

Complaint

IN THE MATTER OF

INTERNATIONAL INVENTORS INCORPORATED, EAST,
ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2976. Complaint, July 5, 1979 — Decision, July 5, 1979

This consent order, among other things, requires an Alexandria, Va. idea promotion firm to cease failing to provide fair and thorough evaluations as to the commercial feasibility of customers' ideas; and misrepresenting that they successfully promote and negotiate with interested manufacturers on clients' behalf; that they secure lucrative contracts for their customers through such efforts; and that the Document Disclosure Program of the United States Patent and Trademark Office protects clients' ideas prior to the filing of a formal patent application. The order requires that prescribed disclosures regarding the financial success of previous clients, the lack of legal protection for ideas, and the advisability of consulting with a patent attorney before signing an agreement be included in contracts and promotional material; and prohibits the company from accepting any fees for promotional services, other than a percentage of royalties earned through its endeavors. Additionally, respondents are required to maintain particular records for a specified period, and institute a continuing surveillance program designed to ensure compliance with the terms of the order.

Appearances

For the Commission: *Richard C. Donohue.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that International Inventors Incorporated, East, a corporation, and James H. Haren, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating charges in that respect as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purpose of this complaint the following definitions shall apply:

(a) The term "idea" shall mean any idea, invention or concept, but

does not include a product that has already been manufactured prior to contact with respondents.

(b) The term "client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea."

(c) The term "financial gain" shall mean an amount of money derived by a "client" from respondents' "promotion" of the "client's idea" that is greater than the amount of money paid by a "client" to respondents.

(d) The term "promotion" shall mean the advertising, evaluation, development, manufacturing, marketing or assistance in developing, manufacturing or marketing and/or otherwise contributing to the success or growth of an "idea," but does not include the seeking of legal protection under the patent laws of the U.S.

II. RESPONDENTS

PAR. 2. Respondent International Inventors Incorporated, East, (hereinafter IIIE), is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at Suite 309, 4900 Leesburg Pike, Alexandria, Virginia.

Respondent James H. Haren is an individual and is the principal owner and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

III. NATURE OF TRADE AND COMMERCE

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising for, offering to enter into and entering into contracts for present or future services in connection with the promotion of ideas.

IV. JURISDICTION

PAR. 4. In the course and conduct of their business, respondents cause, and for some time last past have caused, their services and related materials to be offered for sale and sold from their principal place of business in Virginia to clients and prospective clients located in various other States in the United States and the District of Columbia by means of advertisements placed in newspapers of interstate circulation. In addition, respondents now cause, and have caused, their advertising materials, contracts, and various business papers to be transmitted by means of the U.S. mail from their principal

place of business in the Commonwealth of Virginia to clients, prospective clients, and potential manufacturers in various other States of the United States and the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents are now, and have been, in substantial competition, in commerce, with corporations, firms, and individuals offering contracts for present or future services in connection with the promotion of ideas.

COUNT I

PAR. 6. The allegations of Paragraphs One through Five above are incorporated by reference in Count I as if fully set forth verbatim.

V. ACTS AND PRACTICES

PAR. 7. In the course and conduct of the aforesaid business, and for the purpose of inducing the purchase of their services and related materials, respondents have made numerous statements and representations in advertisements inserted in newspapers of interstate circulation, in letters and other promotional materials, and by the oral statements and representations of their sales personnel to prospective clients. Through such advertising or statements, respondents have represented, directly or by implication, contrary to fact, that:

1. Respondents gave, and still give, clients' ideas a fair and thorough evaluation of their commercial feasibility on which said clients can rely.
2. Respondents could be expected to actively and successfully promote and negotiate, on behalf of their clients, with manufacturers who were interested in acquiring rights to new ideas.
3. The United States Patent and Trademark Office's Document Disclosure Program provides legal protection for clients' ideas prior to the filing of formal patent applications in the United States Patent and Trademark Office.
4. Respondents, in many instances, could and did obtain manufacturing contracts for their clients.
5. Respondents services have resulted and may likely result in financial gain for their clients including, but not limited to, potential income to be derived by their clients from sales, licensing or royalty agreements.

The acts and practices alleged in Paragraph Seven herein are unfair, deceptive and misleading, and therefore, are in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

PAR. 8. The allegations of Paragraphs One through Five and Seven above are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 9. Respondents, in the course and conduct of their idea promotion business, have performed and are performing their services in a manner which is not reasonably calculated to produce the results that have been and are claimed by the statements and representations described in Paragraph Seven, *supra*.

PAR. 10. It was and is an unfair or deceptive act and practice for respondents to sell their services in the manner set forth in Paragraph Nine herein, while they know or should know that their services were not and are not reasonably calculated to produce the results represented.

Therefore, the acts and practices of respondents as alleged herein constituted and now constitute a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 11. The use by the respondents of the aforementioned false, misleading and deceptive acts, practices, statements or representations has had, and now has, the capacity and tendency 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 to induce the purchase of substantial quantities of respondents' products and services and into the execution of contracts with respondents by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged, were and are now causing pecuniary losses to persons contracting with respondents and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now 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.

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 a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered 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 International Inventors Incorporated, East is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at Suite 309, 4900 Leesburg Pike, Alexandria, Virginia.

Respondent James H. Haren is the principal officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his business address is the same as that of said corporation.

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.

For the purpose of this order the following definitions shall apply:

(a) The term "idea" shall mean any idea, invention or concept.

(b) The term "client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea."

(c) The term "financial gain" shall mean the amount of money derived by a "client" from respondents' "promotion" of the "client's idea."

(d) The term "promotion" or "promote" shall mean the advertising, evaluation, development, manufacturing, marketing or assistance in developing, manufacturing or marketing and/or otherwise contributing to the success or growth of an "idea," but does not include the seeking of legal protection under the patent laws of the U.S.

II.

It is ordered, That respondents International Inventors Incorporated, East, a corporation, its successors and assigns, and James H. Haren, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising for, offering to enter into and entering into contracts for present or future services in connection with the promotion of ideas, or any other like or similar services, in or affecting commerce, as it is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing, in the normal course of business, to give clients' ideas a fair and thorough evaluation of the ideas' commercial feasibility, upon which said clients can rely.

2. Representing, directly or indirectly, orally or in writing, that respondents, in the normal course of business, can be expected to actively and successfully promote and negotiate, or in any way promote and negotiate, on behalf of their clients, with manufacturers who are interested in acquiring rights to ideas.

3. Representing, directly, or indirectly, orally or in writing, that the United States Patent and Trademark Office's Document Disclosure Program can provide legal protection for clients' ideas prior to the filing of a formal patent application in the United States Patent and Trademark Office. Provided that nothing in this agreement shall prohibit respondents from referring clients to consult a patent attorney or licensed patent agent.

4. Representing, directly or indirectly, orally or in writing, that respondents services can and do result in manufacturing contracts or licensing agreements between manufacturers and respondents' clients that produce financial gain for their clients.

5. Failing to make the following disclosures on any contract or other binding instrument to be executed by prospective clients. Said

disclosures shall be in more conspicuous print than all other language in said instrument other than respondents' name, but in no case shall they be smaller than 12-point uppercase type. Said disclosures and instrument shall be delivered to prospective clients at least 10 days prior to the time prospective clients execute said instrument. The disclosures shall be in the following form set off from the rest of the instrument by a black border and immediately above the line for the prospective clients' signatures:

NOTICE

(A) IN THE LAST FIVE YEARS THAT WE HAVE BEEN DOING BUSINESS, WE HAVE CONTRACTED TO PROMOTE IDEAS, INVENTIONS OR CONCEPTS FOR (NUMBER) CLIENTS. AS A RESULT OF OUR SERVICES:

1. (number) (____ %) OF OUR CLIENTS
EARNED \$0-99.
2. (number) (____ %) OF OUR CLIENTS
EARNED \$100-499.
3. (number) (____ %) OF OUR CLIENTS
EARNED \$500-\$1,000.
4. (number) (____ %) OF OUR CLIENTS
EARNED OVER \$1,000.
5. (number) (____ %) OF OUR CLIENTS
EARNED MORE THAN THEY PAID US.

(B) WITHOUT PATENT PROTECTION, RECOGNIZED BY THE U.S. PATENT & TRADEMARK OFFICE, YOU MAY LOSE THE OPPORTUNITY TO OBTAIN FINANCIAL BENEFIT FROM YOUR IDEA. WE DO NOT PROVIDE ANY LEGAL SERVICES FOR OBTAINING PATENT PROTECTION RECOGNIZED BY THE U.S. PATENT & TRADEMARK OFFICE. YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY OR AGENT BEFORE YOU SIGN THIS AGREEMENT.

(C) YOU SHOULD TREAT YOUR IDEA AS A CONFIDENTIAL SUBJECT IN ORDER TO AVOID LOSING ANY PATENT RIGHTS YOU MAY HAVE.

(D) TODAY IS (Date). WE CANNOT ASK YOU TO SIGN AN AGREEMENT UNTIL 10 BUSINESS DAYS HAVE ELAPSED WHICH WILL BE ON (MONTH/DAY/YEAR).

I, (Name of Customer), hereby acknowledge receipt of a copy of this agreement on the data specified below.

Customer's Signature Date

Accurate disclosures, given without comment, as required by this

paragraph of the order, shall not be deemed a violation of Paragraph 4 of this order.

6. Executing contracts or other agreements with a client prior to the expiration of the 10-day period disclosed in accordance with Paragraph 5 herein.

7. Failing to retain executed copies of all disclosures required by Paragraph 5 of this order for a period of five (5) years after such disclosure is made regardless of whether prospective clients ultimately execute contracts with respondents. Respondents shall make accurate statistical disclosures required by this paragraph and maintain records for a period of five (5) years sufficient to verify the accuracy of each disclosure.

8. Failing to include on all contracts or other binding instruments to be executed by prospective clients a schedule detailing the entire amount of any and all fees or other consideration which may be required from or paid by the client during the course of his business relationship with respondents.

It is further ordered, That:

1. Respondents shall conspicuously place in all printed advertisements, pamphlets, brochures and other promotional material, the statement below in print at least as large as the largest print in the advertising material other than respondents' name and shall state:

(Number)% of our clients have earned more than they paid to us as a result of our efforts to promote their idea.

2. In all advertisements broadcast by radio, or television, the above-required notice shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest spoken part of the advertisement.

3. Respondents shall maintain for a period of three (3) years after any of respondents' advertisements are disseminated:

(a) Records disclosing the date or dates each such advertisement was published;

(b) Records disclosing the names and addresses of the newspapers, other publications or broadcast media disseminating said advertisement; and

(c) Representative copies or representative scripts of all of respondents' advertisements published or disseminated by any media.

It is further ordered, That:

1. At the time respondents submit advertising to any newspaper or other written medium, they shall provide a copy of the following notice to each such medium:

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NOTICE

The Federal Trade Commission has issued a cease and desist order against (Name of Respondent). A copy of the Commission's News Release is available from (Name of Respondent) upon request.

2. At the time respondents submit advertising to any radio or television station, they shall provide a copy of the following notice to each such station:

NOTICE

The Federal Trade Commission has issued a cease and desist order against (Name of Respondent). A copy of the Commission's News Release is available from (Name of Respondent) upon request. Your attention is directed to an agreement between the Federal Trade Commission and the Federal Communications Commission dated April 27, 1972.

It is further ordered, That respondents shall make all disclosures required by this order accurately, making such disclosures or copies thereof available to the Federal Trade Commission or any member of its staff on request.

It is further ordered, That respondents, upon receipt of a complaint from a client alleging facts that indicate this order may have been violated, rescind the contract, refund monies paid and cancel any outstanding obligations where respondents determine, after a good faith investigation, that one or more of the paragraphs of this order may have been violated in connection with such client's transaction with respondents.

It is further ordered:

1. That respondents deliver, by hand or by certified mail, a copy of this order to each of their present or future salesmen, independent brokers, franchise owners, employees or any other person who sells or promotes the sale of respondents' products or services;
2. That respondents provide each person so described in subparagraph 1. above with a form returnable to respondents, clearly stating an intention to conform sales practices to the requirements of this order and retain such form for a period of three (3) years after it is executed by said persons;
3. That respondents inform each person described in subparagraph 1. above that respondents shall not use any such person, or the services of any such person, until such person agrees to and files notice with respondents to be bound by the provisions contained in this order;
4. That in the event such person will not agree to file such notice with respondents and be bound by the provisions of this order, respondents shall not use such person, or the services or such person;

5. That respondents institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in subparagraph 1. conform to the requirements of this order; and

6. That respondents discontinue dealing with any person described in subparagraph 1. of this order who engages in the acts or practices prohibited by this order.

It is further ordered, That respondents may accept compensation from a client for the promotion of the client's idea only as a percentage of royalties or other financial gain derived through respondents' efforts. Respondents may not accept any other fee or monetary consideration from a client.

It is further ordered, That respondents shall not sell, lease, exchange or otherwise alienate a client's idea or disclose a client's name, address, telephone number or other personal data to any party which will or may request such client to pay a fee or other monetary consideration for the promotion of that client's idea.

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

It is further ordered, That:

1. The individual respondent named herein, and every firm, partnership, association, corporation or other business entity which he now or hereafter controls or manages, and which offers, or purports to offer, any service, product, or program, in connection with the advertising, evaluation, development, manufacturing, marketing, or assistance in developing, manufacturing, or marketing, or otherwise contributing to the success of any client's product or service, shall conspicuously place in all printed contracts, agreements, advertisements, pamphlets, brochures or other promotional materials, the statement below in print at least as large as the largest print on the material other than the business entity's name and shall state:

(Number)% of our clients have earned more than they paid us as a result of our efforts to (describe service, product, or program sold by such business entity.)

2. In all advertisements broadcast by radio or television, the above-required notice shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest spoken part of the advertisement.

3. Individual respondent shall maintain for a period three (3) years after any of respondent's advertisements are disseminated:

(a) Records disclosing the date or dates each such advertisement was published;

(b) Records disclosing the names and addresses of the newspapers, other publications or broadcast media disseminating said advertisement; and

(c) Representative copies or representative scripts of all advertisements published or disseminated by any media.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of 10 years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising out of this order.

It is further ordered, That respondents notify the Commission at least 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 nothing contained in this order shall relieve respondents of any additional obligations respecting idea promotion imposed by any state. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon a showing of inconsistency, shall make such modifications as may be warranted.

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.

FEDERAL TRADE COMMISSION DECISIONS

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IN THE MATTER OF

NESTLE ALIMENTANA, S.A., ET AL.

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

Docket 9008. Complaint, Jan. 7, 1975 — Decision, July 9, 1979

This consent order, among other things, requires a Vevey, Switzerland food processor and an affiliated Panamanian holding company to divest, within one year, the entire frozen prepared foods facility located in Darien, Wisconsin, together with the associated frozen bulk vegetable processing facility and adjoining cold storage warehouse. Additionally, for ten years, effective from January 7, 1975, the date of the complaint, Nestle is prohibited from making any large acquisition in the frozen prepared foods industry without prior Commission approval.

Appearances

For the Commission: *Raymond L. Hays, Carl J. Batter, Jr. and Chauncey Hopkins.*

For the respondents: *Allen F. Maulsby, Cravath, Swaine & Moore, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nestle Alimentana S.A. and its affiliated company, Unilac Inc., have acquired the Stouffer Corporation in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), hereby issues this complaint pursuant to Section 11 of the Clayton Act, as amended, (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act, as amended, (15 U.S.C. 45(b)), charging in that respect as follows:

I

Definitions

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

(a) *Frozen Prepared Foods* consist of frozen foods which have been cooked or processed in some manner beyond the blanching of vegetables and fruits in the freezing process or beyond the freezing of cut or cut meats and seafoods. Frozen prepared foods include, for example,

frozen (TV) dinners, desserts, meat (pot) pies, baked goods (such as cakes), breaded shrimp, snacks (such as pizzas and hors d'oeuvres), soups, breaded and precooked poultry, prepared vegetables, and entrees.

(b) *Frozen entrees* consist of frozen prepared foods which are usually served as the main dish of the principal meal of the day. Generally served with entrees to complete the meal are other home prepared or separately purchased items such as a salad, vegetable or soup.

(c) *Quality frozen entrees* are those entrees which are advertised and marketed as quality or superior food products and which are generally able to command higher than average per-ounce retail prices.

II

Respondents

2. Nestle Alimentana S.A. (Nestle) is a publicly held company organized and existing under the laws of Switzerland. Its principal offices are located in Vevey, Switzerland.

3. Unilac Inc. is a company affiliated and associated with Nestle, organized and existing under the laws of the sovereign Republic of Panama. Its principal offices are located in Panama City, Panama. The shares of Nestle and Unilac are traded together, and the stockholders of the two companies are identical. References to Nestle hereinafter shall be understood to include Unilac Inc.

4. Nestle is a leading processor of food products throughout much of the world, with plants in approximately seventy (70) countries, employing close to ninety thousand (90,000) persons. Nestle is ranked twelfth on Fortune's list of the 300 largest foreign companies for 1972.

5. In 1973, Nestle worldwide sales (in U.S. dollars) were approximately \$5.5 billion and its profits were about \$230.7 million. Its principal worldwide products include sweetened condensed milk, evaporated milk, pasteurized, skimmed, or sterilized milk and cream, milk powder, cheese, butter, and yogurt, dietetic milk foods, dietetic specialties without milk, cereal foods for infants, strained and junior foods, coffee and tea extracts, instant chocolate drinks, liquid drinks chocolate, cocoa, and confectionery products, soups, bouillon, seasonings and condiments, prepared dishes, frozen foods and ice cream. In 1971, Nestle purchased approximately 5 percent of the world's total cocoa exports and about 7.7 percent of the world's total coffee export

6. Nestle's main United States subsidiary is The Nestle Company (referred to by Nestle as "TNCo"), with its principal offices located White Plains, New York. In 1972 TNCo had sales of about \$48'

million, primarily in chocolate products and instant coffee and tea drinks.

7. Nestle was a minority shareholder in Libby, McNeill and Libby (Libby), with its principal offices located in Chicago, Illinois, beginning in 1960, and has been the majority shareholder in Libby since 1970. Libby's major product lines include canned vegetables, canned meats, canned fruits, canned juices and drinks, and frozen foods, including frozen vegetables, fruits juices, and prepared foods. Libby's sales worldwide for the year ending June 30, 1973 were about \$434 million.

8. Nestle, directly or through its subsidiaries and affiliates, ranks among the nation's leading manufacturers of branded consumer food products, including Taster's Choice freeze dried instant coffee, Nescafe instant coffee, Nestle instant tea, Nestle's Quik, Nestle's Crunch, Libby canned vegetables, canned fruits, and canned meats, Libbyland frozen dinners for children, Maggi bouillon cubes, and Crosse and Blackwell preserved foods. In the United States, Nestle was and is, directly or through its subsidiaries, or affiliates, (i) a company engaged in the manufacture of grocery products, (ii) a company with assets in excess of \$250 million, (iii) a company involved in extensive promotional efforts, selling highly differentiated consumer products, and producing a number of products in some of which it holds a strong market position.

9. At all times relevant herein, Nestle, directly or through its subsidiaries or affiliates, sold and shipped and is now selling and shipping products in interstate commerce throughout the United States and in foreign commerce. Nestle was at the time of the acquisition challenged herein and is now engaged in commerce as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act.

III

The Acquired Company

10. Prior to 1973, the Stouffer Corporation (Stouffer), a corporation organized and existing under the laws of the State of Ohio, with principal offices located in Solon, Ohio, was a wholly-owned subsidiary of Litton Industries, which had acquired it in 1967. Prior thereto, Stouffer had been an independent publicly-held corporation, Stouffer Foods Corporation. It was and is a food processor or manufacturer which was and is engaged in the operation of restaurants and inns, and the production and distribution of frozen food products to the institutional and consumer markets. The Stouffer Corporation is the continuation of a family restaurant business started

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by Vernon Stouffer and A. E. Stouffer in 1924. It was incorporated in 1929.

11. Stouffer's sales have risen for its fiscal years 1968-1973, from about \$95.5 million to about \$144.2 million. Its sales of prepared frozen food rose during the same period about \$29.4 million to about \$66.9 million. Its assets at the time of the acquisition were about \$67 million.

12. Stouffer frozen prepared consumer food products include entrees, side dishes, bakery products, and soups.

13. Stouffer has a strong position and is the leading firm in the quality frozen entree market and the second ranking factor in the frozen entree market. Stouffer (i) is and was engaged in the manufacture of grocery products, and (ii) is and was among the top eight producers of one or more important grocery products and has more than a 5 percent share of the frozen entree market.

14. Stouffer is engaged in promotional efforts, and sells highly differentiated consumer products.

15. At all times relevant herein, Stouffer sold and shipped and is now selling and shipping products in interstate commerce throughout the United States. Stouffer was at the time of the acquisition challenged herein and is now engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

IV

The Acquisition

16. On or about March 5, 1973, Nestle purchased all the outstanding shares of the Stouffer Corporation, for approximately \$105 million cash, from Litton Industries, Inc. This acquisition falls within the criteria set forth in the Commission's May 15, 1968 enforcement policy with respect to product extension mergers in grocery products manufacturing.

V

Trade and Commerce

17. The frozen entree market and the quality frozen entree market each has four-firm concentration in excess of 50 percent, high product differentiation, and high barriers to entry.

18. In the food industry generally since World War II there have been trends toward market concentration and dominance by large, multi-product companies with vast financial resources, accompanied by declining trends in the number of competitors. Trends toward concentration are also apparent in the frozen entree market. This market has

