills in the field of art?
Yes () No ()
(If "yes", skip to question 9; if "no", please answer question 8.)
8. (Answer this question ONLY if you answered question 7 "no".) Please give the most important reason why you did *not* try to get a job in the field of art. (Read all reasons first before you check ONE.) (CHECK ONE ONLY)
- (a) I took the course for advancement or improvement in my current job and not to get a new job in the field of art using my artistic skills, and I either;
(i) Got advancement or improvement; or
(ii) didn't get advancement or improvement
- (b) I took the course mainly for self-improvement or self-fulfillment
- (c) I preferred, already had, or got a job in another field unrelated to art
- (d) I decided I didn't want a job in the field of art
- (e) I decided I wouldn't be able to find a job in the field of art using my artistic skills since I had no on-the-job experience
- (f) I decided I wouldn't be able to find a job in the field of art using my artistic skills since I hadn't enough training
- (g) I decided I wouldn't be able to find a job in the field of art using my artistic skills because there was no demand for my talents
- (h) I married or started a family
- (i) I was drafted or enlisted in the military service
- (j) I was going to high school or went on to college, vocational-technical, or other schooling
- (k) I never wanted a job in the field of art in the first place
- (l) Art is a hobby or recreational activity with me
- (m) Other:
(Please Describe) _____
9. (Answer this question ONLY if your answer to question 7 is "yes".) Did you ever get a job in the field of art or sell a substantial amount of free lance art work as a result of your training at Art Instruction School?
Yes () No ()
10. Do you feel that the course was worthwhile to you?
Yes () No ()
11. Would you recommend the course you took to a friend?
Yes () No ()
12. Please give the most important reason why you dropped the AIS course. (Read all reasons first before you check ONE.) (CHECK ONE ONLY)
- (a) I gained the self-improvement I wanted when I signed up
- (b) I felt I didn't have enough time for my art lessons because of my other activities or studies
- (c) I found the course too difficult
- (d) I didn't feel the course was worthwhile
- (e) I didn't feel the course would help me get a job in the field of art
- (f) I went to college or vocational-technical school

- (g) I simply lost interest in studying art
 (h) I could no longer afford the payments for the course
 (i) Other:
 (Please describe) _____

13. (a) What was your age when you signed up for the Art Instruction School course? _____
 (b) What is your age today? _____
 14. What was your job or main activity when you signed up for the course (such as "high school student", or "mechanic" or "housewife")? _____

 15. Please attach to this form copies of any documents, if available, that show you paid any amount of money for any course of instruction offered by Art Instruction Schools.

This form must be signed and mailed in the enclosed self-addressed return envelope.

I CERTIFY THAT THE ABOVE ANSWERS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

[Note: It is a federal crime for anyone to knowingly and willfully make a false, fictitious or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Section 1001.]

 DATE

 STUDENT'S SIGNATURE

 SOCIAL SECURITY NUMBER

 PRINT NAME HERE

HOME ADDRESS:

 Number Street Apt.

 City State Zip Code

HOME TELEPHONE:

BUSINESS ADDRESS:

 Employer's Name

 Number Street

 City State Zip Code

BUSINESS TELEPHONE:

Complaint

- 93 - F.T.C.

IN THE MATTER OF

NATIONAL SYSTEMS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9078. Complaint, March 25, 1976 — Decision, Jan. 11, 1979*

This consent order, among other things, dismisses the complaint against National Systems Corporation and individually named corporate officers, and requires North American Correspondence Schools, a Newport, Calif. firm offering correspondence courses in various fields, to cease misrepresenting enrollment prerequisites; school accreditation; testimonials; and the potential earnings, employment opportunities, and demand for its graduates. Prior to contracting, customers must be furnished with information regarding the employment success of former students; informed of their right to cancellation and refund; and provided with a seven-day cooling-off period. The order additionally requires the company to make restitution to former eligible students in a specified manner; maintain records; and institute a surveillance program designed to ensure compliance with the terms of the order.

Appearances

For the Commission: *Lani M. Sen Woltmann* and *Kendall H. MacVey*.

For the respondents: *Robert A. Skitol* and *Robert M. Cohan, Wald, Harkrader & Ross*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National Systems Corporation, a corporation, and North American Correspondence Schools, a corporation and subsidiary of National Systems Corporation doing business as North American School of Conservation, North American School of Advertising, North American School of Drafting, North American School of Travel, North American School of Systems and Procedures, North American School of Recreation and Park Management, North American School of Surveying and Mapping, North American School of Accounting, North American School of Motorcycle Repair, and North American School of Hotel-Motel Management, and John J. McNaughton, individually and as chairman of the board of directors of National Systems Corporation, Maurice H. Sherman, individually and as an officer of North American Correspondence Schools, Richard C. Parsons and Eugene Auerbach, individually and as employees of North American Corre-

spondence Schools, Wallace O. Laub, individually, as a member of the board of directors of North American Correspondence Schools, 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 National Systems Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 4361 Birch St., Newport Beach, California.

Respondent North American Correspondence Schools is a corporation and subsidiary of National Systems 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 4500 Campus Drive, University Plaza, Newport Beach, California.

Respondent John J. McNaughton was formerly president of National Systems and is now chairman of its Board of Directors and a member of the Board of Directors of North American Correspondence Schools. Respondent Maurice Sherman is president of North American Correspondence Schools. Respondent Eugene Auerbach is Director of Education for North American Correspondence Schools. Respondent Richard C. Parsons is an employee of North American Correspondence Schools. Respondent Wallace O. Laub is a member of the board of directors of North American Correspondence Schools. Together they formulate, direct, and control the acts and practices of North American Correspondence Schools, including the acts and practices hereinafter set forth. The address of Maurice Sherman and Richard Parsons is 4401 Birch St., Newport Beach, California. The address of Eugene Auerbach, Wallace O. Laub and John J. McNaughton is 4361 Birch St., Newport Beach, California.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the advertising, offering for sale, sale and distribution of courses of instruction purporting to prepare students thereof for employment as game wardens, forestry aides, fish hatcherymen, soil conservation officers, government hunters, and various other positions associated with conservation and various positions in other fields of employment.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, said aforementioned courses of instruction to be distributed from their place of business in the State of California to purchasers thereof

located in various other States of the United States. Respondents utilize the services of salesmen throughout the various states to induce the purchase of respondents' courses. Said salesmen transmit to and receive from respondents contracts, checks and other instruments of commercial nature. Respondents maintain, and at all other times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their courses of instruction, respondents have made, and are now making, numerous statements and representations to prospective purchasers by way of the United States mail, radio, television, magazines, newspapers, and other forms of advertising, and in oral sales presentations made by their salesmen with respect to the availability of jobs and projections of occupational demand in the conservation field, or other fields of endeavor for which respondents purport to train their students, the degree which aforementioned courses of instruction enable persons to obtain employment, the starting and potential salaries and entry level of such jobs that are available, and the purpose of the salesmen's calls or solicitations.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

A. Newspaper, Magazine and Direct Mail Advertisements

Ten Year Prediction of Manpower Needs in Conservation 1970-1980: Ecology, Up 180%; Forestry, Up 48%; Forestry Aids (sic), Up 83%; Range Management, Up 34%; Soil Conservation, Up 16%; Wildlife Conservation, Up 34%; Fishing Conservation, Up 67%; Environmental Protection, Up 260%. 425,810 more outdoor careers . . . millions of dollars more federal and state appropriations for acquiring new areas, building new facilities, hiring more conservationists.

* * * * *

Conservation is a growing movement in which thousands of people are finding helpful and satisfying careers.

* * * * *

Exciting job openings now for qualified men who love outdoor work.

* * * * *

Conservation And Ecology . . . a never ending need.

* * * * *

Many [conservation agencies] accepting applications now. Fine starting pay usually with regular advances.

* * * * *

...we show you how to seek exciting outdoor positions.

* * * * *

But the amazing part about outdoor jobs is that in many cases they actually pay off in gunny sacks of money.

* * * * *

Free Facts Mail Coupon on how to become a Game Warden, government hunter, forestry aid (sic), fish-wildlife manager or technician type positions that require less formal education.

* * * * *

Age limit 17-45, sometimes older on luxurious game farms and hunt clubs.

* * * * *

Wear the badge of the future in conservation . . . easy home study plan prepares you now for an outdoor man's dream career in forestry, wildlife, and soil conservation in ecology. (This text is set out in conjunction with pictures of game warden, soil conservationist, forestry aide, government hunter, and fish hatcheryman badges.)

* * * * *

Picture yourself in one of these exciting outdoor jobs. . . . (This text is set out in conjunction with photographs labeled game warden, forestry aide, fish hatcheryman, soil conservation officer and game club manager.)

* * * * *

Most conservation careers combine security with fine starting pay and regular advances.

* * * * *

B. Testimonials Used in Printed Advertisements

In April I became a Conservation Officer—1st Grade. I will be enforcing the fish and game laws of our State. Your Course helped make this life-long ambition a reality.

* * * * *

The NASC course paid off before I finished it. I know for a fact that just being a student. . . contributed toward my becoming a permanent park warden at Lake Louise District of Banff National Park.

* * * * *

North American School of Conservation has paid off for me. I now hold the title of

Complaint

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State Conservation Director of North Carolina for the National Campers and Hikers Association. Also I am a member of the Conservation Council of North Carolina.

* * * * *

I competed in an examination for park manager of the city of El Paso and won the position. I do not believe that I could have gotten the job without the training that I received from NASC. Thanks.

* * * * *

Lands Job First Day After Graduation. I finished my lesson and examination on Sunday and Monday I began work for the California Department of Fish and Game. This is what I consider fast results.

* * * * *

"I am encouraged by the level of work that N.A.S.C. is doing." Steward L. Udall, Former Secretary of the Interior Dept.

* * * * *

C. Television and Radio Advertisements

When you train for work as a game warden, wildlife manager, or government hunter you can forget about strikes and layoffs. . . . work outdoors—and get good pay, plus security and retirement. Call today for career information on how to train at home and qualify for an outdoor job.

* * * * *

If you are looking for a career that offers prestige and adventure . . . discover the opportunities that may await you in a conservation career. . . . And, it can all begin for you right here. . . . at the famed North American School of Conservation, in Newport Beach, California.

* * * * *

D. Oral Presentations

Respondents' sales representatives begin their sales presentations by identifying themselves as representatives of the school sent to determine the prospect's qualifications for enrollment. The prospect is told that only the Director of Education can accept him as a student; however, it is standard procedure for the Director to accept the salesman's recommendation to enroll a student and it is in the salesman's monetary self-interest to enroll as many prospects as possible.

* * * * *

Respondents' sales representatives insinuate that the programs and courses offered by North American will directly qualify the prospect to become a professional conservationist and that many professional jobs are available.

* * * * *

The openings in conservation are unlimited.

* * * * *

Respondents' School of Conservation is recognized by state and federal conservation agencies.

* * * * *

Respondents' School of Conservation is an accredited institution of higher learning.

* * * * *

Credit for respondents' conservation course is transferable to accredited colleges.

* * * * *

Respondents' course of instruction will enable a person to secure conservation employment, notwithstanding his age, physical fitness, formal educational training, and job experience in the conservation field.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. There is an urgent need or demand for all or most of respondents' graduates in positions for which respondents represent they are training such persons.
2. Respondents have a reasonable basis from which to conclude that:
 - (a) there was at the time such representations were made, or
 - (b) there would be at the time that persons then enrolling graduated from respondents' courses,

an urgent need or demand for all or most of respondents' graduates in positions for which respondents represent they are training such persons.

3. The testimonials used in respondents' advertising reflect typical job opportunities awaiting graduates of respondents' schools.
4. The testimonials used in respondents' advertising are true.
5. Completion of respondents' course of instruction, by itself, will enable a person to secure employment in the field of conservation, or other fields of endeavor for which respondents purport to train their students, from government agencies or private institutions, associations or groups.
6. Respondents had a reasonable basis from which to conclude that:
 - (a) at the time such representations were made, a substantial number of respondents' graduates were being hired, or

(b) a substantial number of persons then enrolling in respondents' courses would upon graduation be hired,

by government agencies or private institutions, associations or groups in the positions for which respondents represent they are training such persons.

7. Graduates of respondents' course qualify for professional or technically skilled employment in conservation or other fields of endeavor for which respondents represent they are training such graduates.

8. Age, physical fitness, formal education training, or job experience are not important hiring considerations for conservation employment or other employment for which students are purportedly trained by respondents.

9. Graduates of respondents' courses will receive high salaries from employment in positions for which respondents represent they are training such graduates.

10. Respondents had a reasonable basis from which to conclude that:

(a) a substantial percentage of persons graduating from respondents' courses at the time such representations were made, were earning, or

(b) a substantial percentage of persons then enrolling in respondents' courses would earn when they graduated,

high salaries in positions they obtained as a result of respondents' training.

11. Enrollment in respondents' course is selective.

12. Respondents' qualification questionnaire is utilized to determine a prospect's enrollment qualifications.

13. Respondents' school is an accredited institution of higher learning and credit therefrom is transferable to accredited institutions of higher learning.

PAR. 6. In truth and in fact:

1. There is not an urgent need or demand for all or most of respondents' graduates in positions for which respondents represent they are training such persons.

2. Respondents had no reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) would be at the time that persons enrolling graduated from respondents' courses,

an urgent need or demand for all or most of respondents' graduates in positions for which respondents represent they are training such persons.

3. The testimonials used in respondents' advertising do not reflect the typical job opportunities awaiting graduates of respondents' schools.

4. Some of the testimonials used in respondents' advertising are untrue; while others, because of omission of pertinent facts are deceptive.

5. Completion of respondents' course of instruction by itself will not enable a person to obtain conservation employment or other employment for which students are purportedly trained by respondents, from government agencies or private institutions, associations or groups.

6. Respondents had no reasonable basis from which to conclude that:

(a) at the time such representations were made, a substantial number of respondents' graduates were being hired, or

(b) a substantial number of persons then enrolling in respondents' courses would upon graduation be hired, by government agencies or private institutions, associations or groups in the positions for which respondents represent they are training such persons.

7. Completion of respondents' course of instruction will not qualify a person for professional or technically skilled conservation employment or other employment for which students are purportedly trained by respondents. Such positions often require a college degree or extensive job experience.

8. While employment qualifications vary from state to state, age, physical fitness, formal educational training and job experience are important hiring considerations for most conservation employment or other employment for which students are purportedly trained by respondents.

9. Graduates of respondents' courses will not necessarily receive high salaries from employment in positions for which respondents represent they train such graduates.

10. Respondents had no reasonable basis from which to conclude that:

(a) a substantial percentage of persons graduating from respondents' courses at the time such representations were made, were earning, or

(b) a substantial percentage of persons then enrolling in respondents' courses would earn when they graduated,

high salaries in the positions they obtained as a result of respondents' training.

11. Enrollment in respondents' course of instruction is not selective.

12. Respondents' qualification questionnaire is not utilized to

determine a prospect's enrollment qualifications. It is utilized as a promotional device to induce the purchase of respondents' course of instruction.

13. Respondents' school is not an accredited institution of higher learning and credit therefrom is not transferable to accredited institutions of higher learning.

Therefore, the statements and representations set forth in Paragraphs Four and Five were and are false, misleading, deceptive or unfair acts or practices.

PAR. 7. Respondents offered for sale courses of instruction which purported to prepare graduates thereof for available positions in the field of conservation and other fields of endeavor without disclosing in advertising or through their sales representatives: (1) the percentage of recent graduates for the course offered that were able to obtain employment in the positions for which they were allegedly trained; (2) the employers that hired any such recent graduates for the course offered; (3) the initial salary any such recent graduates from the course received; and (4) the percentage of recent enrollees of the school for the course offered that have failed to complete the course of instruction. Knowledge of such facts would indicate the probability of graduating from respondents' courses, of securing employment upon graduating and of the nature of such employment.

Thus, respondents have failed to disclose material facts, which, if known, would be likely to affect a prospective enrollee's consideration to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 8. Respondents, as aforesaid, have been, and are now failing to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase courses of instruction which were of little use or value to the said persons in obtaining employment in the jobs for which they were trained. Respondents have received the said sums and have failed to offer to refund and have refused to refund such money to such purchasers of their courses.

The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice.

PAR. 9. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been and now are in substantial competition in or affecting commerce, with corporations, firms and individuals engaged in the sale of courses of instruction covering the same or similar subjects.

PAR. 11. The use by respondents of aforesaid false, misleading, unfair or deceptive statements, representations, acts 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 to induce a substantial number thereof to purchase respondents' said courses of instruction by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, 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 or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having issued its complaint on March 25, 1976, charging respondents with violation of Section 5 of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

The Commission having duly determined upon a joint motion of complaint counsel and respondents' counsel that in the circumstances presented, the public interest would be served by withdrawal of the matter from adjudication pursuant to Section 3.25 of the Commission's Rules; and

The respondent North American Correspondence Schools and complaint counsel having executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, as amended, 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 3.25(d) of its Rules, the Commission hereby

makes the following jurisdictional findings, and enters the following order:

1. Respondent North American Correspondence Schools is a corporation and subsidiary of National Systems 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 4401 Birch St., Newport Beach, California.

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

ORDER

I

It is ordered, That respondent North American Correspondence Schools (hereinafter "respondent"), a corporation and a subsidiary of National Systems Corporation, doing business as North American School of Conservation, North American School of Advertising, North American School of Drafting, North American School of Travel, North American School of Systems and Procedures, North American School of Recreation and Park Management, North American School of Surveying and Mapping, North American School of Accounting, North American School of Motorcycle Repair, and North American School of Hotel-Motel Management, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of instruction in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, orally, visually, in writing or in any other manner, directly or by implication that:

(a) There is a need or demand of any size, proportion or magnitude for persons completing any of the courses offered by respondent in the field of conservation or any other field, or otherwise representing that opportunities for employment, or opportunities of any size, figure or number are available to such persons, or that persons completing any such courses will or may earn any specified amount of money, or otherwise representing by any means the prospective earnings of such persons, unless respondent possesses, and relies upon at the time such representation is made, a reasonable basis for such representation, which may consist of a statistically valid and

reliable survey, a reliable study, a government or industry publication or other data or material which would be relied upon by an individual generally recognized as qualified as an expert on the subject matter pertaining to the representation in question.

(b) Completion of respondent's courses of instruction in conservation by itself will enable a person to secure employment in conservation from government agencies or private institutions, associations or groups; or, misrepresenting in any manner the importance or significance of any of the courses offered by respondent for qualifying any person for employment in any field with any firms.

(c) Graduates of respondent's conservation courses qualify for employment in conservation of a kind normally requiring a junior or senior college degree; or, misrepresenting in any manner that persons completing any of the courses offered by respondent will qualify for employment of a kind normally requiring a junior or senior college degree.

(d) Graduates of respondent's conservation courses qualify for employment in conservation irrespective of age, physical fitness, formal educational training or job experience; or, misrepresenting in any manner the employment qualifications for conservation or any other field.

(e) Respondent's School of Conservation, or any other school of respondent, is an accredited institution of higher learning, or that credits therefrom are transferable to accredited institutions of higher learning, unless such is the case.

(f) Respondent's courses of instruction in conservation, or in any other field, are approved or recommended by any persons, groups, or organizations knowledgeable in the field of conservation, or in any other field, unless said persons, groups, or organizations have in fact approved or recommended such courses.

2. Representing orally, visually, in writing or in any other manner, including but not limited to the use of photographs or testimonials, the positions or salaries obtained by graduates of respondent's courses, or the employers who have hired such graduates, unless respondent possesses and relies upon at the time such representation is made, a reasonable basis for such representation, which may consist of a statistically valid and reliable survey, a reliable study, a government or industry publication or other data or material which would be relied upon by an individual generally recognized as qualified as an expert on the subject matter pertaining to the representation in question.

3. Altering or omitting any part of the text of a testimonial used

in respondent's advertising in a manner which is likely to deceive members of the public as to the benefits to be obtained from any of the courses offered by respondent; or, misrepresenting in any manner the content of any testimonial used by respondent in any of its advertising.

4. Failing to state, clearly and conspicuously, in conjunction with any testimonial used in respondent's advertising, that it has been solicited, or is required, as part of the course work, or that the entity giving such testimonial has received remuneration therefor, when such is the case.

5. Failing to obtain, at least twenty-four (24) hours prior to an interview or visit in the home or residence of a prospective student, the prospective student's consent to an interview or visit in her (his) home; failing to disclose to said prospective student, at the outset of any telephone call or other contact intended to solicit her (his) consent to an interview or visit in her (his) home, that the purpose of the contact is to request an opportunity to interview or visit the prospective student at her (his) home, and that the purpose of such interview or visit would be to sell an enrollment in one of the courses of instruction offered by respondent.

6. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective student of any course of instruction offered by respondent, the following information in the format prescribed in Appendix A:

(a) the percentage of graduates from respondent's course available for employment and employed in the field to which the course relates, as shown by respondent's most recent survey conducted in the manner required or approved by the Veterans Administration (VA) pursuant to 38 U.S.C. 1673 and 1723, as amended, and all applicable regulations and circulars; and

(b) the percentage of students in respondent's course during the time period covered by the VA survey used as the basis for the disclosure required by subparagraph (a) of this paragraph who, after having commenced the course, cancelled their enrollment or were terminated by respondent before completion of the course.

Provided, however, that this paragraph shall be inapplicable:

(a) to any school newly established by respondent in a metropolitan area or county, whichever is larger, where it previously did not operate a school, until such time as the school has graduated the number of students sufficient to conduct a valid survey under the

applicable VA regulations and circulars and has conducted such a survey at the earliest possible time; or

(b) to any course newly introduced by respondent, until such time as the course has graduated the number of students sufficient to conduct a valid survey under the applicable VA regulations and circulars and has conducted such a survey at the earliest possible time; or

(c) to any school or course of instruction whose advertising or marketing does not entail employment or earnings claims.

However, in the instance of (a) and (b) above, the following statement, and no other, shall be made in lieu of the Appendix A Disclosure Form required by this paragraph:

DISCLOSURE NOTICE

THIS SCHOOL [OR COURSE, AS THE CASE MAY BE] HAS NOT BEEN IN OPERATION LONG ENOUGH TO INDICATE WHAT, IF ANY, ACTUAL EMPLOYMENT OR SALARY MAY RESULT UPON GRADUATION FROM THIS SCHOOL [COURSE].

7. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in close proximity to the space reserved in the contract for the signature of the prospective student, in a clear and concise manner, and in type that is readable and conspicuous and not smaller than the majority of type used on the enrollment form, the following statement:

You may cancel this transaction at any time prior to midnight of the seventh (7th) calendar day after the date you sign this contract. See enclosed notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective student, at the time she (he) is furnished the enrollment contract, a complete form enclosed immediately after the enrollment contract, containing the following information and statements:

NOTICE OF CANCELLATION

You may cancel this transaction, without any penalty or obligation, within seven (7) calendar days from the date you sign the enrollment application.

If you cancel, any payments made by you under the contract or sale, and any note or other evidence of indebtedness executed by you will be returned within seven (7) calendar days following receipt by the school of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, the school may ask that you return any materials delivered to you as part of the course, at the school's expense and risk.

To cancel this transaction, sign, date and mail or deliver this cancellation notice or any other written notice, or send a telegram to North American Correspondence

Schools at [address] not later than midnight of the seventh (7th) calendar day after you sign the enrollment application.

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Student's signature)

(c) Where a sales representative is involved in the enrollment process, failing to inform orally each prospective student of her (his) right to cancel at the time she (he) signs a contract or agreement for the sale of any course of instruction.

(d) Misrepresenting in any manner the prospective student's right to cancel.

(e) Failing or refusing to honor any valid notice of cancellation by a prospective student and, within seven (7) calendar days after the receipt of such notice, to: (i) refund all payments made under the contract or sale and return any check not cashed or deposited; (ii) return any goods or property traded in, in substantially as good condition as when received by respondent; (iii) cancel and return any note or other evidence of indebtedness executed by the prospective student in connection with the contract or sale.

(f) During the cancellation period described herein, respondent shall not initiate oral contacts with such contracting persons other than contacts permitted by this paragraph, and such contracting persons shall not receive any written materials from respondent before expiration of the cancellation period.

(g) *Provided, however,* that the above statement and cancellation notice may be omitted from enrollment contracts signed during or following an interview or sales presentation in a person's home or residence by a sales representative if, in such circumstances, respondent complies with Paragraph I(8) of this order.

8. Failing to mail, by certified mail return receipt requested, to each person who signs an enrollment contract during or immediately following an interview or sales presentation in her (his) home or residence by a sales representative, a form in duplicate, printed in boldface type of at least ten (10) points and containing the following language:

AFFIRMATION STATEMENT

The enrollment contract that you have signed with North American School of _____ on [date] to enroll in [name of course] is not effective or valid unless you first sign this statement and mail it to the school within ten (10) days from the time that you received this statement. You are free to cancel your enrollment and receive a full refund of any monies you have paid to the school by not signing or

mailing this statement within ten (10) days. At the expiration of this ten (10) day period the school has ten (10) business days to send you your refund (if any) and to cancel and return to you any evidence of indebtedness that you signed. However, if you want to enroll in the school, you should sign your name below and mail this statement to the school within ten (10) days. Keep the duplicate copy for your own records.

I want to enroll in the North American School of _____

(Date)

(Signature)

9. Failing to inform orally each person interviewed or visited at home or in such person's residence by a sales representative, in the course of any such interview or visit, that any enrollment contract signed by such person will not be effective or valid unless and until that person signs and mails an Affirmation Statement that she (he) will receive from the school in the mail, and that she (he) is free to cancel the contract by simply not mailing the Affirmation Statement back to the school within ten (10) days of its receipt.

10. Treating any enrollment contract signed during or immediately following an interview or sales presentation in a person's home or residence by a sales representative as effective or valid, or sending course materials to any such person, unless and until the Affirmation Statement described in Paragraph I(8) of this order is signed and mailed within the prescribed affirmation period; failing to treat any such contract for which an Affirmation Statement is not signed and mailed within the affirmation period as null and void; and failing within ten (10) business days of the expiration of the affirmation period, to return all monies received, and to cancel and return all evidence of indebtedness, relating to any such unaffirmed contract.

11. Representing orally through sales representatives that respondent accepts only qualified candidates for enrollment in its conservation courses; or misrepresenting in any manner the prerequisites or qualifications for enrollment in any of the courses of instruction offered by respondent.

12. Representing orally through sales representatives that respondent's qualification questionnaire is utilized to determine a prospective student's enrollment qualifications; or misrepresenting in any manner the purpose or use of respondent's qualification questionnaire.

13. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may

be misled or deceived in the manner, or by the acts and practices, prohibited by this order.

II

1. *It is further ordered, That:*

(a) Respondent herein deliver a copy of this decision and order to each of its sales representatives, and to all personnel having oral contact with prospective students of the courses offered by respondent or otherwise directly engaged in the promotion, offering for sale, sale or distribution of any course of instruction included within the scope of this order;

(b) Respondent herein provide each person so described in subparagraph (a) of this paragraph with a form returnable to the respondent clearly stating her (his) intention to conform her (his) business practices to the requirements 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;

(c) Respondent herein inform each person described in subparagraph (a) of this paragraph that respondent will not use or engage, or will terminate the use or engagement of, any such person unless such person agrees to and does file notice with the respondent that she (he) will conform to the provisions contained in this order;

(d) If a person described in subparagraph (a) of this paragraph will not agree to file the notice set forth in subparagraph (b) above with the respondent and conform to the provisions of this order, the respondent shall not use or engage or continue the use or engagement of such person to promote, offer for sale, sell or distribute any course of instruction included within the scope of this order;

(e) Respondent herein inform the persons described in subparagraph (a) above that the respondent is obligated by this order to discontinue dealing with or to terminate the use or engagement of persons who continue on their own the deceptive acts or practices prohibited by this order;

(f) Respondent herein institute a program of continuing surveillance designed to reveal whether the business practices of each said person described in subparagraph (a) above conform to the requirements of this order;

(g) Respondent herein discontinue dealing with or terminate the use or engagement of any person described in subparagraph (a) above, who continues on her (his) own any act or practice prohibited by this order as revealed by the aforesaid program of surveillance;

(h) Respondent herein maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two (2) years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondent's business for inspection and copying.

2. *It is further ordered*, That respondent herein present to each interested applicant or prospective student immediately prior to the commencement of any interview or sales presentation during which the purchase of or enrollment in any course of instruction offered by respondent herein is discussed or solicited in such person's home or residence, a 5" x 7" card containing only the following language:

YOU WILL BE TALKING TO A SALESPERSON.

3. *It is further ordered*, That respondent forthwith distribute a copy of this order to each of its operating divisions.

4. *It is further ordered*, That respondent shall, for a period of twenty (20) years following the effective date of this order, notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of 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 respondent which may affect compliance obligations arising out of this order.

5. *It is further ordered*, That should the Federal Trade Commission promulgate a trade regulation rule governing the advertising or promotion of educational courses of instruction subject to this order, provisions of this order relating to practices, requirements or prohibitions covered by such a rule shall automatically be replaced by the provisions of such a rule relating to the same kind of practices, requirements or prohibitions, to the extent covered by such provisions, and any such replacement provisions of the rule shall be incorporated in this order, on the date such rule becomes effective; but shall remain so incorporated only as long as the rule remains effective. If such replacement provisions of the rule should be rescinded or otherwise invalidated, the original provisions of the order herein shall then become effective.

III

It is further ordered, That:

1. Within twenty-one (21) days after the date this order is served on respondent (hereinafter "date of service"), respondent shall

employ an independent contractor (hereinafter "contractor") acceptable to the Commission.

2. Within thirty (30) days after the date of service, respondent shall compile and give to the contractor a list containing the information described in this paragraph. For each person (a) whose enrollment application was accepted and registered by respondent for any of respondent's conservation courses [whether consisting of one hundred and fifty (150) or one hundred (100) lessons; hereinafter "the course"] from March 26, 1973, through March 25, 1976, inclusive; and, (b) who, on or before June 30, 1977, either (1) completed all the lessons in the course (but need not have submitted the final examination or received a diploma) and paid in full the tuition for the course, or (2) cancelled the course or was terminated by the school [for academic reasons or because of lack of communication from the student for two hundred and twenty (220) days] after having completed at least ten (10) examinations in the course and paid at least the pro rata portion of the tuition attributable to ten (10) examinations, (hereinafter "student"), respondent shall provide the following information:

- (a) Name;
- (b) Last known home address;
- (c) Name and address of the nearest relative of the student, or if no such address appears in respondent's files relating to such student, then the student's last known business address if such information is contained in respondent's files relating to such student;
- (d) Date student's enrollment application was accepted and registered by respondent;
- (e) Date student completed the course (but need not have submitted a final examination or received a diploma) or date she (he) cancelled the course or was terminated by respondent for academic reasons or for failure to communicate with respondent for two hundred and twenty (220) days;
- (f) Total tuition paid by or for the student to respondent;
- (g) Total amount of any tuition refund(s) paid by respondent to the student;
- (h) Total amount of any deficiency in the student's pro rata tuition payments; and
- (i) If known, the total amount of tuition paid on behalf of, or reimbursed to, the student by any government agency or department (other than the Veterans Administration), or any private business or other organization.

3. On the sixtieth (60th) day after the date of service, the contractor shall send, via first class mail, to each student at her (his)

last known home address (as it appears in the section of the list referred to in Paragraph III(2)(b) of this order) an envelope which bears the contractor's return address and contains:

(a) A copy of the letter and the Eligibility Questionnaire (hereinafter "questionnaire") in the language, manner and form shown in Appendices B and C respectively; and

(b) A first class postage-prepaid envelope addressed to the contractor.

4. With respect to each student whose mailed inquiry (as described in Paragraph III (3)) is returned to the contractor undelivered or from whom no response has been received within one hundred and five (105) days after the date of service, then, within one hundred and ten (110) days after the date of service, the contractor shall do either of the following:

(a) solicit a more recent address by sending via first class mail to the name and address of the student's nearest relative shown on the list referred to in Paragraph III(2), an envelope which bears the contractor's return address and contains both a letter in the language, manner and form shown in Appendix D and a first-class postage-prepaid envelope addressed to the contractor; if informed of an address more recent than the address referred to in Paragraph III(2), then within five (5) business days of receiving said address, the contractor shall send, via first class mail, to the student at said address, an envelope bearing the contractor's return address and containing the same letter, questionnaire and return envelope referred to in Paragraph III(3) of this order; or

(b) if there is no name or address of a relative on the list referred to in Paragraph III(2), send via first class mail to the student's last known business address if and as it appears on said list an envelope bearing the contractor's return address and containing the same letter, questionnaire and return envelope that were previously mailed to the student's home address.

5. (a) On the one hundred and fifth (105th) day after the date of service, the contractor shall transmit to the Commission a list containing the name of each student whose envelope is returned to the contractor, or from whom no response has been received within one hundred and five (105) days after the date of service, and for whom neither a business address nor a relative's address appears on the list referred to in Paragraph III(2) of this order;

(b) The Commission shall have up to one hundred and forty-five (145) days from the date of service to obtain and transmit to the contractor more recent addresses for the students whose names appear on the list described in Paragraph III(5)(a) of this order;

(c) With respect to each student for whom a more recent address is transmitted to the contractor by the Commission pursuant to the provisions of Paragraph III(5)(b) of this order, the contractor shall, on the one hundred and fiftieth (150th) day after the date of service, send, via first class mail, an envelope which bears the contractor's return address and contains the questionnaire, letter and return envelope described in Paragraph III(3)(a) and (b) of this order.

6. If a student marks more than one answer to questions 2 and/or 4 (see Appendix C) when at least one answer would be a qualifying answer and the other a disqualifying answer under the eligibility criteria enumerated in Paragraph III(8)(a-e) in this order, and if the student is not disqualified on the basis of an answer to any other question, the contractor within five (5) days shall send to such student via first class mail an envelope bearing the contractor's return address and containing: a letter as depicted in Appendix E; an unmarked copy of the question(s) to which the student had given inconsistent answers; and a first-class postage-prepaid envelope addressed to the contractor.

7. On the two hundredth (200th) day after the date of service, the contractor shall transmit to respondent and to the Commission a copy of each completed questionnaire in the contractor's possession, custody, or control. No student whose questionnaire is received by the contractor after that day will be considered for eligibility.

8. Within two hundred and ten (210) days after the date of service, the contractor shall make an initial determination of those students who are "eligible class members" pursuant to the criteria enumerated in this paragraph, Paragraph 9 and the guidelines set forth in Appendix H of this order, and shall transmit to the respondent and to the Commission a list of the names of students who are eligible class members and the most current address for each such student known to the contractor. An "eligible class member" is defined as that person:

(a) whose enrollment application was accepted and registered by respondent between March 26, 1973 and March 25, 1976, inclusive;

(b) who enrolled in the course to enable her (him) to get a job in the conservation or ecology field;

(c) who failed to obtain employment in the conservation or ecology field (1) within two (2) years after completing or terminating the course, or (2) by the date of receipt of the questionnaire, whichever is earlier;

(d) who has demonstrated her (his) eligibility by her (his) responses to the questionnaire and any subsequent questionnaire or inquiry mailed by the contractor pursuant to the provisions of this

order; and the contractor has received all such responses before two hundred (200) days after the date of service; and

(e) who falls into one of the following groups:

(1) that person who completed all the lessons in the course (but may not have submitted the final examination or been issued a diploma), and paid in full the tuition for the course on or before June 30, 1977, and made three (3) "meaningful attempts" (as defined in Paragraph 9) to find a job in the conservation or ecology field at least one (1) of which was either a written application for a job or a personal visit to an agency or employer for the purpose of finding a job; or

(2) that person who cancelled her (his) enrollment in the course or was terminated by respondent (for academic reasons or because of lack of any communication from the student for two hundred and twenty (220) days) and made at least two (2) "meaningful attempts" (as defined in Paragraph 9) to find a job in the conservation or ecology field.

9. For the purposes of Paragraph III(8)(e)(1) and (2), a "meaningful attempt" to find a job in the conservation or ecology field is one in which the student:

(a) Filed a written application for employment with an agency or other employer in the conservation or ecology field, and can reasonably identify the agency or employer to which, and the approximate date on which, application was made;

(b) Wrote to an agency or employer in the conservation or ecology field to inquire about employment but did not file a written application for employment, and can reasonably identify the agency or employer to which, and the approximate date on which, the inquiry was sent;

(c) Contacted the North American School of Conservation for assistance in getting a job in the conservation or ecology field;

(d) Telephoned an employer in the conservation or ecology field to inquire about the availability of a conservation or ecology job but failed to apply for a conservation or ecology job because (1) she (he) was ineligible to apply, (2) she (he) chose not to apply because the salary was too low, or (3) she (he) was advised that no jobs were available; and can reasonably identify the agency or employer contacted and the approximate date of the contact; or

(e) Personally visited an employer in the conservation or ecology field to inquire about the availability of a conservation or ecology job but failed to apply for a conservation or ecology job because (1) she (he) was ineligible to apply, (2) she (he) chose not to apply because the salary was too low, or (3) she (he) was advised that no jobs were

available; and can reasonably identify the agency or employer contacted, the person to whom she (he) spoke (name, position, title or description), and the approximate date of the contact.

10. Within two hundred and forty (240) days after the date of service, respondent shall present to the contractor any challenge respondent may wish to make to the contractor's initial determinations of eligibility, and respondent shall present to the contractor simultaneously with its challenge any substantiating materials in its possession, custody, or control. On the same day that respondent presents its challenges to the contractor, it shall transmit copies of all challenges and substantiating materials constituting said presentation to the Commission.

11. (a) Within two hundred and seventy (270) days after the date of service, the contractor shall, after considering all of respondent's challenges to the contractor's initial determinations of eligibility, make its final determinations of those students who are eligible class members. Also within two hundred and seventy (270) days after the date of service, the contractor shall notify respondent and the Commission simultaneously of said final determinations by transmitting to each of them a list of the names and most current addresses of students who are eligible class members, a report explaining the basis for upholding or denying any challenge(s) and copies of all materials considered by the contractor in upholding or denying any challenge.

(b) In resolving disputes about whether particular students are eligible class members, the contractor shall consider all evidence presented to it that bears on the appropriateness and reasonableness of the contractor's interpretation of responses to the questionnaire and all evidence presented to it that bears on the accuracy or veracity of a student's responses to the questionnaire pursuant to the guidelines set forth in Appendix H of this order. The contractor's decision in upholding or denying any challenge shall be fair and impartial. No financial or other material benefit shall accrue to the contractor contingent upon the nature of the outcome of her (his) decision.

12. Within two hundred and eighty (280) days after the date of service, respondent shall file, under Rule 3.61(d) of the Commission's Rules of Practice, a written request for advice as to whether the contractor's final determinations of eligible class members comply with the terms of this order. The Commission shall render its advice to respondent within three hundred and forty (340) days after the date of service.

13. Within three hundred and sixty-five (365) days after the date

of service, respondent shall send, via registered mail, return receipt requested, an envelope to each of the eligible class members at the address on the list prepared by the contractor pursuant to Paragraph III(11)(a) of this order containing a letter in the language, manner, and form shown in Appendix F and:

(a) In the case of a student who has completed all the lessons in the course (but may not have submitted the final examination or been issued a diploma) and paid in full the tuition for the course, on or before June 30, 1977, a check for the lesser of the following amounts:

(1) Two hundred dollars (\$200.00);

(2) The amount by which the tuition paid by or for the student exceeds the amount paid on behalf of, or reimbursed to, the student by any government agency or department (other than the Veterans Administration) or any private business or other organization (excluding loans); or

(b) In the case of a student whose enrollment has been cancelled or terminated as described in Paragraph III(8)(e)(2) of this order, a check for the lesser of the following amounts:

(1) One hundred dollars (\$100.00);

(2) The amount by which the tuition paid by or for the student exceeds the amount paid on behalf of, or reimbursed to, the student by any government agency or department (other than the Veterans Administration) or any private business or other organization;

provided, however, that if the student had not paid for all of the lessons completed prior to cancellation or termination of her (his) enrollment, the pro rata cost of the lessons she (he) completed but for which she (he) had not paid will be deducted from the refund to which she (he) is otherwise entitled.

14. On the same day that respondent mails envelopes containing refund checks to eligible class members, pursuant to Paragraph III(13) of this order, respondent shall send, via first class mail, an envelope which bears respondent's return address and contains a letter in the language, manner and form shown in Appendix G and a copy of this order to the last known home address of each student who was determined on the basis of her (his) returned questionnaire to be ineligible for a refund under Part III of this order.

15. On the four hundred and twenty-fifth (425th) day after the date of service, respondent shall file with the Commission a report in writing setting forth the manner and form in which it has complied with Part III of this order. This report shall contain a listing of the names, addresses, and refund amounts of those eligible class

members whose refund checks were returned by the United States Postal Service.

16. The Federal Trade Commission shall have one hundred and eighty (180) days from the date of receipt of the report described in Paragraph III(15) of this order to locate such eligible class members and to notify respondent of such members' most recent addresses, if found.

17. Within five (5) days of receiving the notification referred to in Paragraph III(16) of this order, respondent shall send, via registered mail, return receipt requested, an envelope to each of the eligible class members whom the Federal Trade Commission has located, at the address found by the Commission, which bears respondent's return address and contains the letter and check referred to in Paragraph III(13) of this order.

18. Any administrative costs incurred by respondent in carrying out the provisions of this Part III, including the cost of employing the contractor, shall be borne by respondent.

19. If any duty required to be performed on a certain day under Part III of this order falls upon a non-business day, the respondent herein shall perform such duty on the next following business day.

IV

It is further ordered, That:

1. Respondent shall maintain records and documents for two (2) years after the filing of the report referred to in Paragraph III(15) of this order, which demonstrate that respondent has complied with Part III of this order, and shall further maintain all documents and other materials relied upon in compliance with Parts I and II of this order for a period of two (2) years following the last date such documents and materials were relied upon. Such records, documents and materials demonstrating compliance with this order shall be made available for inspection and copying by the Commission during normal business hours.

2. In addition to all other reports required by this order, respondent shall file with the Commission within sixty (60) days after service upon it of this order, a report, in writing, setting forth in detail the manner and form in which it has complied with Parts I and II of this order.

3. The Complaint against National Systems Corporation, a Corporation; John J. McNaughton, individually and as chairman of the board of directors of National Systems Corporation; Maurice H. Sherman, individually and as an officer of North American Correspondence Schools; Eugene Auerbach and Richard C. Parsons,

individually and as employees of North American Correspondence Schools; and Wallace O. Laub, individually and as a member of the board of directors of North American Correspondence Schools, be, and it hereby is, dismissed.

APPENDIX A

DISCLOSURE FORM

(Name of School)

EMPLOYMENT AND COMPLETION RECORD FOR (NAME OF COURSE)
FOR THE PERIOD OF (DATE) TO (DATE)

1. (Name of School) recently conducted a survey, pursuant to regulations of the Veterans Administration,¹ of students who graduated from the (name of course) between (date) and (date). (Number) questionnaires were mailed; (number) were returned. The survey shows that among the graduates who responded to the questionnaire, (percentage) of graduates available for employment actually obtained jobs in the (name of field) or a related field.

2. (Percentage) of the students who enrolled in (name of course) between (date) and (date) completed the course; (percentage) of the students who enrolled in that period cancelled their enrollment or were terminated by the school before completion of the course; (percentage) of the students who enrolled in that period are still studying the course.

APPENDIX B

(Name)
(Address)

Dear (Name):

In settlement of a proceeding brought by the United States Federal Trade Commission, North American Correspondence Schools has agreed to a Consent Order. Under that Order, North American is undertaking to make tuition adjustments for some former students of its Conservation course, if they meet certain requirements. The purpose of the enclosed questionnaire is to help determine your eligibility for such an adjustment.

You are under no obligation to fill out or send in this questionnaire. You must return this questionnaire, however, if you wish to have your eligibility determined. You may already have received and sent in other questionnaires relating to the Conservation course. Those questionnaires were used for other purposes and do not contain sufficient information to determine your eligibility.

DIRECTIONS: Please read each question carefully and mark or fill in the appropriate spaces on the questionnaire enclosed. After you have answered every applicable question, take the questionnaire to a notary public. Sign and swear to the Affidavit in the presence of the notary public, who will then notarize it. If you do not live within twenty-five (25) miles of a notary public, you may sign and swear to the Affirmation before three persons who are not related to you and who are at least

¹ [The following disclaimer shall be inserted if the course has not been approved by the Veterans Administration: "This course is not approved for veterans benefits."]

eighteen (18) years of age, each of whom must attest that he or she has witnessed your signing of the Affirmation statement.

If you decide to send in this questionnaire, you must follow the directions and answer all questions which apply to you completely and truthfully to the best of your knowledge. Questionnaires which are incomplete or improperly filled out could result in the loss of eligibility. Please keep in mind that you can be exposed to criminal penalties if you knowingly give false information.

Please return the completed, signed and notarized (or witnessed) questionnaire in the enclosed stamped addressed envelope. You should fill out and mail in this questionnaire no later than [insert day 30 days after contractor mailed questionnaire]. If you should misplace the envelope provided, please mail your questionnaire to [insert contractor's name and address].

APPENDIX C

ELIGIBILITY QUESTIONNAIRE

Please type or carefully print your answers.

Name

Address

1. Did you enroll in the North American School of Conservation?
 Yes No
2. What was the *MOST IMPORTANT* reason why you enrolled? (MARK ONE BOX ONLY. Be sure to read all of the alternatives below before marking *the one* that applies to you.)
MARK ONLY ONE BOX
 Primarily to increase my knowledge and further my education.
 Primarily to enable me to get a job in the conservation or ecology field.
 Primarily to get a promotion in my present job.
 Primarily to help me decide if I wanted to go into the conservation or ecology field.
 Primarily to enhance my enjoyment of the outdoors.
 Other (please explain)

3. Generally speaking, were you satisfied with the course?
 Yes
 No
 Somewhat satisfied, but not entirely.
4. If you *completed* the course, skip this question. If you did *not* complete the course, please give the *MOST IMPORTANT* reason why you did not complete the course. (MARK ONE BOX ONLY. Be sure to read all of the alternatives below before marking *the one* that applies to you.)
MARK ONLY ONE BOX
 Primarily because I could no longer afford the course for financial reasons.
 Primarily because I changed my career goal.
 Primarily because I became convinced that the course would not help me get a job in the conservation or ecology field.
 Primarily because I did not have enough time to study or I found the course materials too difficult.
 Primarily because I was drafted or enlisted in the military service.

- _____ Primarily because I went to college or other schooling.
- _____ Primarily because I married, started a family, or stopped taking the course for other personal reasons such as illness or relocation.
- _____ Other (please explain)

5. Did you try to get a job in the conservation or ecology field?
 _____ Yes _____ No (If no, skip to question 8.)

6.(a) Please list as many agencies or employers that you can recall where you filled out or submitted a *written application* for employment in the conservation or ecology field and the approximate date of your application. (If you need more space, please use the back of this page or add more pages.)

Agency or Employer Approximate Date

(b) Please list as many agencies or employers that you can recall you *wrote to* about employment in the conservation or ecology field, but to which you did *not* make written application for a job. *Also*, please give the approximate date when you wrote, and a brief summary of the reply you received. (If you need more space, please use the back of this page or add more pages.)

Agency or Employer: _____

Approximate Date: _____

The reply I received was: _____

Agency or Employer: _____

Approximate Date: _____

The reply I received was: _____

Agency or Employer: _____

Approximate Date: _____

The reply I received was: _____

(c) Please list as many agencies or employers that you can recall you *personally visited* to see employment in the conservation or ecology field and the approximate date that you visited. *Also*, please identify the person you spoke with and give a brief summary of what happened. Tell what questions you asked and what you were told. (If you need more space, please use the back of this page or add more pages.)

Agency or Employer: _____

Approximate Date: _____

Name, title, position or description of person you spoke with:

The questions I asked and the answers I received were:

Agency or Employer: _____

Approximate Date: _____

Name, title, position or description of person you spoke with:

The questions I asked and the answers I received were:

Agency or Employer: _____

Approximate Date: _____

Name, title, position or description of person you spoke with:

The questions I asked and the answers I received were:

- (d) Please list as many agencies or employers that you can recall you *telephoned* with regard to employment in the conservation or ecology field and the approximate date that you telephoned. *Also*, please give a brief summary of what happened. Tell what questions you asked and what you were told. (If you need more space, please use the back of this page or add more pages.)

Agency or Employer: _____

Approximate Date: _____

The questions I asked and the answers I received were:

Agency or Employer: _____

Approximate Date: _____

The questions I asked and the answers I received were:

Agency or Employer: _____

Approximate Date: _____

The questions I asked and the answers I received were:

- (e) Did you contact North American School of Conservation for assistance in getting a job?

_____ Yes _____ No

If yes, approximately when? _____

- 7. Did you get a job in the conservation or ecology field within 2 years of completing or dropping out of the course?

_____ Yes _____ No

- 8.(a) Did any private business or other organization, or any government agency or department other than the Veterans Administration, pay any of the tuition for the course in which you enrolled? (Do not include any loan which you have

repaid, are repaying, or are obligated to repay.)

_____ Yes _____ No

(b) If yes, how much of your tuition was paid by each private business, or organization, or government agency or department? (Do not include any loan which you have repaid, are repaying, or are obligated to repay.)

Amount \$ _____

In order for you to be eligible for any tuition adjustment, you must, after completing the questionnaire, sign the following Affidavit in the presence of a Notary Public. However, if there is not a Notary Public within twenty-five (25) miles of the place you live, you may sign the Affirmation in the presence of three (3) witnesses who are not related to you and who are eighteen (18) years of age or older.

Also, in order for you to be eligible for any tuition adjustment, you must mail us the completed questionnaire promptly. Please mail the questionnaire by [insert date 30 days after contractor mailed questionnaire]. If you misplace the enclosed postage-prepaid envelope, you should mail the completed questionnaire to [insert contractor's name and address].

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. (18 U.S.C. 1001.)

AFFIDAVIT

I hereby affirm that I am the person to whom this questionnaire was sent and that I have answered the above questions completely and truthfully, to the best of my knowledge.

Signature

Subscribed and sworn to before me this _____ day of _____, _____.

My commission expires: _____

Notary Public

If and only if you live more than 25 miles away from a Notary Public, you may sign this before 3 witnesses other than your spouse or relative; but all 3 witnesses must fill in the blanks below.

AFFIRMATION

I hereby affirm that I am the person to whom this questionnaire was sent and that I have answered the above questions completely and truthfully, to the best of my knowledge.

Signature

We affirm that we witnessed (*name of student*) sign the above statement; that we are not related to (*name of student*) by blood or marriage; that we are each at least eighteen (18) years of age; and that we hereby sign our names as attesting witnesses.

1. _____

Signature

Address

Date

Decision and Order _____ 93. F.T.C.

2. _____
Signature

Address _____

Date _____

3. _____
Signature

Address _____

Date _____

APPENDIX D

(Name)

(Address)

Dear (Name):

Pursuant to an Order of the Federal Trade Commission, agreed to by this company, you are requested to provide us with the last known address of [insert name of student].

It is believed that this person was a student in the North American School of Conservation between 1973 and 1976. The Federal Trade Commission has determined that it is necessary to collect information from certain North American Conservation students to implement the terms of an Order which, among other things, requires the company to make tuition adjustments for certain students, possibly including the person named above.

If you know the current address of the person named above, please write it in the place provided at the bottom of this page and return it to us in the enclosed postage prepaid envelope as soon as possible, but *not later than* [insert date representing the one hundred and thirtieth (130th) day after the date of service].

Your cooperation will be appreciated.

Sincerely,

(current address of person listed above)

APPENDIX E

(Name)

(Address)

Dear (Name):

This letter relates to the questionnaire about your enrollment in the North American School of Conservation which you recently returned to us. We cannot evaluate your response because you marked more than one answer to Question[s] [2 and/or 4]. In order for us to evaluate your response you must return the enclosed copy of Question[s] [2 and/or 4] with ONLY ONE answer marked under [that, those] question[s]. You may not receive a tuition adjustment unless you mark ONLY ONE answer to [the, each] question.

Select the ONE answer for Question[s] [2 and/or 4] that best applies to you. You are reminded that your answer[s] must be truthful to the best of your knowledge.

Although your response to this inquiry need not be notarized or witnessed, you can be subjected to the same criminal penalties for an untruthful answer as you would be for untruthful answers to the Eligibility Questionnaire itself.

Your answer, on the enclosed copy of Question[s] [2 and/or 4] must be mailed to us not later than [insert date representing the earlier of the twenty-first (21st) day after contractor mails this letter or the one hundred and ninetieth (190th) day after the date of service]. If you misplace the enclosed postage-prepaid envelope, mail your answer[s] in an envelope addressed to [independent contractor's address].

By _____

Enclosures

APPENDIX F

(Name)
(Address)
Dear (Name):

Pursuant to a Consent Order issued by the Federal Trade Commission, the North American School of Conservation has agreed to make a partial tuition adjustment for certain former students in its Conservation courses.

The Order of the Commission contains the provisions identifying the class of persons eligible for adjustments, and the procedures for making adjustments. (You may obtain a copy of the Order without charge by writing to the Federal Trade Commission, Public Reference Branch, Room 130, Washington, DC 20580. Refer to National Systems Corp., *et al.*, Docket No. 9078.)

In accordance with the provisions of the Order, it has been determined that you are entitled to a tuition adjustment of \$_____. A check for this amount is enclosed.

NORTH AMERICAN SCHOOL OF
CONSERVATION
By _____

APPENDIX G

IMPORTANT NOTICE

Pursuant to an Order of the Federal Trade Commission issued on _____, the North American School of Conservation agreed to make a partial tuition adjustment for certain former students in its Conservation courses. The Order of the Commission contains provisions identifying the class of persons eligible for adjustments and the procedures for making adjustments.

In accordance with Part III of the Order, it has been determined, based upon your responses to the "Eligibility Questionnaire," that you are not eligible for an adjustment. A copy of this Order is enclosed.

NORTH AMERICAN SCHOOL OF
CONSERVATION
By _____

APPENDIX H

INSTRUCTIONS TO INDEPENDENT CONTRACTOR

Respondent North American Correspondence Schools (NACS) shall require the independent contractor referred to in Part III of the Order to comply with the following instructions:

Determination of Eligible Class Members

The contractor shall receive the responses to the Appendix C Eligibility Questionnaire. From these responses, the contractor will determine all eligible class members, and, supplemented by NACS's records, the amount of refund to which each member is entitled, pursuant to the terms of Part III of this Order. All references regarding question numbers refer to the questions on the Appendix C Eligibility Questionnaire.

a. Vocational Intent Requirement

By checking the second response to question 2, the respondent to the questionnaire shall have met the requirement that she (he) enrolled in a NACS conservation course to enable her (him) to get a job in the conservation or ecology field. The contractor shall evaluate any answers to the sixth response to question 2 in Order to make a reasonable determination as to whether the respondent to the questionnaire met this requirement. If the respondent to the questionnaire checks two or more responses, one of which is a qualifying answer and one or more others is (are) disqualifying answer(s), and the respondent is not disqualified on the basis of an answer to any other question, then the contractor shall follow the procedure set forth in Paragraph III(6) of the Order. That is, within five (5) days after receiving the questionnaire, the contractor shall send, via first class mail, an envelope to the student bearing the contractor's return address and containing (a) a letter in the language, manner and form shown in Appendix E to the Order; (b) a copy, from an unanswered questionnaire, of that question or those questions to which the student had given inconsistent answers in her (his) first response; and (c) a first class postage-prepaid envelope addressed to the contractor.

b. Question 3

The contractor shall ignore the answers to question 3 in her (his) initial determination of eligibility.

c. Dropouts

Question 4 is to be answered only by those who did not complete NACS's conservation course. By checking the third response to question 4, the respondent to the questionnaire shall have met the requirement that the reason for not completing the course was that she (he) did not believe the course would help in getting employment in the conservation or ecology field. The contractor shall evaluate any answers to the eighth response to question 4 in order to make a reasonable determination as to whether the respondent to the questionnaire met this requirement. If the respondent to the questionnaire checks a qualifying answer and one or more disqualifying answer(s), but is not otherwise disqualified on the basis of an answer to any other question, then the contractor shall follow the procedure set forth in Paragraph III(6) of the Order. That is, within five (5) days after receiving the questionnaire, the contractor shall send, via first class mail to the student, an

envelope bearing the contractor's return address and containing (a) a letter in the language, manner and form shown in Appendix E to the Order; (b) a copy, from an unanswered questionnaire, of that question or those questions to which the student had given inconsistent answers in her (his) first response; and (c) a first class postage-prepaid envelope addressed to the contractor.

d. Meaningful Attempts to Find a Job

Those who completed NACS's course in conservation must have made three meaningful attempts to find a job in conservation or ecology at least one of which was either a written application or a personal visit. Those who did not complete said course must have made two meaningful attempts. An attempt may be made in person, in writing, or by telephone. A "yes" answer to question 6(e) establishes the fact of one meaningful attempt. In determining whether any other action or effort constitutes a meaningful attempt, the contractor shall be governed by the criteria set forth in Paragraph III(9) of the Order. That is, a meaningful attempt is one in which the student:

(a) Filed a written application for employment with an agency or other employer in the conservation or ecology field, and can reasonably identify the agency or employer to which, and the approximate date on which, application was made;

(b) Wrote to an agency or employer in the conservation or ecology field to inquire about employment, and can reasonably identify the agency or employer to which, and the approximate date on which, the inquiry was sent;

(c) Contacted the North American School of Conservation for assistance in getting a job in the conservation or ecology field;

(d) Telephoned an employer in the conservation or ecology field to inquire about the availability of a conservation or ecology job but failed to apply for a conservation or ecology job because (1) she (he) was ineligible to apply, (2) she (he) chose not to apply because the salary was too low, or (3) she (he) was advised that no jobs were available; and can reasonably identify the agency or employer contacted and the approximate date of the contact; or

(e) Personally visited an employer in the conservation or ecology field to inquire about the availability of a conservation or ecology job but failed to apply for a conservation or ecology job because (1) she (he) was ineligible to apply, (2) she (he) chose not to apply because the salary was too low, or (3) she (he) was advised that no jobs were available; and can reasonably identify the agency or employer contacted, the person to whom she (he) spoke (name, position, title or description), and the approximate date of the contact.

A student who completed the course must have provided a total of at least three (3) acceptable responses under these criteria to questions 6(a) through 6(e) of the Eligibility Questionnaire, of which at least one (1) must have been an acceptable response under these criteria to question 6(a) or 6(c).

A student who did not complete the course must have made two (2) meaningful attempts to find a job; thus, such student must have provided a total of at least two (2) acceptable responses under these criteria to questions 6(a) through 6(e) of the questionnaire.

e. Obtained Employment

A student who obtained employment in the conservation or ecology field within two (2) years after completing, cancelling or being terminated from the course is not eligible for a tuition refund. Therefore, any student who answered "Yes" to question 7 shall be deemed ineligible.

f. Out of Pocket Payments for Tuition

In determining the amount of refund to which an eligible class member is entitled, the contractor shall be guided by the provisions of Paragraph III(13) of the Order. Where an eligible class member's tuition was paid by a private business or organization or by a state or federal agency (other than the Veterans Administration) in whole or in part, that member shall not receive an amount greater than the amount not paid for by such business, organization or agency. To determine the amount of such tuition assistance an eligible class member received, the contractor shall contact NACS for any records it may have indicating the nature and amount of such assistance. If NACS does not have such records, then the contractor may refer to the response to question 8 of the questionnaire in determining the amount to be paid to the eligible class members.

If NACS's records indicate that an eligible class member had not paid for all of the lessons completed prior to cancellation or termination of her (his) enrollment, the contractor shall deduct from the refund to which the student is otherwise entitled the pro rata cost for the lessons she (he) completed but for which she (he) had not paid. Thus, for example, if a student had enrolled in the one hundred (100) lesson course with a total tuition cost of five hundred dollars (\$500.00), and had completed sixty (60) lessons (for which the pro rata cost would be \$300.00), but paid only two hundred and fifty dollars (\$250.00) in tuition, that student would have fifty dollars (\$50.00) deducted from the refund to which she (he) would otherwise be entitled.

g. Affidavit and Affirmation Forms

If a questionnaire is not properly sworn or witnessed, the contractor shall photostat and promptly return the original questionnaire to the respondent of the questionnaire along with new Affidavit and Affirmation forms and the following notice:

"We are returning your questionnaire because you did not properly sign it. Enclosed is a new Affidavit which you must sign before a notary public. *But* if you live more than twenty-five (25) miles from the nearest notary public, then sign the enclosed Affirmation before three witnesses (spouse and relatives don't count). Please sign the proper form and mail it along with the questionnaire within 2 weeks to (*name, and address*). If you fail to do so, you will be ineligible for a tuition adjustment."

If respondent challenges the eligibility of a student initially determined to be eligible on the ground that the student signed before three witnesses rather than before a notary public notwithstanding the fact that the student lives within twenty-five (25) miles of a notary public, and respondent furnishes evidence that the student in fact lives within twenty-five (25) miles of a notary public, the contractor shall photostat and promptly return the original questionnaire to the student along with a new Affidavit and the following notice:

"We are returning the questionnaire because you did not properly sign it. Since you live within twenty-five (25) miles of a notary public, you should have signed the Affidavit before a notary public rather than the Affirmation before three witnesses. Enclosed is a new Affidavit which you must sign before a notary public. Please sign it and mail it along with the questionnaire within 2 weeks to (*name and address*). If you fail to do so, you will be ineligible for a tuition adjustment."

h. Resolution of Challenges

In resolving challenges to the contractor's initial determinations of eligibility, the contractor shall be governed by the provisions of Part III(11)(b) of the Order. That is, the contractor shall consider all evidence presented to it that bears on the appropriateness and reasonableness of the contractor's interpretation of responses to the questionnaire and all evidence presented to it that bears on the accuracy or veracity of a student's responses to the questionnaire. Such evidence may include, *inter alia*, (1) evidence that the student has answered a question on the questionnaire in a manner inconsistent with the student's answer or answers to a previous questionnaire or inquiry, (2) evidence that the student did not in fact file a written application or otherwise contact an agency or employer listed on the questionnaire, and (iii) the student's failure to have the questionnaire notarized or affirmed in compliance with the questionnaire's instructions. The contractor's decision in upholding or denying any challenge shall be fair and impartial. No financial or other material benefit shall accrue to the contractor contingent upon the nature of the outcome of her (his) decision.

Complaint

93 F.T.C.

IN THE MATTER OF

ZAYRE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2951. Complaint, Jan. 19, 1979 — Decision, Jan. 19, 1979*

This consent order, among other things, requires a Framingham, Mass. discount department store chain to cease inducing or receiving discriminatory promotional allowances, services or facilities from its suppliers; and prohibits the firm from boycotting or decreasing its purchases from recalcitrant suppliers. The company is also required to maintain specified records for a five-year period; and to bear all costs of any trade show it sponsors, organizes or directs.

Appearances

For the Commission: *David W. DiNardi* and *Norman H. Jackman*.
For the respondent: *Harry L. Shniderman, Covington & Burling*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Zayre Corp., a corporation, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and believing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows.

I. Respondent

PARAGRAPH 1. Respondent Zayre Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 770 Cochituate Road, Framingham, Massachusetts.

PAR. 2. Respondent is now and for many years has been engaged in the business of selling general merchandise to the public at retail. Respondent operates a chain of discount department stores which sell a large variety of clothing, hard goods, and other general merchandise. There are presently approximately two hundred and sixty department stores in respondent's chain, which stores are located in twenty-six states in the eastern half of the United States. Its sales in fiscal 1977 amounted to \$1,160,572,000.

PAR. 3. In the course and conduct of its business, respondent is now and has been in competition with other corporations, persons, firms, and partnerships in the purchase, sale, and distribution of clothing,

hard goods, and general merchandise, except to the extent limited or restrained by the practices identified hereinafter.

II. Commerce

PAR. 4. In the course and conduct of its business, respondent has been and is now engaged in activities which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, in the following manner:

(a) Respondent purchases for resale a great variety of general merchandise from a large number of suppliers located throughout the United States. Respondent causes these products to be transported from the places of manufacture or purchase to its stores or warehouses located in various states throughout the eastern half of the United States for resale to the general public. In many instances, respondent causes merchandise delivered to its warehouses to be transported to its stores located in other states.

(b) In addition, respondent disseminates advertising in commerce and receives payments in commerce from suppliers for advertising and promotional services and facilities, including those described hereinafter.

III. Inducing Discriminatory Allowances

PAR. 5. In the course and conduct of its business in or affecting commerce, respondent has knowingly induced and received, or received, from some of its suppliers, the payment of something of value to respondent or for respondent's benefit, as compensation for or in consideration of services or facilities furnished by or through respondent in connection with respondent's offering for sale, or sale, of products sold to respondent by the aforesaid suppliers. In particular:

(a) In July of 1972, respondent held a trade show in Miami Beach, Florida, at which products of its suppliers were displayed. This trade show was organized, directed, and conducted by respondent and was attended by respondent's officials and employees, as well as by a substantial number of respondent's suppliers. The show was not open to the public.

(b) Respondent solicited many of its suppliers to participate in said trade show and induced from each such participating supplier payment for the rental of booth space at said trade show. The amount of such money induced and received, or received, by respondent from participating suppliers was substantial. Approxi-

mately 190 suppliers paid \$700,000 in financial payments, allowances and other things of value to proposed respondent.

(c) In the course and conduct of said trade show, respondent required each participating supplier to provide valuable services, including staffing the booths rented by said suppliers from respondent and demonstrating and promoting the products displayed therein. In addition to the furnishing of such services, other services were performed by suppliers which aided said respondent in the resale of suppliers' products. The value of such services induced and received, or received, by respondent was substantial.

(d) Respondent threatened to eliminate or boycott or decrease purchases from, or has eliminated or boycotted or decreased purchases from, suppliers which refused to participate in said trade show.

PAR. 6. Some of respondent's suppliers who participated in the aforesaid trade show did not offer or otherwise make available to all their customers competing with respondent in the sale and distribution of their respective products payments, allowances, services, or other things of value, for advertising and promoting such products, on proportionally equal terms to those granted respondent in connection with its trade show.

PAR. 7. Furthermore, respondent has also knowingly solicited and induced from a major supplier, discriminatory payments for services in connection with the resale of certain products in the regular course of its business during the years 1972, 1973, and 1974. Respondent has received substantial sums from this supplier for each of the years 1972, 1973, and 1974.

PAR. 8. When respondent induced and received, or received, such payments, allowances, services, facilities, or other things of value from suppliers, said respondent knew or should have known that it was inducing and receiving, or receiving, payments, allowances, services, facilities, or other things of value from suppliers, which said suppliers were not offering or otherwise making available on proportionally equal terms to all of the suppliers' other customers who were competing with respondent in the sale and distribution of their respective products.

PAR. 9. The methods, acts, and practices of respondent, as herein alleged, are all to the prejudice of the public and constitute unfair methods of competition in or affecting commerce and unfair acts and practices in or affecting commerce within the intent and meaning of and in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

DECISION AND ORDER

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

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

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

1. Respondent Zayre Corp. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 770 Cochituate Road, Framingham, Massachusetts.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That Zayre Corp., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device in connection with the purchase in or

affecting commerce, or receipt of merchandise on consignment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, of products for resale by the respondent, or in connection with any other transaction between respondent and its various suppliers involving or pertaining to the regular business of the respondent in purchasing, promoting, advertising, distributing, and/or selling: books, phonograph records, photo finishing, photo film, photo equipment, franchise cosmetics, candy, health and beauty aids, home and office stationery, greeting cards, gift wrap, paper goods, party goods, and candles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Inducing and receiving, receiving, or contracting for the receipt of, any promotional allowance, payment, or other thing of value, solicited by respondent from any supplier, including any consignor or vendor, as compensation for or in consideration of any advertising or promotional service, furnished by or through respondent in connection with promotions originating with or sponsored by respondent, and involving the respondent's sale or offering for sale of the above-listed products, when respondent knows or should know that such compensation is not affirmatively offered or otherwise made available by such supplier, including any consignor or vendor, on proportionally equal terms to all of its customers competing with respondent, including any customer who purchases from any intermediary and competes with respondent in the resale of any such product of any such supplier.
2. Inducing and receiving, receiving, or contracting for the receipt of, the furnishing of any service or facility solicited by respondent from any supplier, including any consignor or vendor, in connection with promotions originating with or sponsored by respondent, and involving respondent's sale or offering for sale of the above-listed products, when respondent knows or should know that such service or facility is not affirmatively offered or otherwise made available by such supplier, including any consignor or vendor, on proportionally equal terms to all of its customers competing with respondent, including any customer who purchases from any intermediary and competes with respondent in the resale of any such product of any such supplier.
3. Eliminating or boycotting or decreasing purchases from any supplier or suppliers because of such suppliers' refusal to grant any allowance or payment in connection with the processing, handling, sale, or offering for sale of the above-listed products, or refusal to furnish any service or facility connected with respondent's sale or

offering for sale of any such product, when respondent knows or should know that such allowance, payment, service, or facility is not affirmatively offered or otherwise made available by such supplier, including any consignor or vendor, on proportionally equal terms to all of its customers competing with respondent, including any customer who purchases from an intermediary and competes with respondent in the resale of any such product of any such supplier.

II

It is further ordered, That respondent shall not organize, direct, or sponsor any trade show unless respondent bears the full cost of the operating expense of any such trade show.

III

It is further ordered, That, for a period of five (5) years from the date of service upon it of this order, respondent shall establish and maintain at its General Office in Framingham, Massachusetts, a separate file containing each offered promotional allowance, payment, or other thing of value, induced and received within the meaning of Paragraph I of this order. The file shall be maintained alphabetically, according to suppliers with all offers and related materials pertaining to each supplier filed chronologically, within that supplier's portion of the file. The information shall be maintained for the effective period of this order. The file shall be made available to employees of the Federal Trade Commission, for inspection and copying, upon written notice of ten (10) calendar days.

IV

It is further ordered, That respondent, within thirty (30) days after the date of service upon it of this order, shall distribute a copy of this order to each of its officers and managers of each of its divisions and subsidiaries.

V

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

VI

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

IN THE MATTER OF
THE AMERICAN SOCIETY OF ANESTHESIOLOGISTS,
INC.

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

Docket C-2952. Complaint, Jan. 22, 1979 — Decision, Jan. 22, 1979

This consent order, among other things, requires a Park Ridge, Ill. medical society, composed mainly of physicians who have limited their professional activities to the practice of anesthesiology, to cease including statements relating to compensation arrangements in membership documents; conditioning membership privileges on such arrangements; or engaging in any act or practice which would serve to influence the prices members charge for their services. The Society is further required to delete from its files any record of disciplinary sanctions imposed upon members for failure to adhere to past pricing policies, and advise affected parties of such deletion. Additionally, the Society would be required to revoke the charter of any component society which fails to comply with the terms of the order.

Appearances

For the Commission: *M. Elizabeth Gee* and *James E. McCarty*.

For the respondent: *Squire, Sanders & Dempsey*, Washington, D. C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et. seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The American Society of Anesthesiologists, Inc. has violated the provisions of Section 5 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 as follows:

PARAGRAPH 1. Respondent, The American Society of Anesthesiologists, Inc. ("ASA"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 515 Busse Highway, Park Ridge, Illinois.

PAR. 2. ASA has approximately 15,000 members, which amounts to approximately 90 percent of all anesthesiologists practicing in the United States. Its members are comprised mainly of those physicians who have completed post-graduate training in, and who have limited their professional activities to, the practice of anesthesiology or are otherwise especially interested in anesthesiology. The members elect

the officers of ASA, who, together with the Board of Directors, manage the affairs of ASA.

PAR. 3. Anesthesiologists are licensed physicians who specialize in rendering a patient insensitive to pain. They are generally engaged in the private practice of medicine and derive substantial portions of their professional income from fees for medical treatment charged to patients or to insurers.

PAR. 4. ASA has engaged in activities relating to the economic aspects of the practice of anesthesiology, including the development and distribution of relative value guides and the promulgation of the *Guidelines to the Ethical Practice of Anesthesiology* and *Statement of Policy* which relate in part to the financial aspects of anesthesia practice, as a result of which ASA is organized for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. In the course and conduct of their business, the members of ASA:

(a) charge and collect fees which, in substantial part, are paid or reimbursed to patients directly or indirectly with Federal funds through Medicare, Federal Employees Health Benefits Program, Civilian Health and Medical Program of the Uniformed Services, and other federal programs;

(b) charge and collect fees which, in substantial part, are paid or reimbursed to patients directly or indirectly by Blue Shield Plans and by commercial insurance carriers pursuant to group contracts covering insureds in two or more states; and

(c) practice anesthesiology and charge and collect fees therefor in the District of Columbia;

as a result of which the acts and practices of ASA and its members are in and affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 6. Since at least 1968, ASA, individually and in collusion with its component societies and members, promulgated, published, approved and enforced documents entitled *Guidelines to the Ethical Practice of Anesthesiology* and *Statement of Policy*. Said documents include provisions which provide that anesthesiologists should be compensated only on a fee-for-service basis and that ASA members should not practice as salaried employees of organizations such as hospitals.

PAR. 7. The acts, practices and methods of competition alleged in Paragraph Six above have had the effect of:

- (a) fixing, establishing, maintaining or otherwise influencing the prices which anesthesiologists charge for their services;
- (b) limiting the ability of hospitals to freely negotiate and conclude contracts with ASA members and others;
- (c) otherwise restraining, limiting, and foreclosing competition among anesthesiologists; and
- (d) depriving consumers of the benefits of competition;

and are in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

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

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

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

Counsel for the Commission having thereafter submitted a revised order, and respondent and its counsel having submitted letters of agreement dated December 28, 1978, and January 8, 1979, assenting to the terms of the order, as modified; and

The Commission having duly considered the recommendations of its staff and the assent of respondent to the revised order, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order, as modified:

1. Respondent, The American Society of Anesthesiologists, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 515 Busse Highway, in the City of Park Ridge, State of Illinois.

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

ORDER

I

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

A. The term "ASA" means The American Society of Anesthesiologists, Inc., its successors or assigns, its committees or organizational subdivisions, and, in their capacities as such or while representing the Society, its officers, agents, representatives, employees or authorized delegates;

B. The term "Membership Document" means any document the acceptance of which or adherence to the terms of which is a condition of membership privileges;

C. The term "Official Position" means an oral or written statement which is made by ASA or any of its Component Societies;

D. The term "Component Society" means any organization duly chartered as such by ASA, any successor or assign to any Component Society, any committee or organizational subdivision of any Component Society, and, in their capacities as such or while representing a Component Society, any officers, agents, representatives, employees or authorized delegates; and

E. The term "Effective Date of This Order" means the date of service of this order.

II

It is ordered, That ASA directly or through any corporation, subsidiary, division or other device, or through employment of any method, act, practice or procedure, shall cease and desist from:

A. Importuning or engaging in threats or acts of reprisal, coercion, or intimidation with the purpose or effect of restraining or impeding anesthesiologists individually or as a class of practitioners from engaging in the practice of anesthesiology other than on a fee-for-service arrangement;

B. Including within any Membership Document any statement which relates to the fee-for-service, salary or any other compensa-

tion arrangement of anesthesiologists individually or as a class of practitioners; and

C. Conditioning any privilege of membership upon the fee-for-service, salary or any other compensation arrangement of anesthesiologists individually or as a class of practitioners.

III

It is further ordered, That, except as required by subpoena or other legal process, ASA is prohibited from publishing, disseminating or distributing in any manner any list, compilation, document or statement that refers to censure or other sanction against any present or former member, the grounds for which was failure of such member to accept or to adhere to the terms of any Membership Document or Official Position which prohibited anesthesiologists individually or as a class of practitioners from engaging in the practice of anesthesiology on other than a fee-for-service arrangement, and ASA shall advise any such members (if living) of this prohibition.

IV

It is further ordered, That ASA shall for a period of ten (10) years following the Effective Date of This Order cease and desist from making any statement which contains an Official Position which relates to the fee-for-service, salary or other compensation arrangement of anesthesiologists individually or as a class of practitioners, unless such statement contains and is not inconsistent with the following language:

It is the official policy of The American Society of Anesthesiologists, Inc. that an anesthesiologist is free to choose whatever arrangement he prefers for compensation of his professional services. The Society does not consider the compensation arrangement so chosen to be a matter of professional ethics.

This part does not modify the requirements of Part II of this order.

V

It is further ordered, That ASA shall:

A. At the first Annual Meeting of ASA's House of Delegates subsequent to 180 days after the Effective Date of This Order, revoke the charter of any Component Society which, prior to the meeting of ASA's Board of Directors immediately preceding such Annual Meeting, has not informed ASA by a sworn statement of an

authorized officer that the Component Society has (1) agreed to comply with the requirements of Part II of this order, and brought its own Membership Documents and Official Positions into conformity with the requirements of that part, (2) agreed to the prohibition of Part III of this order, so that, except as required by subpoena or other legal process, the Component Society is prohibited from publishing, disseminating or distributing in any manner, any list, compilation, document or statement that refers to censure or other sanction against any present or former Component Society or ASA member, the ground for which was failure of such member to accept or to adhere to the terms of any Membership Document or Official Position which prohibited anesthesiologists individually or as a class of practitioners from engaging in the practice of anesthesiology on other than a fee-for-service arrangement, and (3) agreed to abide by the requirements of Part IV of this order, so that every statement of the Component Society which contains an Official Position which relates to the fee-for-service, salary or other compensation arrangement of anesthesiologists individually or as a class of practitioners, contains and is not inconsistent with the following language:

It is the official policy of [name of Component Society] that an anesthesiologist is free to choose whatever arrangement he prefers for compensation of his professional services. The [name of Component Society] does not consider the arrangement so chosen to be a matter of professional ethics.

B. Within 60 days after the Effective Date of This Order, distribute by first class mail a copy of the Commission's complaint and order in this matter to each of the aforesaid Component Societies and to each of ASA's then current members, together with a letter on ASA's regular letterhead in the form shown in the Appendix attached hereto.

VI

It is further ordered. That nothing in this order shall prohibit or limit the organizations and persons subject to this order from petitioning the government for a redress of grievances by:

A. Preparing or furnishing testimony, information or advice to, or negotiating with, any government body or agency or furnishing drafts thereof to any organization which is preparing or furnishing testimony, information or advice to, or negotiating with, any government body or agency with respect to the same subject matter;

B. Advising its members and others of legislation, programs,

policies, regulations, procedures or interpretations of any government body or agency and soliciting their views thereon;

C. Informing members and others of any testimony, information or advice supplied to, or negotiations with, any government body or agency; and

D. Suggesting or recommending that members or others undertake the activities enumerated in subparagraphs (A), (B) and (C) above; but only as long as the activities enumerated in this Part VI are not undertaken with the purpose or intent of achieving a result prohibited by Part II of this order through means other than the action of a government body or agency.

VII

It is further ordered. That ASA shall, within sixty (60) days following the Effective Date of This Order, and thereafter on the first anniversary date of the Effective Date of This Order, and at such other times as the Commission may by written notice to the respondent require, file or cause to be filed with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order. All compliance reports shall include such other information and documentation as may be required to show compliance with this order.

VIII

It is further ordered. That ASA shall notify the Commission at least thirty (30) days prior to any proposed change in its structure resulting in the emergence of a successor corporation, or any other change in its structure, which may affect obligations arising out of this order.

APPENDIX

[ASA REGULAR LETTERHEAD]

To the Members and Component Societies of the American Society of Anesthesiologists, Inc.:

As some of you have been aware, the Federal Trade Commission ("FTC") in September 1977 initiated an investigation of the extent to which members and component societies of ASA were required to accept or adhere to certain principles, contained in documents approved by the ASA House of Delegates, which related to the fee-for-service, salary or other compensation arrangements of anesthesiologists.

The Board of Directors and House of Delegates have determined that they do not desire to impose any such condition nor to impose any sanction against an ASA member for failure to accept or adhere to such principles. Accordingly, ASA has with approval of its House of Delegates reached agreement with the FTC, resulting in the issuance by the FTC of a complaint on _____, and the entry of a consent order.

The complaint and the order are attached to this letter. The order, rather than this letter, is the document which legally binds ASA and others. You should carefully review it.

The complaint alleges that the promulgation and enforcement of those provisions of the Statement of Policy and Guidelines to the Ethical Practice of Anesthesiology which relate to compensation arrangements have had the effect of:

- (a) fixing, establishing, maintaining or otherwise influencing the prices which anesthesiologists charge for their services;
- (b) limiting the ability of hospitals to freely negotiate and conclude contracts with ASA members and others;
- (c) otherwise restraining, limiting and foreclosing competition among anesthesiologists; and
- (d) depriving consumers of the benefits of competition.

The agreement containing the consent order states that it is for settlement purposes only and does not constitute an admission by ASA of the charges in the complaint or that the law has been violated. The consent order itself requires, in summary, that ASA:

- (a) Refrain from importuning or engaging in threats or acts of reprisal, coercion, or intimidation with the purpose or effect of restraining or impeding anesthesiologists individually or as a class of practitioners from engaging in the practice of anesthesiology other than on a fee-for-service arrangement;
- (b) Not include within any membership document any statement which relates to the fee-for-service, salary or any other compensation arrangement of anesthesiologists;
- (c) Not condition any privilege of membership upon the fee-for-service, salary or any other compensation arrangement of anesthesiologists;
- (d) Not publish, disseminate or distribute (unless required to do so by subpoena or other legal process) any list, compilation, document or statement that refers to censure or other sanction imposed upon any member for failure to accept or adhere to any position or policy which prohibited anesthesiologists from practicing on other than a fee-for-service arrangement, and notify any such member of this prohibition;
- (e) For a period of ten years, refrain from making any statement which contains an ASA official position which relates to the fee-for-service, salary or other compensation arrangement of anesthesiologists unless the statement contains and is not inconsistent with the following language:

It is the official policy of The American Society of Anesthesiologists, Inc. that an anesthesiologist is free to choose whatever arrangement he prefers for compensation of his professional services. The Society does not consider the compensation arrangement so chosen to be a matter of professional ethics;

and

- (f) Revoke the charter of any component society which does not (1) agree to abide by the provisions of the order, and (2) bring its own membership documents, guidelines, policies and statements into conformity with these provisions.

The order also provides that nothing in it shall prohibit or limit the organizations and persons subject to the order from petitioning the government for a redress of grievances by:

(a) Preparing or furnishing testimony, information or advice to, or negotiating with, any government body or agency or furnishing drafts thereof to any organization which is preparing or furnishing testimony, information or advice to, or negotiating with, any government body or agency with respect to the same subject matter;

(b) Advising its members and others of legislation, programs, policies, regulations, procedures or interpretations of any government body or agency and soliciting their views thereon;

(c) Informing members and others of any testimony, information or advice supplied to, or negotiations with, any government body or agency; and

(d) Suggesting or recommending that members or others undertake the activities enumerated in subparagraphs (a), (b) and (c) above;

but only as long as the activities enumerated above are not undertaken with the purpose or intent of achieving a result which is prohibited by the order through means other than the action of a government body or agency.

Henceforth, it will be the official policy of ASA that an anesthesiologist is free to choose whatever method he prefers for compensation of his professional services, and that the compensation arrangement so chosen will not be a matter of professional ethics. The financial arrangements between an anesthesiologist and a hospital or other institutional provider of health care will not be the basis for the denial to an anesthesiologist of ASA membership or any privilege of ASA membership.

Sincerely,