

Complaint

95 F.T.C.

IN THE MATTER OF
MARKET DEVELOPMENT CORPORATION, ET AL.

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

Docket 9067. Complaint, December 19, 1975—Final Order, January 15, 1980

This order dismisses the complaint against Juanita Anderson, and requires a Chicago, Ill. mail order house and two corporate officers, among other things, to cease making false or misleading representations to obtain sales or prospects, and misrepresenting the nature of their business and goods, and the value and costs of merchandise and services. The order also bars the firm from failing to deliver goods or services within a reasonable time; and from misrepresenting that it is conducting a contest, or that recipients of its mailings are winners. If a warrantee is offered for a product or service, the terms, conditions and limitations of the warrantee must be clearly disclosed and obligations under the warrantee promptly fulfilled. The firm is additionally required to respond to written customer inquiries within seven working days and maintain specified records for three years.

Appearances

For the Commission: *Aaron H. Bulloff and Robert P. Weaver.*

For the respondents: *Lawrence C. Rubin, James S. Barber, Arvey, Hodes, Costello & Berman, Chicago, Ill.; Stein, Mitchell & Mezines, Washington, D.C. for Columbia Research Corporation and Raymond Anderson; Arnold Morelli, Bauer, Morelli & Heyd, Cincinnati, Ohio for Juanita Anderson and Joseph Anderson.*

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 Market Development Corporation, a corporation, and Raymond Anderson, Juanita Anderson, and Joseph Anderson, individually and as officers and/or directors and/or employees of said corporation, and Columbia Research Corporation, a corporation, and Raymond Anderson, [2]individually and as an officer and/or director of said corporation, hereinafter 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 Market Development Corporation is a corporation organized, existing, and doing business under and by

virtue of the laws of the State of Ohio, with its offices and principal places of business located at 5826 Hamilton Ave. and 3584 Hauck Road, in the City of Cincinnati, State of Ohio.

Respondent Columbia Research Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its offices and principal place of business located at 3762 West Devon, in the City of Chicago, State of Illinois.

Respondent Raymond Anderson is an individual and is or has been a director and President of both Market Development Corporation and Columbia Research Corporation, and is a resident of Ohio and/or Illinois. He takes or has taken part in the formulation, direction, and control of the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth.

Respondent Juanita Anderson is an individual and is or has been an employee of Market Development Corporation, and is a resident of Ohio. She takes or has taken part in the formulation, direction, and control of the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth.

Respondent Joseph Anderson is an individual and is or has been an employee of Market Development Corporation, and is a resident of Ohio. He takes or has taken part in [3]the formulation, direction, and control of the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth.

The aforementioned respondents cooperate and act, or have cooperated and acted together, in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents have been engaged, and are now engaged, in the advertising, offering for sale, sale, and distribution of "vacations," sewing machines, and household and cosmetic products through magazines, newspapers, catalogues, and letters.

PAR. 3. In the course and conduct of their business, respondents now cause, and have caused, their products and supplies to be shipped from suppliers located outside the States of Ohio and Illinois to their offices in Ohio and Illinois, and when sold, to be shipped from Ohio and Illinois to purchasers located in other States and territories of the United States, and further, respondents now cause, and have caused, promotional material and advertisements to be prepared at their central offices in Ohio and Illinois and distributed therefrom to prospective purchasers located in other states; so that respondents have maintained a course of trade in said promotional material, advertisements, products, supplies, and material in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents now

engage, and have engaged, in various sales schemes in order to promote the sale of "Treasure Chests," "Super Jackpot Packages," "gift boxes," "vacations," "sewing machines," and "Warm-O-Trivets." Respondents generally solicit, or have solicited, purchasers either through the use of mass mailings initially, or by mailings which follow up respondents' placement of "contest" or "sweepstakes" entry blanks in periodicals. The central thrust of these various schemes consists of informing [4]consumers, by mail, that they have either won a contest or are eligible as a result of a contest, or have otherwise been specially selected and are therefore eligible to receive "prizes" and/or "awards" and/or "gifts" and/or "bonuses" and/or free goods and services, which variously consist of a "Treasure Chest," "Super Jackpot Package," or "gift box" containing "full-sized nationally advertised household and cosmetic products," including one that allegedly retails for Twenty Dollars (\$20.00); and/or a certificate good for a "free vacation" for two; and/or a discount certificate good for \$100.00 towards the purchase price of a sewing machine that allegedly sells for \$179.50; and/or a "Warm-O-Trivet." In truth and in fact, none of these goods and services are "prizes," "awards," "gifts," and/or "bonuses," nor are they free, but rather are simply goods and services offered by respondents at their normal retail selling prices of \$15.00 for the "Treasure Chest," "Super Jackpot Package," or "gift box" and "vacation," and/or \$79.50 for the sewing machine and Warm-O-Trivet.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents are making, and have made, certain statements and representations in promotional material, magazine advertisements, and by other means, with respect to drawings, sales promotions, free goods, limitations to product offers, and merchandise prices.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are Exhibits A, B, C, D, and E, attached hereto and incorporated herein by reference.

PAR. 6. By and through the use of the aforementioned statements and representations, and by other written statements of similar import and meaning (not specifically set out herein), respondents represent, and have represented, directly or by implication, that:

1. Respondents have conducted and/or are conducting a contest.[5]
2. Respondents will award a specific number of products as contest prizes.
3. Respondents are in the business of market research and/or analysis.
4. Respondents have engaged, and/or are engaging, in incentive promotions and/or programs.

5. Respondents have co-sponsors.
6. Respondents represent other companies.
7. Recipients of respondents' offers have won a contest.
8. Recipients of respondents' offers have been specially selected.
9. Recipients of respondents' offers are entitled to "prizes," and/or "awards," and/or "winnings," and/or "gifts," and/or "bonuses," and/or "free" goods and services.
10. Recipients of respondents' offers are entitled to goods and services for only a registration, handling, and service charge.
11. Recipients of respondents' offers have a limited time to claim offered goods and services. [6]
12. Recipients of respondents' offers are receiving "once-in-a-life-time" opportunities.
13. Recipients of respondents' offers are offered a "vacation" and that it is "free."
14. Recipients of respondents' offers are offered a choice of vacation times, locations, and accommodations.
15. The promotions entitled "Treasure Chest," "Super Jackpot Package," or "gift box" are unconnected to the sales promotion of any other product.
16. Three hundred forty thousand (340,000) families have accepted the offered goods and services.
17. The sewing machine offered by respondents is sold throughout the United States.
18. The sewing machine offered by respondents is serviced throughout the United States by or through respondents.
19. The sewing machine offered by respondents is used in home economics classes throughout the United States.
20. The sewing machine offered by respondents has a retail price of either \$179.50 and/or \$169.50. [7]
21. The sewing machine certificate offered by respondents is worth \$100 toward the purchase of respondents' sewing machine.
22. The "Treasure Chest," "Super Jackpot Package," or "gift box" offered by respondents has a value of \$30 or more.
23. The "vacation" coupons offered by respondents are worth \$50 or \$100.
24. The value of the total "Treasure Chest" offer is \$250 to \$300, or represents a savings of \$200 or \$250, and the value of the total "Jackpot" package is \$500 or more.
25. The "Treasure Chest," "Super Jackpot Package," or "gift box" contains only "full-sized" products.
26. The "Treasure Chest" contains a "rare and very expensive cosmetic" with a retail value of \$20.

27. Respondents will deliver ordered goods and services.
28. Respondents will bear the cost of delivery of their products.
29. Respondents guarantee goods and services on a money-back/satisfaction-guaranteed basis.
30. Respondents had a reasonable basis for making the aforesaid representations prior to making them. [8]

PAR. 7. In truth and in fact:

1. Respondents have not conducted, and do not conduct, contests. No *bona fide* contest or sweepstakes exists. Respondents' solicitation scheme is a systematic, money-making retail sales business transacted through mass mailings, and does not involve any elements of skill or chance. Their solicitations are intended only for the purpose of obtaining sales and/or leads.
2. Respondents fail to award all the "contest prizes" advertised.
3. Respondents do not engage in any market research and/or analysis. Their sole business is the sale of their "Treasure Chest" or "Super Jackpot Package" and sewing machine.
4. Respondents have not engaged, and are not engaged, in incentive programs and/or programs. Their sole business is the sale of their "Treasure Chest" or "Super Jackpot Package" and sewing machine.
5. Respondents have no co-sponsors for their promotions. Respondents retail the products they purchase from wholesalers of the products' manufacturers.
6. Respondents have at no time represented other companies in the sale of their products.
7. Recipients of respondents' solicitations are not winners, either in a sweepstakes or in a contest. At no time have respondents conducted a *bona fide* contest or sweepstakes. [9]
8. There is no special selection of solicitation recipients. Respondents mail to millions of prospective customers whose names respondents take from rented computer lists.
9. Recipients of respondents' offers are not entitled to any "prizes," and/or "awards," and/or "winnings," and/or "gifts," and/or "bonuses," and/or "free" goods and services. Recipients are only entitled to purchase them at a stated price.
10. The registration, handling, and service charge is nothing but respondents' full retail price for their goods and services.
11. No time limit exists within which recipients of respondents' solicitations must remit their money. Recipients may make their purchases after ten days after receiving the solicitation, and, in fact, many were subsequently solicited by respondent Market Development Corporation to purchase a second "Treasure Chest" or "vacation."
12. The promotion is not a once-in-a-lifetime opportunity. Actual

customers were solicited by respondent Market Development Corporation to purchase a second "Treasure Chest" or "vacation."

13. Purchasers of respondent Market Development Corporation's solicitation do not receive a vacation, but only lodging accommodations. Customers of corporate respondents Market Development Corporation and Columbia Research Corporation do not receive a "free vacation" because there are, in fact, no prizes, awards, or the like. Purchasers must buy the "Treasure Chest" to receive the "vacation" and must pay [10] for all other vacation expenses themselves, including all transportation and food expenses, and additional charges incurred during the "peak season."

14. Purchasers of the vacation do not have their choices of locations, lodging accommodations, and times. Actual arrangements may be different from purchasers' selections sent to respondents.

15. The Market Development Corporation "Treasure Chest" or "gift box" solicitation fails to state, or alternatively fails to state clearly and conspicuously, that the "vacation" is part of a land sales promotion and that the entire offer includes a follow-up sewing machine solicitation. The Columbia Research Corporation solicitation fails to state, or alternatively fails to state clearly and conspicuously, that the "vacation" is part of a land sales promotion or lodging accommodations sales promotion.

16. Respondents have inflated the number of families who have accepted their offer, and fail to disclose that their "satisfied" customers were induced to make purchases because of respondents' deceptive, and/or false, and/or unfair acts and practices.

17. Respondents' sewing machine is not sold throughout the United States except by mail from Cincinnati, Ohio, and at a few isolated retail outlets.

18. Respondents' sewing machine is serviced by or through respondents only in Cincinnati, Ohio.

19. Respondents' sewing machine is not used in home economics classes throughout the United States. [11]

20. Respondents' sewing machine does not have a \$179.50 and/or \$169.50 retail price. Currently, respondents' regular selling price of the sewing machine is \$79.50, and prior to 1974, \$69.50.

21. The discount certificate is worthless because respondents' regular selling price of the sewing machine is \$79.50 or \$69.50. Respondents artificially inflate the price of the sewing machine by \$100.

22. Respondents artificially inflate the price of their "Treasure Chest," "Super Jackpot Package," or "gift box." Its value is significantly less than \$30.

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23. Respondents fail to disclose that in order to receive the benefits of the coupon book, one must make additional food and drink purchases, such as two-for-one deals. The only way the value of the coupon book may be realized is for purchasers of the "vacation" to spend the entire vacation time visiting the places of business represented in the coupons and spending additional money at each place of business.

24. The values of the goods and services offered by Market Development Corporation are significantly less than the \$250-300 values ascribed to them by respondents' solicitations. If any "savings" are realized by dealing with respondents, those savings are significantly less than the \$200-250 in savings claimed by respondents' solicitations. The values of the goods and services offered by the Columbia Research Corporation are significantly less than the \$500 or more claimed for them by [12] respondents' solicitations. Respondents thus overstate the worth of the goods and services they offer.

25. The "Treasure Chest" does not always contain full-sized products or the products that respondents picture in their solicitation. The "Treasure Chest" may contain sample-sized products.

26. The "rare and very expensive cosmetic" is a perfume which does not sell anywhere at retail and costs respondents 37 cents a bottle to purchase.

27. Respondents fail, in many instances, to deliver ordered goods and services.

28. Respondents' customers bear the delivery costs of respondents' sewing machine.

29. Respondents do not promptly refund monies if purchasers are dissatisfied. In many instances, respondents fail to make refunds at all.

30. Respondents knew that the aforesaid representations were untrue prior to making them or, alternatively, did not have a reasonable basis for making the aforesaid representations prior to making them. [13]

PAR. 8. In the 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 sewing machines, vacation packages, and cosmetic products of the same general kind and nature as those sold by respondents.

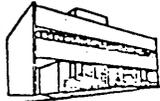
PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and/or into the

purchase of substantial quantities of respondents' products by reason of such erroneous and mistaken belief.

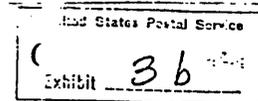
PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competition and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

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MARKET

DEVELOPMENT
CORPORATIONHOLLYWOOD BUILDING, CINCINNATI, OHIO, 45224,
CONTEST AWARD DIVISION**Congratulations!**

It is indeed my pleasure to inform you that your lucky number has been computer selected as a Sweepstakes prize winner.

YOU ARE TO RECEIVE THE FOLLOWING PRIZES:

A GLAMOROUS VACATION FOR TWO ADULTS, just minutes away from the world's newest, bigger than ever, . . \$300 Million Tourist attraction, . . WALT DISNEY WORLD, near Orlando, Florida. WALT DISNEY WORLD, . . is a completely new kind of vacation experience. Here you will find all the fun of California's Disneyland--and many new attractions created especially for Walt Disney World. And that's just the beginning. . . here you can dine in the banquet hall of a medieval castle. . . sail for miles or sun on the beach of a Polynesian Village. . . watch the sunset from the deck of a 19th Century steamboat. . . ride a swift monorail train right through the "lobby" of a resort hotel, as contemporary as tomorrow.

These adventures and many more, await you and your family at Walt Disney World. Walt Disney World offers a whole new vacation way of life. . . recreation, family entertainment and relaxation. . . all together for the first time in one "Vacation Kingdom."

Or, if you prefer Miami Beach, including 1st class accommodations, a \$100.00 food allowance discount coupon book, plus an optional Bahama Cruise. If a tour out west is more to your liking, you will be our guest at the Hacienda located in the entertainment capital of the world, Las Vegas, Nevada.

AND THAT'S NOT ALL YOU GET!

In addition to receiving your Vacation Certificate Award you will also receive a TREASURE CHEST CRAMMED FULL OF NATIONALLY ADVERTISED HOUSEHOLD AND COSMETIC PRODUCTS. . . products used daily by the entire family. In this Treasure Chest you will also discover a rare and very expensive cosmetic featured on TV programs such as Concentration, Let's Make a Deal with Monty Hall and advertised in Harper's Bazaar. This BEAUTIFUL AND ELEGANT product retails for \$20.00. This is only one of the many nationally advertised products you will find crammed into this Treasure Chest. . .

(over please)

EXHIBIT A, p. 1

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Also included will be a \$100.00 cash merchandise certificate you may use toward the purchase of a zig-zag sewing machine manufactured for one of the world's oldest and very famous sewing machine companies.

SO . . .AREN'T YOU EXCITED. . . YOU CERTAINLY SHOULD BE. . .

because the total intrinsic value of your winnings amounts to approximately \$300.00. Now at this point you are probably asking yourself, "How can this possibly be true?"

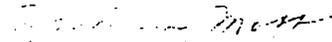
The answer is relatively simple. All of our participating co-sponsors are contributing their share toward this fabulous Sweepstakes. It is only through their combined advertising budgets, along with ourselves, Market Development Corporation, that makes this entire presentation possible. Naturally, all of our participating co-sponsors are very proud of their products and feel that through this program you will have an opportunity to acquaint yourself first hand with their many fine products, including fun-filled exciting vacation facilities.

We know you will be quite anxious to claim your Sweepstakes winnings, but you must be sure to claim your winnings within the next 10 days. There is a \$15.00 (total cost to you) service charge to supplement the cost of registering your Vacation Certificate. This includes packaging, handling, freight charges and insuring safe arrival of your Treasure Chest to your door. Naturally, if for any reason whatsoever, upon receipt of your Sweepstakes award package, you find you are not totally and completely satisfied, you may return all prizes, certificates, etc. to us and we will promptly refund your \$15.00.

Sincerely hope that you will be able to take advantage of this wonderful opportunity. You will definitely enjoy the vacation of a lifetime and be more than delighted with the many fine products that will arrive in your Treasure Chest.

Please let us know your decision as early as possible. Simply fill in the enclosed award acceptance form. Also, you must endorse the back of your registered gift certificate (IBN card). You may use the postage paid, self-addressed envelope that I have included for your convenience. Unless I hear from you within the next 10 days, I must assume that you are not interested in taking advantage of your winnings. At that time I will be compelled to pass your winnings on to the next eligible contest winner.

Cordially yours,



William Hoss:HA

Contest Director

P.S. You don't have to make your reservations now. . . you do this when you are ready to go on your vacation. Then mail the reservation area request form (60 days prior to your planned departure date) and you will receive reservation and confirmation request form for the available resort area of your choice. You have a full year to decide where and when you wish to take your vacation. It is not mandatory that you use your Vacation Certificate. This Certificate is given to you as an additional bonus along with the many fine products contained in your Treasure Chest. However, I want to add that the Vacation Certificate is naturally the most valuable part of your Sweepstakes winnings. This Certificate can be transferred at any time. It makes a nice birthday or holiday gift. It is negotiable in the event you wish to sell it. Be sure to clearly indicate your choice of vacation area on your acceptance form. BE SURE TO MAIL IT WITHIN THE NEXT 10 DAYS.

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MARKET
DEVELOPMENT
CORPORATION

HOLLYWOOD BUILDING, CINCINNATI, OHIO, 45224.

J M Van Law
19 Hidden Brook Rd
Riverside, Connecticut 06878

CONGRATULATIONS MRS. LAW!

It is indeed my pleasure to inform you that our computers have selected the magic house number 19 Hidden Brook Rd.

MRS. LAW, YOU ARE TO RECEIVE THE FOLLOWING:

A GLAMOROUS VACATION FOR TWO in Miami, Florida, or be our guest at one of Las Vegas' fabulous casino hotels. - or take the entire Law family and enjoy fabulous Walt Disney World. Your accommodations will be nearby in Orlando, Florida. Plus over \$100.00 in Food and Entertainment Coupons to use in Florida.

AND THAT'S NOT ALL. - -

By accepting this offer there will be a bonus package delivered to 19 Hidden Brook Rd, Riverside, Connecticut.

So, Mrs. Law, today is indeed your lucky day. If you are excited, you certainly should be.

I have enclosed complete details, along with acceptance form and a return envelope which must be sent to me within the next 10 days in the event you wish to accept this offer.

Cordially yours,

James F. Lynch

James F. Lynch

JFL:sw

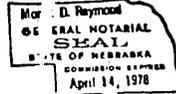
EXHIBIT B

Complaint



MARKET DEVELOPMENT CORPORATION

HOLLYWOOD BUILDING, CINCINNATI, OHIO, 45224.



CONGRATULATIONS, YOU ARE A WINNER!

You will recall that you recently entered our free SUPER SWEEPSTAKES. It is my pleasure to inform you that among the thousands of entries submitted, YOUR name was computer selected to receive:

A \$100.00 CASH MERCHANDISE DISCOUNT CERTIFICATE plus an additional bonus gift.

This cash discount certificate is good toward the purchase of the \$179.50 deluxe Good Housekeeper Zig Zag sewing machine. This full size, heavy duty machine makes buttonholes, sews on buttons and makes decorative zig zag patterns. (It will also make a stretch stitch so important for all your knit fabrics!)

The columnist, Sylvia Porter, points out that "A woman who sews can save at least fifty cents out of every dollar she spends on clothing and get far superior workmanship, smartness, and individuality." And can you think of a better way to beat the rising cost of living?

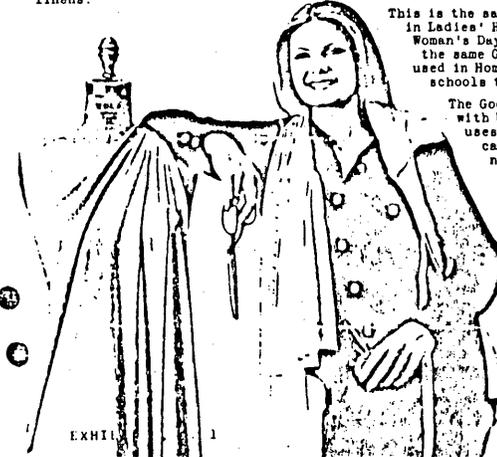
The Good Housekeeper is jam-proof and comes in a chic carrying case of fine aircraft luggage design.

This is a brand new 1974 model, the top of the line.

Good Housekeeper Deluxe Zig Zag Model 308 complete portable.

Regular Price.....	\$179.50
Less Discount Certificate.....	100.00
YOUR TOTAL COST ONLY.....	79.50

Good Housekeeper sewing machines are sold and serviced in all 50 states and have a 25-year guarantee bond. Each machine comes to you completely adjusted, threaded and ready to sew. It also includes extra needles and bobbins, as well as a complete instruction book. Everything you need for creating a variety of imaginative designs in clothes and household linens.



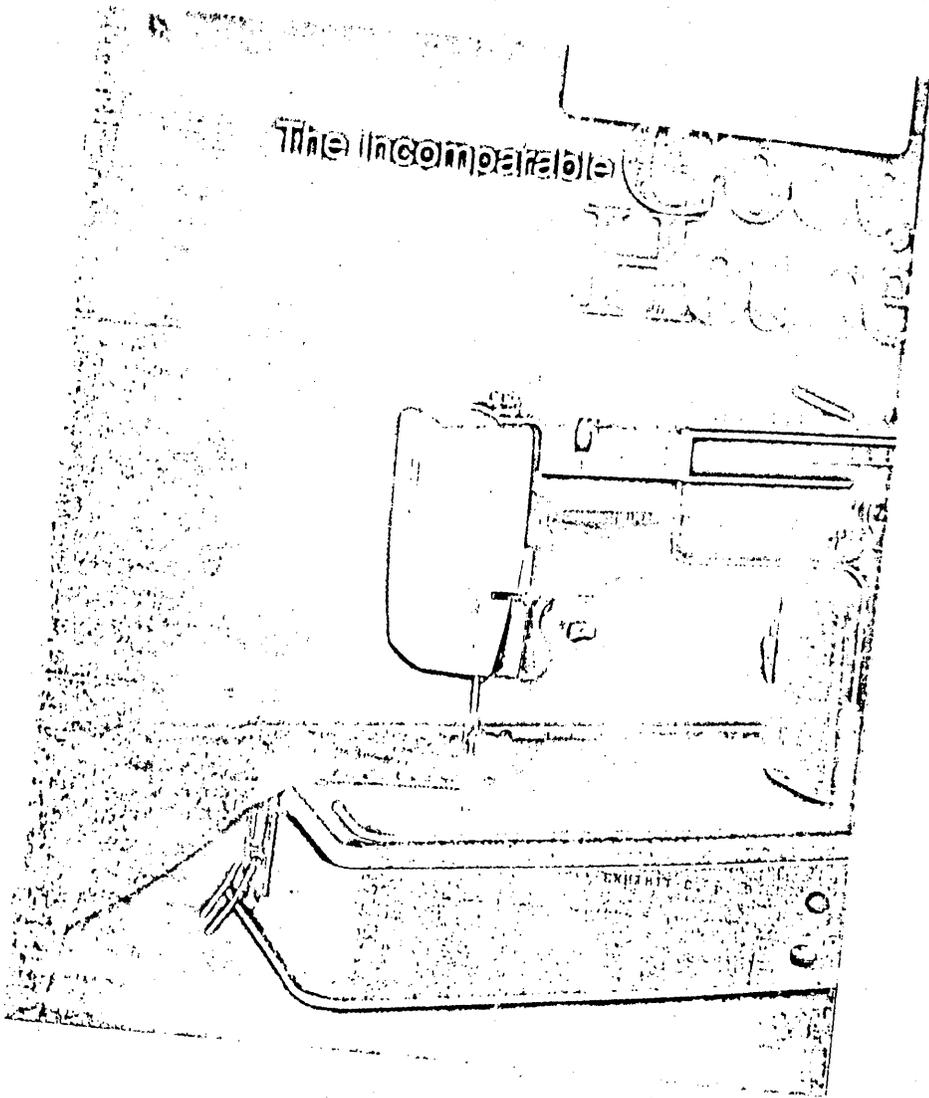
This is the same machine advertised at \$179.50 in Ladies' Home Journal Needle & Craft, Woman's Day and Modern Needlecraft magazines; the same Good Housekeeper machine that is used in Home Economics classes of high schools throughout the country.

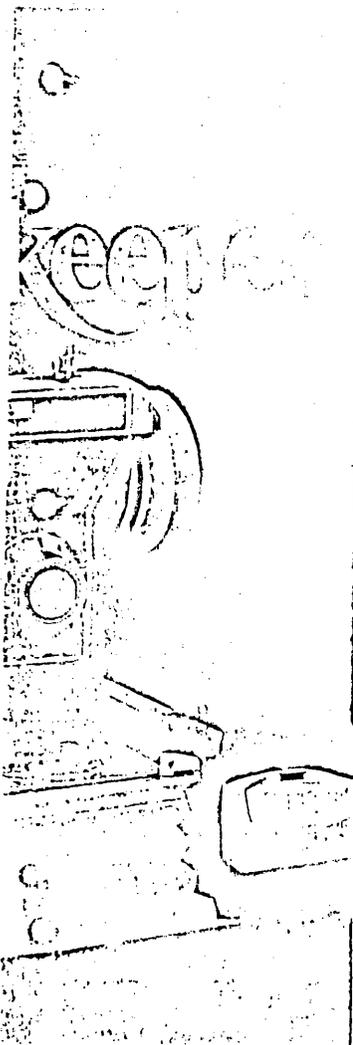
The Good Housekeeper machine is equipped with Underwriters Approved wiring and uses standard needles and bobbins which can be purchased at any store where notions are sold.

You may apply your \$100.00 cash gift certificate toward this machine leaving a very small balance of only \$79.50 -- one of the lowest prices ever for a machine of this quality.

PLUS ONE MORE EXTRA BONUS GIFT -- JUST FOR RESPONDING QUICKLY!

Just return your order form within 10 days and you'll receive - along with your Good Housekeeper Zig Zag sewing machine - the popular Hostess Warm-O-Trivet as a valuable bonus gift. The panel below tells all about this great bonus gift. Once you've used it you'll wonder how you managed





Everything you want in a truly fine quality sewing machine. All you add is imagination.

One of the world's finest and most versatile ZIG ZAG Sewing Machines

Making things yourself can be an exciting expression of your own creativity. And nothing gives you more creative freedom than *Good Housekeeper*, the advanced zig zag sewing machine that makes sewing easier than ever before.

Just a touch of a dial gives you perfect stretch stitch sewing for today's popular knits. And wait till you see the controls this *Good Housekeeper* gives you for mending, darning, making buttonholes, sewing on buttons, hems, eyes and monograms—as well as sewing such fabrics as tough canvas and fragile voiles.

Yet with all the performance and reliability built into *Good Housekeeper*, its moderate price may be the most surprising feature of all.

\$179.50
Complete Model 308
Including 25 Year Written Guarantee

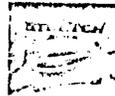
EXHIBIT C, p. 4
LIGHTWEIGHT CARRYING CASE
of fine aircraft design
for true portability.



BUTTON SEWING — Sew on 2 and 4-hole buttons, collars, eyes and yokes with ease.



HEMMING — Save money by hemming more well dressed with quick, rippled hems.



STRETCH STITCHING — Just dial for stretch stitching. The stitches are 1/4" wide with the built-in stretch made for.



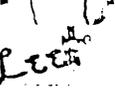
BLIND STITCHING — Blind hemming is ideal for curtains, draperies, and more. You want to hide the seam?



ZIPPER AND COILING — Get professional looking results every time. Attach and finish zipper or coiling.



BUTTONHOLE — Make any length buttonholes quickly easily.



MONOGRAMMING — To use a standard dial set with free hand. Turn out professional results in one try.



EMBROIDERING —



APPLIQUE — Applique with precision with the zig zag stitch.

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without it, I promise - a true \$5.95 value in itself.

Since your name has been selected from our Super Sweepstakes, I am sure you will be anxious to take advantage of your sweepstakes winnings. You may use your Master Charge or BankAmericard if you wish, and spread out your payments over several months, or send check or money order in the enclosed envelope. But, understand the transaction is not yet complete. We take the risk, I must repeat, your money will be promptly refunded in full. (30 days inspection.) YOU MUST AGREE THAT YOU HAVE RECEIVED MANY TIMES YOUR MONEY'S WORTH. YOU HAVE EVERYTHING TO GAIN AND ABSOLUTELY NOTHING TO LOSE.

In any event, please let me know your decision as early as possible. You will find enclosed a postage paid envelope for your convenience. Unless I hear from you within the next 10 days I must assume that you are not interested in taking advantage of your sweepstakes winnings. At that time, I will be compelled to pass your winnings on to the next eligible contest winner.

Cordially yours,

James A. Lancaster
James A. Lancaster

P.S.: So that you may take immediate advantage of your contest winning certificate you may use any one of our three convenient payment plans.

- Plan 1. Use your Master Charge or BankAmericard and, if you desire, spread your payments over several months, or charge it to your American Express. Simply fill in and sign the enclosed charge slip. Your machine and your Warm-O-Trivet will arrive by Express, freight collect.
- Plan 2. Remit \$79.50 as payment in full, no interest added. Your machine and your bonus gifts will be shipped, freight collect IMMEDIATELY.
- Plan 3. Lay-away. Remit with your order \$10 or more and each month remit \$10 or more until the balance of \$79.50 is paid in full, no interest added.

Just fill out one of the enclosed order blanks and mail today and your Good Housekeeper 308 Zig Zag machine and bonus gift will be delivered to your home for your complete inspection. No salesman will call.

EXHIBIT C, p. 2



Complaint

mdc

MARKET DEVELOPMENT CORPORATION
 HOLLYWOOD BUILDING, CINCINNATI, OHIO 45224
 CONTEST AWARD DIVISION

REGISTERED NO. 519415

TREASURE CHEST WINNER. . . PLUS HOLIDAY FOR TWO

WALT DISNEY WORLD. . MIAMI BEACH. . LAS VEGAS, NEVADA. . .

This certificate is valid only thru MARKET DEVELOPMENT CORP. - one certificate per item.

NON-NEGOTIABLE

SHIRLEY FIELD 354 -037219
 7525 SW KELLY ST WR
 PORTLAND OR 97206

BY: *A H Young*

CO456-1355

FIRST CLASS PERMIT NO. 10210 CINCINNATI, OHIO

NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES

BUSINESS REPLY MAIL

POSTAGE WILL BE PAID BY

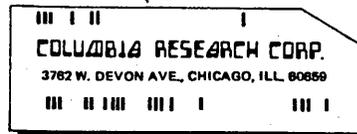
CONTEST AWARD DIVISION
 5874 HAMILTON AVENUE
 CINCINNATI, OHIO 45224



CONTEST AWARD DIVISION
 254 MARKET ROAD, CINCINNATI, OHIO 45224

CINCINNATI OHIO 45224
 MAR 2 1974
 08

EXHIBIT D



Congratulations:

Are You In For a *Big* Jackpot Surprise!!!!

It is indeed my pleasure to inform you that your name has been selected by our computer and you are to receive the following:

A luxurious vacation for two in the casino capital of the world, Las Vegas, Nevada, where adult entertainment awaits you 24 hours a day. As you know, Las Vegas is not only the casino capital of the world it is also the entertainment capital of the world.

Your accommodations are going to be strictly First Class air conditioned rooms with private bath, right on the strip, within walking distance of all the fun and excitement that Vegas has to offer. In addition to having your deluxe accommodations for two paid for in full you will also be entitled to select 3 meals per day from either the delicious menu or buffet and receive a total Food and Beverage allowance of \$62.50.

You will also be given \$18.00 Cash Nickles to spend any way you want. Naturally the casino would not object if you were to drop some of them in their slot machines, but you don't have to, if you don't want to . . . plus an additional \$300.00 in **Lucky Bucks** (Match Play, etc.), you match with your \$1.00 and win \$2.00 etc.

If you prefer the great outdoors, you and your children can *relax* around the beautiful desert landscaped pool. You may choose any time of the year to enjoy your fabulous vacation for two because Southern Nevada's climate is perfect the year round. It is known for its clear, dry, desert climate.

Here you and your family can enjoy the clean fresh desert air. You may want to visit Hoover Dam, one of the seven wonders of the world. See and enjoy scenic Lake Mead, or visit Death Valley and Mt. Charleston. In this area alone it is possible to water ski on beautiful Lake Mead and don snow skis on nearby 12,000 foot Mt. Charleston, all in the same day. Yes, all of this outdoor fun awaits you and your family just over the horizon from glittering Las Vegas.

Additional Bonuses to Come . . . Over Please

Page 1 EXHIBIT E
 OBTAINED BY _____
 ATTORNEY EXAMINED _____
 FILE NO. _____

And Believe It or Not There is Still More to Come!

You will also receive our **Super Jackpot Package** of brand name products. This package will be crammed full of nationally advertised Household and Cosmetic products. These products are from the world's leading manufacturers. Something for every member of the family. They are not sample sizes, but full size products. The total combined value of this package alone will be at least \$25.

Now bear in mind the **Grand Total** value of this Las Vegas Jackpot amounts to approximately \$500.00 or more.

You are probably asking yourself "How can they possibly afford it? or "Who pays for all of this?"

The answer is very simple. All of our participating sponsors are contributing their share toward this fabulous Las Vegas Jackpot. It is only through their combined advertising budgets, along with ourselves, Columbia Research, that makes this entire presentation possible. Naturally, all of our participating sponsors are very proud of their products and feel that through this program you will have an opportunity to acquaint yourself first hand with their many fine products, including their fun filled, exciting vacation facilities.

And perhaps after you have completed your fabulous Las Vegas Jackpot Holiday and have had a chance to use the many fine products from your **Super Jackpot Package**, you might drop us a line and give us your candid opinion, suggestions or comments, etc. You know every business likes to get testimonials from their customers. You may be asked to fill out a short questionnaire form which would help us with our advertising research.

This is a **very limited offer** you will be accepted on a first come, first serve basis. So **you must act at once**. It is very important that I receive your order confirmation form within the next 10 days. You don't have to make your reservations *now* . . . you do this when you are ready to go on your vacation. You have one full year to decide. There is a very small service charge of \$15. (total cost to you) that we must charge to supplement the cost of acquiring, registering and confirming your Super Las Vegas Jackpot Holiday for two. This includes your lodging accommodations and all meals in Las Vegas, etc., everything mentioned earlier in this letter plus packaging, handling, freight charges and insuring safe arrival of your Super Jackpot package of nationally advertised products to your door.

Naturally, if for any reason whatsoever, upon the completion of your holiday for two, you feel that you did not have the vacation of a lifetime and you were not totally delighted with your accommodations, your \$15.00 service charge will be **refunded in full** . . . and you still keep everything that you received in your **Super Jackpot Package** with our compliments.

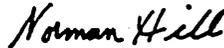
Complaint

95 F.T.C.

I sincerely hope that you will be able to take advantage of this wonderful opportunity. You will definitely enjoy the vacation of a lifetime and be more than delighted with the many fine products that will arrive in your **Super Jackpot Package**.

Simply fill in the enclosed Vacation Jackpot order confirmation form. Also, you must *endorse the back* of your registered form. Please use the postage paid, self-addressed envelope that I have included for your convenience. *Unless I hear from you within the next 10 days* I must assume that you are not interested in accepting your Super Las Vegas Jackpot Package and your Las Vegas Vacation for Two.

Cordially yours,



Norman Hill
Fulfillment Director

P.S. You don't have to make your reservations now . . . you do this when you are ready to go on your vacation. Then mail the reservation area request form (20 days prior to your planned departure date) and you will receive reservation and confirmation for the resort area of your choice. You have a full year to decide where and when you use your Vacation Certificate. This Certificate is given to you as an additional bonus along with the many fine products contained in your Super Jackpot Package of nationally advertised products. However, I want to add that the Vacation Certificate is naturally by far the most valuable part of this valuable offer. This Certificate can be transferred at any time. It makes a nice birthday or holiday gift. Be sure to clearly indicate your choice of vacation areas on your acceptance form. **Be sure to mail it within the next 10 days.** Remember, you are risking nothing because your order is filled on a **100% money-back guarantee.**

P.P.S. Perhaps you would rather vacation in the beautiful sunshine state of Florida. You will receive first class deluxe accommodations for two adults for five days and four nights* plus receive over \$15 in valuable vacation coupons that can be applied toward attractions, admissions, restaurants and other fabulous Florida features. You may choose the resort area which you would enjoy most —
St. Petersburg/sparkling Clearwater,
Central Florida, Walt Disney World area.

Complaint

YOUR HOLIDAY GIFT CERTIFICATE ENTITLES YOU TO (GENERAL EXPLANATION)

If your choice is Las Vegas—3 days and 2 nights—1st class accommodations. Each room has finger tip controlled air conditioning, swimming pool, etc. You will enjoy sparkling night life late night and casinos everywhere you go! Big name entertainment, championship golf courses, and a chance to break the bank in Las Vegas.

In addition to taking your deluxe accommodations for two paid for in full you will also be able to select your delicious meals from either the buffet or à la carte, including cocktails, receiving a total Food and Beverage allowance of \$42.50.

You will also be given \$18.00 Cash Nickies to spend any way you want. Naturally the casino would not object if you were to drop some of these in their slot machines, but you don't have to if you don't want to... plus an additional \$300.00 in Lucky Bucks (Match Play, etc.) which match with your \$1.00 and win \$2.00 etc.

If you decide to vacation in Florida, you will receive deluxe accommodations for two adults for 5 days and 4 nights exact during peak season, February through June 3 days, 2 nights.

You enjoy vacation at the resort area of your choice.

Reservations are subject to availability of rooms. In the event your accommodations are not available, we will naturally attempt to provide accommodations as close as possible to your chosen resort.

This offer is void where prohibited by law. Resorts are AAA recommended or members of a nationally recognized hotel organization and accept major credit cards such as BankAmericard and Master Charge.

Transportation not included.

Holders of this Certificate must be at least 21 years of age, married and accompanied by spouse, or two unmarried persons of the same sex, in the same room. One certificate per family.

If you wish to extend your vacation beyond the days specified on the Holiday Gift Certificate, you may do so at the then prevailing hotel/motel rates, payable directly to the resort.

You will also receive your Super Jackpot Package of brand name products. This package will be crammed full of nationally advertised Household and Cosmetic products. These products are from the world's leading manufacturers. Something for every member of the family. They are not sample sizes, but full size products. The total combined value of this package alone will be at least \$25.

This offer open to residents of United States, except employees of Columbia Research Corp. and their families. This is an incentive program offer. It is not a contest or prize notification. Void where prohibited by law.

The valuations and prices listed in the communication are shown for reference purposes only. They do not necessarily represent the usual or customary prices at which these items are sold at retail in your community at any particular period of the year. The quoted values and prices represent a retail price, or our determination of a fair and normal price at which comparable merchandise is sold. We believe these retail prices generally reflect actual selling prices, but we do not control the prices charged by others on a particular date in any specific locale.

Offer subject to minor change without notice but never less than stated value.

The more the merrier Let others be your guest

One of the best rewards that we can receive in life is the joy of sharing our good fortune with others. Now it is possible for you to say "Be Our Guest" to those who are very special. If you have friends or relatives who meet the requirements and who may wish to accompany you to Las Vegas on this special offer, you may order an additional Las Vegas Vacation and Super Jackpot Package. This would certainly be an excellent gift for any occasion such as birthdays, anniversaries, Christmas, etc. Just fill out the information below and mail this form to us— only one certificate per family per year may be used. Vacations may be planned together or separately.



Please ship the Super Jackpot Bonus Package of Nationally advertised products, including a Las Vegas Holiday Vacation for two Gift Certificates.

Enclosed you will find a personal check or money order for \$15.00 payable to Columbia Research. I understand that the money back guarantee applies to this order as outlined in your letter.

Please ship to:

NAME _____ ADDRESS _____

CITY _____ STATE _____ ZIP _____

Choice of Resort Area is Las Vegas Florida's Disneyworld area Miami Beach

100% Money Back Guarantee

COLUMBIA RESEARCH CORP.
3782 N. DEVON AVE., CHICAGO, ILLINOIS 60659

REGISTERED NO.
12501-1025669

This certificate is valid only
for COLUMBIA RESEARCH
CORP. one certificate per item.

NON-NEGOTIABLE

Norman Hill
VALIDATED BY

ORDER CONFIRMATION FORM

ATTENTION: MR. NORMAN HILL.
Yes, we certainly want to take advantage of your fabulous offer.
Our choice of Resort Area is: Las Vegas Central Florida Miami Beach

Enclosed you will find my personal check or money order for \$15.00 payable to COLUMBIA RESEARCH CORP. If for any reason whatsoever, upon the completion of our vacation for two at the resort area as checked above, we feel that we are not totally delighted you will promptly refund our \$15.00 service charge in full, and we may keep the entire contents of the Super Jackpot Package crammed full of nationally known household and cosmetic products with your compliments.

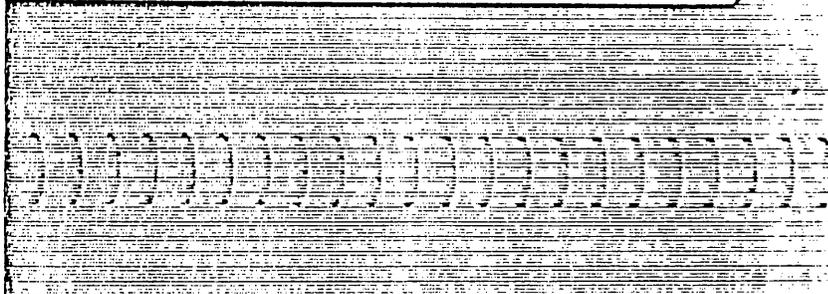
12501-1025669 REGISTERED NO.

Page 2 EXHIBIT E

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

Validated by
N.P.

MONEY-BACK GUARANTEE REGISTERED NO. 12501-1025669



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Complaint

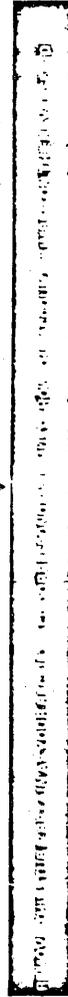
PLEASE ENDORSE ON THIS LINE

Endorse above and return this

ENTIRE document after

REMOVING THIS STUB

This stub is your official receipt.



FEDERAL TRADE COMMISSION DECISIONS

Complaint

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Page 3
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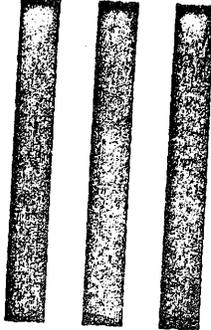
ATTORNEY-EXAMINER

FILE NO. _____

First Class
Permit No. 72077
Chicago, Ill.

BUSINESS REPLY MAIL No postage stamp necessary if mailed in the United States

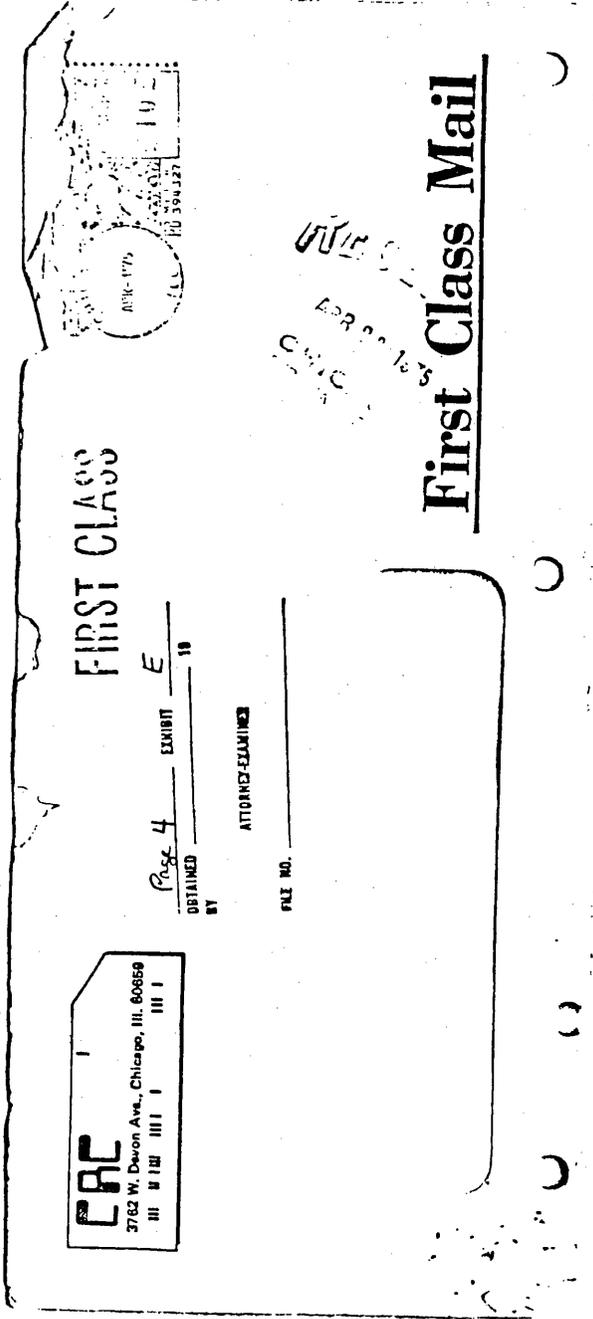
Postage will be paid by



COLUMBIA RESEARCH CORP.

**3762 W. DEVON AVENUE
CHICAGO, ILLINOIS 60659**

Complaint



FIRST CLASS

Page 4 EXHIBIT E

CPC
3782 W. Devon Ave., Chicago, Ill. 60659

OBTAINED BY

ATTORNEY-EXAMINED

FILE NO.

First Class Mail

CHICAGO
MAR 21 1973

Initial Decision

95 F.T.C.

INITIAL DECISION BY THOMAS F. HOWDER, ADMINISTRATIVE LAW
JUDGE

JUNE 7, 1979

PRELIMINARY STATEMENT

The Commission's complaint in this case, issued December 19, 1975, charges two corporations and three individuals with a wide variety of deceptive statements and practices in the advertising and distribution of "vacations," sewing machines, and household and cosmetic products through mass mailings, magazines, newspapers and catalogues. [2]

Thirty specific charges are listed in the complaint, having to do with such matters as: (1) the characterization of respondent companies as market research firms, as offering promotional incentives, as having co-sponsors and as representing other companies; (2) the offering of "free" vacations and vacation coupons, and other "free" goods and services; (3) the conducting of "contests," with concomitant prizes, winnings, awards, gifts and bonuses; (4) representations concerning "special selection" and "once-in-a-lifetime" opportunities, with limited times for acceptance; (5) monetary charges to customers for what was described variously as "registration," "handling" or "service"; (6) representations concerning the value of respondents' "Treasure Chests" and "Gift Cartons," the size of products contained therein, and the description and retail selling price of the perfumes in such packages; and (7) the total value of the goods and services offered by respondents. In addition, the complaint challenges respondents' sales of sewing machines, including representations concerning servicing, use, retail prices and discount certificates.

Respondents' answers, filed in early and mid-June 1976, generally denied the substantive allegations.

Prehearing conferences were held on July 19, 1976, in Washington, D.C., and on December 1, 1976, and February 15, 1977, in Cleveland, Ohio. The process of discovery in this case was arduous. Respondents Raymond Anderson and Columbia Research Corporation¹, in particular, vigorously resisted the attempts of complaint counsel to obtain needed information. Eventually, following the refusal of these respondents to comply with discovery subpoenas, it became necessary to impose sanctions pursuant to Rule 3.38(b).

Trial of this matter commenced on January 31, 1978, in Los Angeles, California, and continued at intervals throughout most of that year in Las Vegas, Nevada; New York, New York; Cincinnati and Cleveland,

¹ Frequently referred to herein as "CRC."

Ohio; Chicago, Illinois; and Washington, D.C. Much of the record consists of consumer testimony and evidence.

The record (which includes a transcript of 6101 pages and over 1100 exhibits) was closed on February 5, 1979, following the disposition of various post-trial motions of the parties.

Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this Initial Decision, are hereby denied. [3]

This proceeding is before me upon the complaint, answer, testimony and other evidence, proposed findings of fact and conclusions of law filed by counsel supporting the complaint and by counsel for respondents Raymond Anderson and CRC. The proposed findings of fact, conclusions and arguments of these parties have been carefully considered, and those findings not adopted either in the form proposed or in substance are rejected as not supported by the evidence or as involving immaterial issues not necessary for this decision.

The transcript of testimony is usually referred to with the last name of the witness and the page number or numbers upon which the testimony appears. For a complete listing of the abbreviations used in this Initial Decision, see Appendix A, pp. i-iii.

Having heard and observed the witnesses and after having carefully reviewed the entire record in this proceeding, together with the proposed findings and conclusions submitted by the parties, I make the following findings:

FINDINGS OF FACT

I. IDENTITY OF RESPONDENTS AND THE NATURE OF THEIR BUSINESS

A. Market Development Corporation

1. Market Development Corporation ("MDC") was a corporation organized, existing and doing business under, and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 5826 Hamilton Ave., Cincinnati, Ohio. MDC began operating in late 1969 and terminated its business operations in June 1974, when it filed for bankruptcy (Complaint, ¶ 1 and Answer of Raymond Anderson, ¶ 1; CX 660A, B; Joseph Anderson 3928-29).

2. MDC grew from about four clerical employees in 1970, when it was located at 5918 Hamilton Ave., Cincinnati, Ohio, to approximately 15 employees in 1971, when it moved to 5826 Hamilton Ave. It employed 15 to 20 sales personnel in 1970 to conduct in-home sales presentations of sewing machines (Harris 5023-26, 5028). At the time

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that it terminated business in June 1974, MDC employed 22 individuals, including respondent Raymond Anderson (CX 673A-B).

3. MDC also established a plant located at 3584 Hauck Road in Cincinnati, Ohio (Harris 5024). This plant operated from a warehouse type building with postage meters, printing equipment, sorting machines and other equipment (Harris 5027), and employed a total of about 25 individuals (Joseph Anderson 3993). MDC maintained an inventory of sewing machines, Treasure Chests and trivets at its Hauck Road facilities (Joseph Anderson 3970, 3975). [4]

4. When MDC first began operations, it sold sewing machines primarily in Ohio and West Virginia through in-home presentations conducted by its sales force. The sales force was disbanded when the firm began offering sewing machines through mail order solicitations (Joseph Anderson 3928, 3930-32).

5. MDC's sewing machine customers were offered three payment options: cash, layaway or credit card (Flach 3506-07; CX 1329).

6. In addition to sewing machines, MDC offered the following products and services to consumers: vacation certificates; promotional kits, including ones denominated as "Treasure Chests," which contained household and cosmetic products; and trivets (Karniol 2008-10; Taubes 2243-46; CX 288A; Juanita Anderson 3716-17; Joseph Anderson 3931-32, 3937, 3969-70; Flach 3567-68). These products and services were presented to consumers primarily through solicitations in direct mailings and magazines (Joseph Anderson 3930-32; Flach 3500-02; *see, e.g.*, Fs. 8, 12, 60).

7. Florence Wolf, Inc., a company that supplied mailing list services to its customers (Sutton 4148-49), dealt with respondents Raymond and Juanita Anderson and provided mailing lists to MDC containing the names of consumers to whom solicitations would be sent (Sutton 4154-55, 4164-66).

8. MDC utilized mass mailings in making its direct mail solicitations to consumers (*see, e.g.*, CX's 1700A-B, 1701, 1705, 1710, 1715, 1720). The solicitations were sent out on a daily basis (Joseph Anderson 3973), and, at one point, amounted to as many as 529,000 pieces mailed in one month (CX 1705). Millions of consumers throughout the United States received solicitations from MDC² (Fs. 60, 77, 93).

9. MDC conducted test mailings of its solicitations in order to determine which elicited the highest percentage of incoming orders from consumers (Joseph Anderson 3959-61). In order to break even, MDC needed paid responses to its mailings of between 1.5% and 1.7%

² In some instances, MDC instructed its computer processing firm to delete the names of consumers living in certain states such as Ohio and Michigan (Sarbaugh 3648-49; CX 2061).

(Karniol 2070-71). Its actual rate of responses ranged from 3.5% to 5% (Karniol 2070). [5]

10. Initially, MDC processed about 20 incoming sewing machine orders per day manually; by 1973, the number of orders had increased to 40 to 50 per day (Flach 3513-14, 3523, 3529).

11. Subsequently, MDC began processing orders by computer. The firm would give its customer orders to a computer house which processed the orders and returned a print-out sheet and shipping labels to MDC. MDC employees then calculated the shipping charges, entered those charges on the labels and made up the shipping orders. The sewing machine shipping orders were stored at MDC's Hamilton Avenue location until instructions were given to send the orders to the Hauck Road facilities (Flach 3516-19).

12. MDC conducted various contests and placed entry forms in magazines such as TV Guide, Family Circle and Good Housekeeping. By returning an entry form filled in with their name, address and phone number, consumers would become eligible to win prizes such as sewing machines or electric scissors. Entries would be keypunched and a computer would select the winning names based on a mathematical formula correlated to the number of prizes that MDC represented would be given away. For example, if a contest had 1,000 entrants and there were 20 prizes to give away, the computer would select every fiftieth name (Harris 5032-42).

13. In addition to offering sewing machines by mail, MDC offered vacations in the form of vacation certificates to consumers responding to its solicitations. MDC purchased vacation certificates from several companies that also arranged for the accommodations of MDC's customers in hotels or motels. These certificate companies included Genie Enterprises ("Genie") in Las Vegas, Nevada; Vacation Incentives and Properties, Inc. ("V.I.P.") in Miami, Florida; and Resort Hosts International, Inc. ("Resort Hosts") in St. Petersburg and on the west coast of Florida (Juanita Anderson 3743-47; Wray 5276-77; CX's 867, 875, 883, 884). As an example, MDC paid \$1.00 for each certificate provided by V.I.P., and placed orders in quantities as high as 25,000-30,000 certificates for a one-month period (CX's 867, 875, 883, 884; Wray 5277).

The certificates that MDC purchased were for accommodations at the Sheraton Hotel in St. Petersburg, the Sheraton West in Orlando, the Colonial in St. Petersburg Beach, and various hotels in Fort Lauderdale, Florida and elsewhere. Resort Hosts, one of the companies from which MDC purchased the certificates, honored the certificates even though MDC had subsequently gone bankrupt. Resort Hosts did so, according to witness Wray, because it "was a land development

company [and] looked at the people who came in . . . as good prospects and they wanted them to come." (Wray 5276-78). [6]

14. MDC purchased household and cosmetic product kits primarily from Value Package, subsequently known as A.M. Sampling (F. 322), and Selective Sampling in New York, New York, and offered them to consumers in a box shaped like a treasure chest (Karniol 2017-20; Taubes 2242-43; Harris 5047). The products in the Treasure Chest were almost all nationally advertised products and included over-the-counter drugs, toiletries, cosmetics, shampoo, foodstuffs, perfume, and health and beauty aids (Karniol 2098-99; Taubes 2232, 2235, 2246; *see, e.g.*, CX's 749, 979, 981, 997).

15. The perfume contained in the kits was supplied by Grafton Products and was sent, at MDC's direction, to Selective Sampling and Value Package for placement in the Treasure Chests (Karniol 2024; Taubes 2246-47). Grafton supplied the entire perfume package for MDC which consisted of a bottle, cap, five labels, fragrance, colored water, a piece of tape, a chipboard box and paper wrapping. The perfume was named "Beau Bien" (Marcus 3230-31).

16. MDC ordered generally 5,000 to 10,000 bottles of perfume per month from Grafton Products (Marcus 3227-29); an order in January 1974 was for 12,096 pieces (CX 1915). Selective Sampling filled 25,000 to 30,000 orders per month for MDC when business was at its peak, and 3,000 to 6,000 orders per month during slow periods (Karniol 2068-69). MDC's orders from Value Package ranged from 7,500 to 11,500 kits per shipment (CX's 978-80, 987-90).

17. The kits supplied by Selective Sampling cost MDC \$2.00 F.O.B. Hicksville, New York (Karniol 2069; CX's 1000, 1003, 1006); those supplied by Value Package cost MDC from \$1.60 to \$1.76 each (CX's 987-90).

18. MDC often provided the kit suppliers with shipping instructions and shipping labels and, in turn, the suppliers sent the kits directly to MDC's customers (Karniol 2021-22). In other instances, MDC received the kits in Cincinnati, Ohio for subsequent shipments to its customers (Taubes 2244).

B. Columbia Research Corporation

19. Columbia Research Corporation ("CRC") is a corporation organized, existing and doing business under, and by virtue of, the laws of the State of Illinois, with its offices and principal place of business located at 3762 West Devon Ave., Chicago, Illinois (Complaint, ¶ 1 and Answer of CRC, ¶ 1). CRC began doing business in November 1974 (CX 1236A). [7]

20. When CRC commenced operating in November 1974, it em-

ployed approximately three individuals. By 1976, it had grown to a staff of 15 employees. (Balko 4911, 4914; Jacobson 4973).

21. CRC offer the following products and services to consumers: vacation certificates; packages of household and cosmetic products called "Gift Cartons"; blackjack boots; and memberships in a buying club (Boyd 1821-23, 1829-30; Jenni 1905; McGuire 2377-78; Taubes 2264, 2266-68; Stipulation, pp. 3-4; CX's 335A-D, 463A-D, 464, 467A, 1236C, 1655, 1656A-B, 1657A-B). These products and services were presented to consumers through solicitations in direct mailings, magazines, newspapers and catalogues (CX 1236C; Stipulation, p. 2).

22. First National List Services, Inc., a mailing list brokerage company similar to Florence Wolf, Inc. (Sutton 4152-54. See F. 7), was approached by Raymond Anderson and CRC in late 1974, and provided mailing list services to CRC between 1974 and 1976³ (Sutton 4166-68, 4175-76).

Individuals were selected to receive CRC's offers from these mailing lists. Selection was based on particular demographic and psychographic characteristics determined by CRC, including residence, marital status, age, income and spending habits (Sutton 4172-74, 4227). In most cases, First National List Services utilized data cards to supply the information relative to these criteria (Sutton 4227-28).

23. The lists which had been selected were sent to Universal Data Systems, Inc. ("Universal"), the company that provided computer processing services to CRC, where they were matched up against certain tapes possessed by Universal. The tapes included census tract information which covered a broad range of criteria such as family, type of residence, traveling history, race, employment, etc. Universal then selected or discarded particular groups of names on the list depending on whether they did or did not meet the particular criteria specified (Sutton 4228-29; RX 62-206).

24. Universal addressed original mailing pieces (either mailing coupons or computer letters), processed incoming orders, printed shipping documents, printed reservation request forms [8] and printed reservation confirmations for CRC (RX 62-231-32, -236, -251-52). Universal provided Raymond Anderson and CRC with a weekly response analysis showing the mailing list, when the solicitations were mailed and the percentage of responses, analyses of customer files expiration date and location choice, and a weekly printout on mailing lists used by CRC (RX 62-217-18, -228, -234). Universal maintained a customer file for CRC (RX 62-220-21).

25. CRC conducted tests of its mailing lists. Such tests inv

³ CRC ordered a total of 2,753,600 names from various list owners through First National between September 1976 and July 26, 1976 (CX 1539A-H).

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renting a small quantity of names (usually about 5,000), mailing particular solicitations to those names and checking the response rate. (Sutton 4158, 4176-77). According to witness Sutton, the standard rate of response in the mail order industry is 3% to 5% (Sutton 4186).

26. As noted, CRC offered vacations in the form of vacation certificates to consumers responding to its solicitations (Jacobson 4985; Stipulation, p. 2; F. 21).

CRC purchased vacation certificates from a variety of sources, including Bay Shore Yacht & Tennis Club in Indian Shores, Florida; Genie Vacations in Las Vegas; and Miami-Las Vegas Vacation Bureau in Las Vegas (Joseph Anderson 4022, 4042; McGuire 2350; CX's 1089A-C, 1937-41, 1943). CRC also purchased gaming certificate packages from several casinos in Las Vegas (Joseph Anderson 4072-73; CX's 1652, 1656A-B, 1913, 1914). CRC also furnished show tickets to some of its Las Vegas customers. Some of these show tickets were purchased by CRC and some were obtained by CRC at no charge (Joseph Anderson 4071-72).

27. CRC provided accommodations for its customers in Las Vegas by entering into agreements with various Las Vegas motels to purchase a block of rooms at an average price to CRC of about \$10 per day or \$20 for two nights (Joseph Anderson 4032, 4038-39, 4062; CX's 703A-B, 706A-B).

28. Consumers responding to CRC's direct mail solicitations forwarded to CRC a check or money order usually in the amount of fifteen dollars (\$15.00). According to the offer, or consumers' belief based upon their reading thereof, this amount covered all of the items which were offered, computer registration of their names, the printing of the offer and other written materials, processing of hotel reservations and other services applicable to the offer. Consumers understood that they could avail themselves of the offer if they responded within ten days, and that they might not be able to obtain the items offered if they failed to respond within that time (Stipulation, p. 2; Joseph Anderson 4062). [9]

Consumers were required to fill out an acceptance form attached to CRC's solicitation (*see, e.g.*, CX 272A-D) or a form that came in the envelope (*see, e.g.*, CX's 491, 522) in order to take advantage of the vacation offer. There was also the option of filling out an acceptance form for a guest (*see, e.g.*, CX 2720). The acceptance form instructed the customer to select a vacation choice and then send the check and a check or money order covering the number of vacation packages ordered to CRC in Chicago (*see, e.g.*, CX's 272D, 273).

Within 30 days after CRC cashed their check or money order, consumers received a vacation certificate from CRC listing the

geographic location which they specified in their initial order. The vacation certificates were substantially similar to one or more of CX's 58, 59, 204B, 252, 284B, 318, 319 (top), 338, 421, 433, 452, 483, 515, 535, 598 (bottom), 1660, 1660A, 1847A-C, 1867, 1876A-B, 2048 (Stipulation, p. 2).

After receiving the vacation certificates, the consumers' next step was to request reservations at the locations listed in the certificates such as Las Vegas, Nevada; Orlando, Florida; St. Petersburg, Florida; Miami, Florida; and Tampa, Florida, using forms substantially similar to one or more of CX's 58, 59, 204B, 252, 1847C, 318, 319 (top), 338, 421, 433, 452, 483, 284B, 515, 535, 598 (bottom), 1660, 1660A, 1847A-C, 1867, 1876A-B, 2043A-B and 2048 (Stipulation, p. 4).

30. In accordance with the instructions contained in the vacation certificates or other communications from CRC, consumers sent their requests for reservations in Las Vegas to CRC, Genie Vacations or Miami-Las Vegas Vacation Bureau. Sometimes, CRC or Genie sent customers' requests to the other. Thereafter, the customers received confirmed reservations for Las Vegas for the original or alternate dates that they requested. The hotels that they received reservations for in Las Vegas were the Westwind Motel, Baghdad Motel, Holiday Motel, Todd Motor Motel, Colonial House Motel, Mini-Price Motor Inn, King 8 Motel and Lucerne Motel. None of the customers received reservations for the California Hotel and Casino (Stipulation, p. 4; Joseph Anderson 4042-44).

31. At one time, Genie's main office was at 2128 Paradise Road, Las Vegas, Nevada. The company also had offices at the Westwind Motel and the Baghdad Motel in 1975 (Joseph Anderson 4020-21). The Paradise Road office had a small sign on the door stating, "Columbia Research Corporation" (CX 2111, p. 65). CRC had a separate telephone line in Las Vegas (Joseph Anderson 4025-26). CRC also had a checking account at the Nevada State Bank in Las Vegas. Raymond Anderson, Joseph Anderson [10] and Mike Alpert of Genie were signatories on this checking account which was to serve as a general working account for CRC in Las Vegas. The account also paid Joseph Anderson's rent and the general office rent (Joseph Anderson 4099-4100; CX 2111, pp. 136-37). According to witness Jenni, operator of the King 8 Motel, CRC used the name "Genie" in Las Vegas, and the names "CRC" and "Genie" were used interchangeably (Jenni 1911).

32. Genie had four or five employees, some of whom worked at check-in locations (Joseph Anderson 4022, 4056-57). As reservations were confirmed, CRC and/or Genie would enter the customer's name, address and other pertinent information on a manifest. There was a separate manifest for each date; the manifest was filed in chronologi-

cal order by arrival date. A copy of the manifest was sent to CRC in Chicago. The day before the arrival date, the manifest was pulled out and sent to the motel involved (Joseph Anderson 4029-31, 4041; CX 2111, pp. 66, 70-71). There was a cut-off point of about 50 to 60 people who could be handled in Las Vegas by CRC on a daily basis. When the number of reservation requests exceeded this, customers were asked to pick alternate dates (Joseph Anderson 4055-56; CX 2111, p. 82).

33. During the time that CRC dealt with Phil Gold of Miami-Las Vegas Vacation Bureau, consumers sent their reservation forms to CRC. CRC recorded the customers' names and addresses on a list and forwarded the request forms to Phil Gold (Joseph Anderson 4048-49), who arranged accommodations for CRC customers during this time period instead of Genie, and performed the same functions as Genie (Joseph Anderson 4042-44).

34. Consumers requesting Florida vacations sent their requests for reservations to the following Florida companies: AITC Travel, Inc.; Bay Shore Yacht and Tennis Club; Lehigh Corporation; or National Travel, Inc. Thereafter, these customers received confirmed reservations for Florida for the original dates or alternate dates that they requested, so long as they did not ask for holiday or weekend arrivals. The reservations were filled at the following hotels: Winter Gardens Hotel, Winter, Florida; Lehigh Motel, Ft. Myers, Florida; Days Inn, Orlando, Florida; Season Hotel, Ft. Lauderdale, Florida; and hotels and apartments owned by Bay Shore (Stipulation, p. 5; McGuire 2373-76, 2422-23).

35. In a number of instances, consumers requesting Las Vegas were informed on the vacation certificates of Genie to send to CRC or Genie, along with their reservation requests, [11] a deposit of twenty-five dollars (\$25.00) to confirm and to hold their reservations. In a number of other instances, Florida customers were requested on the vacation certificates of AITC Travel, Inc., Lehigh Corporation and National Travel, Inc. to send in a deposit of ten dollars (\$10.00) to the above-named companies to guarantee their reservations. Those persons traveling to Las Vegas received their deposits back, on their arrival, in cash or in gaming script, at their option. Those persons who traveled to Florida usually received their deposits back in cash upon their arrival (Stipulation, p. 5; *see, e.g.*, Lawley 454-56; Blackmore 691-93).

36. Those customers who went to Las Vegas appeared at the check-in location indicated on their confirmation form for the purpose of receiving their lodging accommodations. In many instances, they also received from Genie gaming-meal-and-beverage packages of various casinos, each of which, if used independently, could be redeemed in a specified manner at the casino involved over the course of the three-

day/two-night stay in Las Vegas. The gaming-meal-and-beverage packages were usable at the following casinos: King 8 Hotel and Casino, California Club, Jackpot Casino, Lady Luck Casino, Silver City Casino, Foxie's Firehouse Casino and Castaways. The packages were substantially similar to one or more of CX's 242A-E, 244A-P, 245A-B, 247, 711A-B, 1480, 1769; CPX1-C, CPX1-H, CPX1-Q, CPX1-R, CPX1-S; RX 22 and RX 23. The customers also received photo souvenirs with their gaming-meal-and-beverage package (Stipulation, p. 6 *see, e.g.*, Lawley 463-68; Blackmore 693-97). At the time of their check-in, they were supposed to receive a refund of their room deposit (*see, e.g.*, Lawley 466-67; Blackmore 694; Fs. 35, 125).

37. "Time-sharing" is a method of marketing condominium apartments⁴ by which the use of the condominium is sold to various purchasers in time intervals of one week. The purchaser buys the condominium for a specific interval during each year (*e.g.*, the first week each January), and holds the condominium for that time interval for the life of the property (usually 30 years). The purchase is evidenced by a sales contract (*e.g.*, [12]CX 1928), with the sale price generally paid over a period of four years (McGuire 2354-57). The purchaser of a time-sharing arrangement receives the same shelter space and benefits or amenities as a condominium buyer, but pays a daily usage fee instead of a monthly maintenance fee (McGuire 2355-56).

38. While in Las Vegas, some CRC customers were solicited by a company called Caribbean International in connection with time-sharing arrangements. CRC received \$27 to \$30 for each couple from CRC's Las Vegas vacation program who attended a time-sharing presentation. CRC received this payment regardless of whether the customer purchased a time-sharing arrangement (Joseph Anderson 4066-68).

39. In addition to the vacations, CRC also offered some consumers a Gift Carton whose value was represented as being between \$30.00 and \$40.00, and which was represented to contain such articles as deodorants, shaving creams, razors, aspirins, feminine hygiene products, decongestants, antacid products, shampoos, hand lotions, facial creams, cosmetics, drink mixes, pens, colognes and perfumes or some combination thereof (Taubes 2267-68; Stipulation, p. 3; *see, e.g.*, CX's 53A-D, 349A-C, 2031A-D). These kits were supplied by A. M. Sampling, a New York firm, which sent them directly to CRC's customers. Under the arrangement, CRC paid in advance for the kits.

⁴ A "condominium," as referred to in this Initial Decision, is an apartment deeded in fee simple to the purchaser. The purchaser would also have a pro-rated share of all the commonaries or amenities and all the land that goes with the building, and would pay a monthly maintenance fee (McGuire 2350-52).

The address shipping labels were then forwarded to A. M. Sampling at its Connecticut facilities from a computer house in Chicago. A. M. Sampling then affixed the labels to the kits and sent them to the Post Office for mailing (Taubes 2264, 2267).

40. The perfume contained in the Gift Cartons was initially supplied by Grafton Products and was a house brand called "Beau Bien." Subsequently, CRC requested that A. M. Sampling purchase perfume from various manufacturers and close-out sources and include that perfume in the kits (Taubes 2268). A. M. Sampling later purchased a Faberge perfume ("Xanadu"), a Polly Bergen perfume ("Tortue") and another private label perfume ("Paris Now") for the CRC kits (Taubes 2268, 2272, 2275-76).

41. In CRC's operations, the voluminous responses of consumers were usually received at CRC's Chicago office where they were separated from other types of incoming mail. Correspondence was segregated by type and distributed to specific individuals at CRC. For example, mail addressed to "Mary Nelson" went to the CRC employee who handled reservations. The checks and other forms of payments were pulled from the orders. CRC employees entered the amount paid and placed the orders in a pile. The orders were batched, counted by state, entered into a book and placed in a big tray to be taken to the computer house (Jacobson 4946-51). Some of the incoming mail containing customer checks was sent by CRC unopened to its bank (Third CRC Admissions, Request 16). [13]

42. CRC received an average of 350 to 500 pieces of correspondence per day. It was CRC's policy not to retain consumer correspondence in its files (Jacobson 4973). Correspondence from such entities as Better Business Bureaus, Attorneys General Offices and state or local consumer offices was separated from the general consumer correspondence and, unlike the consumer correspondence, was retained by CRC (Jacobson 4985-87).

43. CRC also made use of a variety of form letters in responding to consumer inquiries and complaints. One such letter consisted of a checklist of form responses to 21 different questions that might arise (CX 215A-B). Other CRC form responses included: refunds (*e.g.*, CX's 217, 231B, 466A); erroneous reservation confirmations (*e.g.*, CX's 177A-C, 179, 197, 1661A); reservation confirmations (*e.g.*, CX's 126, 195, 322, 339, 1946, 2044). The form letters were sent to the consumer along with the consumer's original letter to CRC.

44. Consumers attempting to telephone CRC received a recorded message, generally asking them to write since CRC could not handle the incoming calls (*e.g.*, Peters 49-51; Gorman 194-95; Lawley 445; Tuber 832-33; Third CRC Admissions, Requests 29-30).

C. Raymond Anderson

45. Respondent Raymond Anderson was president and a director of MDC. He is presently president and a director of CRC. He has participated in the operation of MDC and CRC in each of the above capacities (Complaint, ¶ 1 and Answer of Raymond Anderson, ¶ 1).

46. Raymond Anderson is the father of respondent Joseph Anderson and the ex-husband of respondent Juanita Anderson (Juanita Anderson 3707).

47. Prior to the creation of MDC, Raymond Anderson had been involved with several other firms which sold sewing machines through in-home presentations, including the following companies: (a) Universal Sewing Service; (b) Domestic Sales and Service; (c) Budget Sales (Juanita Anderson 3709-10; Joseph Anderson 3918-22).

48. Raymond Anderson filed a voluntary petition in bankruptcy on June 28, 1974 (CX 671A-N).

For a detailed description of Raymond Anderson's activities in connection with MDC and CRC, *see* Fs. 295-330. [14]

D. Joseph Anderson

49. Respondent Joseph Anderson was an employee of MDC from the company's inception in 1969 until its termination in June 1974 (Joseph Anderson 3921, 3928-29; CX 673B; Answer of Joseph Anderson, ¶ 1).

50. Joseph Anderson served as a sewing machine salesman for about one or two years and sales manager for MDC's door-to-door sewing machine sales force in 1972, a position he held for about ten months to a year; as sales manager, he was based at MDC's Hamilton Avenue location (Joseph Anderson 3928-30, 3938, 3949). Subsequently, in 1972 or 1973, he was instructed by Raymond Anderson to go to MDC's Hauck Road plant where he served as a general manager and supervised the printing, mailing and shipping operations of MDC, including the supervision of other MDC personnel such as department managers (Joseph Anderson 3949-51, 3969; CX 2111, p. 15; Juanita Anderson 3731). Joseph Anderson also, in his own words, "kept kind of an eye on things to see" concerning MDC's sewing machine repair department (Joseph Anderson 3971-72).

51. Although Joseph Anderson operated under Raymond Anderson's supervision and reported to him on a daily basis, the former also exercised independent decision making responsibility (Joseph Anderson 3952-55).

52. Joseph Anderson was employed by CRC from May 1975 to July 1976 and worked in Las Vegas where he supervised the operation of

CRC's vacation certificate program; he received a salary paid by CRC (Joseph Anderson 4017-19, 4021-22; Fs. 339, 343).

53. Joseph Anderson graduated from high school in 1964. (Joseph Anderson 3915). Soon after, and prior to his involvement with MDC and CRC, he worked for various companies in which Raymond Anderson had financial or operating interests, including the following two firms which sold sewing machines through in-home presentations: (a) Domestic Sales and Service; (b) Budget Sales; he was employed as an in-home sewing machine salesman (Joseph Anderson 3918-21; F. 47).

For a detailed description of Joseph Anderson's activities in connection with MDC and CRC, *see* Fs. 331-48. [15]

E. Juanita Anderson

54. Respondent Juanita Anderson was employed by MDC from the company's inception in 1969 until its termination in June 1974; she received a salary paid by MDC. She functioned in a supervisory capacity (Juanita Anderson 3716, 3719, 3776; Answer of Juanita Anderson, p. 2).

55. Juanita Anderson was never employed by CRC, although she did interview individuals in Chicago for employment by CRC; she selected one such individual who was subsequently hired (Fs. 316, 318, 353).

56. Juanita Anderson began working for Raymond Anderson in the early 1950's. Prior to the creation of MDC, she had been employed by Raymond Anderson when he was conducting business as Universal Sewing Service (Juanita Anderson 3708-10).

For a detailed description of Juanita Anderson's activities in connection with MDC and CRC, *see* Fs. 349-54.

F. Commerce

57. MDC transacted business with suppliers located outside of Ohio, many of whom shipped goods to MDC in Ohio (Elliott 1237-38, 1242, 1263-66; Taubes 2231-33, 2242-44; *see, e.g.*, CX's 897, 925, 926, 987, 988, 1648, 1649, 1915, 1916, 1924). MDC directed some of its suppliers to ship goods on its behalf to other companies or to consumers situated outside of the states in which the suppliers were located (Karniol 2243; Marcus 3233-35; CX's 1915, 1922). MDC sold and shipped its products to consumers located throughout the United States (CX's 1587, 1588, 1589A-B, 1590, 1591). Thus, MDC has been engaged in a course of trade in or affecting commerce.

58. CRC transacted business with suppliers located outside of

Illinois, some of whom sent products to CRC in Illinois (Taubes 2231-33, 2263-64; Joseph Anderson 4019-22, 4032-33, 4042-43; Third CRC Admissions, Request 37; *see, e.g.*, CX's 702, 703A-B, 705A-B, 706A-B, 1652, 1656A-B, 1938, 1939, 1940, 1943). CRC directed some of its suppliers to ship goods on its behalf to other companies or to consumers situated outside of the states in which the suppliers were located (Taubes 2266-67; *see, e.g.*, CX's 1171-75, 1206-11, 1223-27, 1228-29, 1231-33). CRC sold and shipped its products to consumers located throughout the United States (CX 1236C; Third CRC Admissions, Request 38). Thus, CRC has been and is engaged in a course of trade in or affecting commerce (Third CRC Admissions, Request 36; CRC Sanctions, pp. 3-4). [16]

II. REPRESENTATIONS ALLEGED

A. Contests

59. MDC has represented that it has conducted contests or sweepstakes (Complaint ¶¶ 6(1), 7(1); *e.g.*, CX's 65, 111A-B, 1326, 1332A-B, 1353A, D, 1367A-B, 1702, 1711A-B, 1716A-B). This representation was explicitly made, for example, in the following direct mailings to consumers:

(a) Your sweepstakes entry into our Washington Post Magazine Contest. . . . (CX 1313A.)

(b) MDC Contest Award Division. (*E.g.*, CX's 1317, 1319, 1326, 1327, 1331A, 1701A, 1702, 1705, 1719.)

(c) Do you recall the day that you entered our Sewing Machine Super Sweepstakes Contest? (CX 1326.)

(d) Dear Contest Winner: (CX's 1332A, 1356A.)

(e) CONGRATULATIONS, YOU ARE A WINNER! You will recall that you recently entered our free SUPER SWEEPSTAKES. (CX 1353A.)

(f) Congratulations: It is indeed my pleasure to inform you that your lucky number has been computer selected as a Sweepstakes prize winner. (CX 1367A.)

(g) [G]iant \$300,000 Sweepstakes Contest. (CX 1332A.)

60. MDC disseminated this representation through mass solicitations. For instance, it mailed out about five million solicitations between October 1971 and December 1972, informing recipients that they had won a Treasure Chest (CX's 743A, 1701). In other solicitations, MDC stated that each entrant was an "Instant Winner" in MDC's "Sewing Machine Sweepstakes" (CX's 1730A-B, 1731A-B,

1732A-B); these solicitations totalled at least 4.2 million between September 1973 and May 13, 1974 (CX 1700A-B). [17]

61. On April 25, 1973, Raymond Anderson instructed Joseph Anderson to print 297,000 solicitations to follow up sweepstakes entries and to mail to potential customers who did not respond to various previous mailings (CX 726). In November 1973, MDC was planning to mail follow-up solicitations to 126,000 sweepstakes entrants (CX 693).

62. In numerous instances, the record shows that MDC has not conducted contests or sweepstakes as represented. In such instances, its solicitations were solely for the purpose of obtaining sales or leads for sales. Such solicitations constituted a systematic, retail sales business transacted through mass mailings, and did not involve any elements of skill or chance (*see* F. 110).

B. Specific Number of Contest Prizes

63. MDC has represented that it will award a specific number of products as contest prizes (Complaint ¶ ¶ 6(2), 7(2)). In a solicitation concerning its "giant \$300,000 Sweepstakes," MDC stated:

[W]e will be awarding our grand prizes consisting of:

10 Brand New 1970 Dodge Challengers

50 23" Zenith Chromacolor TV Consoles

21,272 Keystone Camera Kits

75 Samsonite 4-piece Luggage Sets

100 Zodiac Watches (CX 1332B).

64. The record evidence discloses that no automobiles or television sets were given away as prizes pursuant to this solicitation (Joseph Anderson 3979; Juanita Anderson 3872-73).

C. Market Research

1. *Market Development Corporation*

65. In its consumer solicitations, MDC has represented that it was engaged in market research and market analysis (Complaint ¶ ¶ 6(3), 7(3)). The letterfoot of the solicitations often contained the words: "CONTEST DEVELOPMENT [18] AND FULFILLMENT ● DIRECT MARKETING ● MARKET RESEARCH ● CONSUMER MOTIVATION ● COMPUTER EVALUATION OF MARKET POTENTIAL ● MARKET ANALYSIS ● DISTRIBUTOR DEVELOPMENT ON ALL LEVELS, LOCAL, NATIONAL AND INTERNATIONAL." (*e.g.*, CX's 65, 288A, 1332A, 1356A, 1701A, 1706A, 1716A).

66. The term "market research" connotes consumer research directed to probing the consumer for his or her attitude towards a product, including likes and dislikes, frequency of usage and other factors (Taubes 2288).

67. A. M. Sampling was a major Treasure Chest supplier to MDC (Fs. 14, 184). A. M. Sampling basically performed two types of functions. It provided actual market research to manufacturers by assembling and distributing kits of sample products and doing follow-up consumer research on the products. It also assembles promotional packages containing close-out and sample products which are sold in bulk to sales organizations that subsequently redistribute them to their customers for promotional purposes (Taubes 2231-33, 2236-39). MDC purchased promotional packages from A. M. Sampling (Taubes 2242-43).

68. The name "Market Development Corporation" itself, and in the context of the solicitations disseminated to consumers, constituted the representation that MDC was engaged in the business of market research and market analysis.

69. MDC was not involved in market research or market analysis, except insofar as it attempted to retail its own products and services. MDC was a retail mail order house engaged in the business of advertising, promoting, selling and distributing sewing machines, vacation certificates, boxes of household and cosmetic products, and trivets (Fs. 4, 6, 8).

70. Neither MDC nor its Treasure Chest supplier conducted any market research or market analysis in connection with the household and cosmetic product kits that were distributed to MDC customers (Juanita Anderson 3788; Taubes 2288-89).

2. Columbia Research Corporation

71. In its consumer solicitations, CRC has represented that it was engaged in market research and market analysis (Complaint ¶ ¶ 6(3), 7(3)). The letterfoot of the solicitations often contained the words: "MARKET RESEARCH ● COMPUTER MARKETING SERVICES ● DIRECT MARKETING ● MARKET ANALYSIS." (e.g., CX's 39A, 82A, 93A, 124A, 147A, 156A, 169A, 174A, 335A, 810A, 2003A). [19]

72. A. M. Sampling was a major Treasure Chest supplier to CRC. See F. 67, for a description of the types of functions performed by A. M. Sampling. CRC purchased promotional packages from A. M. Sampling (Taubes 2264).

73. The name "Columbia Research Corporation" itself, and in the context of the solicitations disseminated to consumers, constituted the

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representation that CRC was engaged in the business of market research and market analysis.

74. CRC is not involved in market research or market analysis, except insofar as it attempts to retail its own products and services. CRC is a retail mail order house engaged in the business of advertising, promoting, selling and distributing vacation certificates, boxes of household and cosmetic products, and miscellaneous other products or services (Fs. 21, 22, 26; CRC Sanctions, pp. 3-4).

75. Neither CRC nor its Treasure Chest supplier, A. M. Sampling, conducted any market research or market analysis in connection with the household and cosmetic product kits distributed to CRC customers (Taubes 2289; CRC Sanctions, pp. 3-4).

D. Incentive Promotions

1. *Market Development Corporation*

76. In solicitations sent to prospective customers, MDC has represented directly and indirectly that it was engaged in incentive programs or promotions (Complaint ¶ ¶ 6(4), 7(4)). MDC made this representation in the following statements:

(a) This is an incentive program offer. (CX's 1330B, 1742B, 1744A.)

(b) To acquaint you with the newest advances of modern sewing, our merchandising department has been authorized to include in this GIFT BOX a special GIFT CHECK. (CX 1739A.)

(c) Naturally all of our participating co-sponsors are very proud of their products and feel that through this program you will have an opportunity to acquaint yourself first hand with their many fine products, including fun-filled exciting vacation facilities. (E.g., CX's 1701B, 1706B, 1716B, 1726.) [20]

77. MDC made this representation in millions of solicitations that were disseminated to consumers. For example, MDC mailed out its solicitation No. 123ER (CX 1726; F. 76(c)) to approximately eight million households between April 1973 and May 13, 1974 (CX 1700A).

78. MDC did not have a contractual relationship or any other business relationship with any of the manufacturers who were depicted as co-sponsors and were referred to as such in its solicitations except solely as a direct or indirect purchaser of their goods and services (Fs. 86, 87).

79. MDC did not engage in incentive programs or promotions and made no special or incentive offers to prospective customers. Rather, MDC was in the business of selling sewing machines, vacation certificates, Treasure Chests and trivets (F. 6).

2. Columbia Research Corporation

80. In solicitations sent to prospective customers, CRC has expressly represented that it was engaged in incentive programs or promotions (Complaint ¶¶ 6(4), 7(4)) by making the affirmative statement, "This is an incentive program offer." (e.g., CX's 39D, 53D, 82D, 93D, 125, 147C, 156D, 169D, 174D, 335D, 810D, 2003D).

81. Customers of CRC believed this representation with respect to hotels and casinos in Las Vegas (Blackmore 689; Andrews 785; Cain 866), and often viewed CRC's goods and services as being of a promotional nature and as a form of advertising (Cain 866; Stipulation, p. 2).

82. CRC did not have a contractual relationship or any other direct business relationship with any of the manufacturers who were depicted as co-sponsors of its offers except solely as a direct or indirect purchaser of their goods and services (Fs. 90, 91).

83. CRC did not engage in incentive programs or promotions and made no special or incentive offers to prospective customers. CRC is in the business of selling vacation certificates, Treasure Chests, blackjack books and memberships in a consumers' buying club (F. 21; CRC Sanctions, pp. 3-4). [21]

E. Co-Sponsorship and Representation of Other Companies

1. Market Development Corporation

84. In its consumer solicitations, MDC has represented that it had co-sponsors and that it represented other companies (¶¶ 6(5), 6(6), 7(5), 7(6)). MDC made this representation through statements such as:

(a) All of our participating co-sponsors are contributing their share toward this fabulous sweepstakes. It is only through their combined advertising budgets, along with ourselves, Market Development Corporation, that makes this entire presentation possible. Naturally, all of our participating co-sponsors are very proud of their products and feel that through this program you will have an opportunity to acquaint yourself first hand with their many fine products, including fun-filled exciting vacation facilities. (E.g., CX's 111B, 288B, 733B, 1367B, 1701B, 1716B, 1721B, 1747E.)

(b) Leading companies and hotels are cooperating in this program to acquaint you, first hand, with their offerings Market Development Corporation has been selected to make these gift offerings available to you. . . . (CX 1729A.)

(c) Market Development Corporation acquires these fine products and fun-filled exciting vacation opportunities at a minimum cost from independent companies who in turn obtain them from manufacturers in exchange for the definite promise that their products will be distributed to a desirable cross section of consumers. (E.g., CX 1711B.)

85. MDC also made this representation in conjunction with its use

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of the Hunt-Wesson Foods, Inc. name. In addition to distributing a questionnaire dealing with Hunt-Wesson products together with product coupons, MDC represented in its literature that Hunt-Wesson was sponsoring the promotion offered by MDC to consumers (Pill 584-86, 597-98; Ryan 1041-44; CX's 110, 117, 118A-C). [22]

86. MDC did not have any contractual relationship or other direct business relationship with manufacturers and suppliers of goods and services distributed by MDC to its customers except as a direct or indirect purchaser of the goods and services. These manufacturers and suppliers neither considered themselves co-sponsors of MDC's program nor considered MDC to be their co-sponsor (Karniol 2052-57, 2069, 2111-12; Nolan 994, Ryan 1044-45; Selman 4473, 4480, 4486-87; CX's 116, 118C).

87. Thus, MDC neither represented other companies nor had co-sponsors. Both Hunt-Wesson Foods, Inc. and Walt Disney Productions specifically disclaimed any connection with MDC and demanded that MDC cease using their names in its literature because of the false impression generated among consumers as to their connection with MDC (CX's 116, 118C, 732, 1747A-B, H-I, 1749A-B; Nolan 994).

2. Columbia Research Corporation

88. In its consumer solicitations, CRC has represented that it had co-sponsors and that it represented other companies (Complaint ¶¶ 6(5), 6(6), 7(5), 7(6)). CRC made this representation through phrases such as:

- (a) Participating sponsors. (E.g., CX's 53B, 124B, 169B, 278B, 1668B, 2031B).
- (b) Our clients. (CX's 376C, 503C).
- (c) Client-sponsors. (E.g., CX's 335A, 346A, 397A, 413A, 478A, 498A, 526A, 595A, 1980A, 2000A, 2003B).
- (d) Las Vegas is one of the biggest and best promoters around. . . . That's why they have authorized me to offer a limited number of Vacations for Two. (E.g., CX's 32C, 39A, 82A, 283E, 712A, 1389A, 1802A, 1869A.)

89. Some of CRC's customers believed this representation (Cesario 2577; Holtzman 2641-42; Other 2885; Birch 2994; Gerstad 3278; Stipulation, p. 2).

90. CRC did not have any contractual relationship or other direct business relationship with manufacturers and suppliers of goods and services distributed by CRC to its customers except as a direct or indirect purchaser of the goods [23] and services. These manufacturers and suppliers neither considered themselves co-sponsors of CRC's

program nor considered CRC to be their co-sponsor (Nolan 994-95; McGuire 2429-31; Selman 4474, 4480, 4486-87; CX 1636; CRC Sanctions, pp. 3-4; Third CRC Admissions, Requests 7-8, 47-48).

91. Thus, CRC neither represented other companies nor had co-sponsors. For instance, Dow Chemical had specifically disclaimed any connection with CRC (CX 1636).

F. Special Selection

1. *Market Development Corporation*

92. In its consumer solicitations, MDC has represented that recipients of its offers had been specially selected. (Complaint ¶¶ 6(8), 7(8)). For example, MDC made this representation through statements such as:

(a) Since your entry has been selected in our national sweepstakes I am sure you will be anxious to take advantage of this once in a lifetime offer. (CX 65B; *see, e.g.*, CX's 1331B, 1711B, 1741B.)

(b) [I]n the process of selecting a first prize winner in the National Sweepstakes Drawing, your name was also computer selected. (*E.g.*, CX's 111A, 288A, 1716A, 1721A.)

(c) [Y]our lucky number has been computer selected as a Sweepstakes prize winner. (*E.g.*, CX's 733A, 1367A, 1701A.)

(d) [O]ur computers have selected [your] magic house number . . . YOU ARE TO RECEIVE THE FOLLOWING: . . . [T]oday is indeed your lucky day. (CX 1725.)

93. MDC did not select a limited number of consumers to receive its promotional offers. Rather, MDC disseminated its solicitations by means of mass mailings. Millions of consumers throughout the United States received essentially identical offers from MDC (F. 8). For instance, eight million vacation and Treasure Chest solicitations [24] (CX's 1725, 1726A-B) were sent by MDC to consumers between April 1973 and May 13, 1974 (CX 1700A); each such solicitation contained the statement, "our computers have selected [your] magic house number" (CX 1725), implying that the recipient was specially selected. MDC mailed out approximately five million Treasure Chest solicitations (CX 1701A-B) between October 1971 and December 1972, informing each recipient that "your lucky number has been computer selected as a Sweepstakes prize winner" (CX's 1701, 1701A). In fact, MDC mailed out approximately 10.2 million solicitations of various kinds between January 1, 1973 and May 13, 1974, all making the representation to the consumer that he or she had been specially selected (CX's 1700A-B, 1705, 1706A, B, 1710, 1711A, B, 1715, 1716A, B, 1720, 1721A, B, 1725, 1726A-B, 1733A, B, 1738A, D, 1740, 1741B). The 14 million households

to whom MDC sent solicitations during this time period constituted about 20% of the 68.2 million households in the United States for 1973 (CX 1143).

94. There were no "lucky numbers." The registered numbers on the vacation certificate order forms identified the particular magnetic tape being used and the sequential position of the customer's name on that tape. For example, the registered number 165-027228 found on CX 835 means that the customer with that number was the 27,228th name on tape 165 (Sarbaugh 3657-59).

95. To further illustrate the fact that MDC was concerned with presenting its offers to as many consumers as possible rather than to a select few, MDC stated in its solicitations that recipients could transfer the Holiday Vacation Gift Certificate to another couple (e.g., CX's 1703B, 1706C, 1708B, 1712A, 1713B, 1723) or invite another couple along on the vacation for \$15.00 extra using the additional order forms provided (CX's 1726B, 1727A).

96. Therefore, MDC did not specially select the recipients of its offers.

2. Columbia Research Corporation ("CRC")

97. In its consumer solicitations, CRC has represented that recipients of its offers had been specially selected (Complaint ¶¶ 6(8), 7(8)). For example, CRC made this representation through statements such as:

(a) [Las Vegas has] authorized me to offer a limited number of Vacations for Two. And . . . the computer selected *your name* among others, as the lucky person to receive this invitation. . . . (E.g., CX's 32C, 39A, 82A, 712A, 1389A, 1802A.) [25]

(b) Today's a lucky day for you. Because our computers have selected [name of recipient] The computer has programmed your lucky registration number for you to receive (E.g., CX's 272A, 1678E, 1678K.)

(c) YOU ASK—WHY HAS THE COMPUTER SELECTED ME? (E.g., CX's 272B, 1678F, 1678L.)

(d) [Y]our name has been selected by our computer (E.g., CX's 53A, 93A, 124A, 169A, 278A, 1668A.)

(e) [Y]our name has been selected by the computer of our consumer research company. . . . (E.g., CX's 32C, 39A, 82A, 335A, 397A, 467A, 524A, 712A, 1389A, 1802A.)

(f) BECAUSE YOU HAVE BEEN SELECTED (E.g., CX's 82A, 93E, 283E, 712A, 1389A, 1802A.)

(g) You may be asking yourself—why has the computer selected me? (E.g., CX's 335A, 397A, 467A, 524A.)

98. CRC did not select a limited number of consumers to receive its promotional offers. Rather, CRC disseminated its solicitations by means of mass mailings. Millions of consumers throughout the United States received essentially identical offers from CRC (Wray 5245, 5247; CRC Sanctions, pp. 3-4).

99. There was no special computer selection of recipients of CRC's offers. CRC merely selected the mailing lists which it felt would contain the names of those categories of customers who would be most likely to respond to CRC's solicitations (Fs. 22, 23, 25; Sutton 4227; CX 1086).

100. Furthermore, Invite-a-Friend forms were routinely sent by CRC to many consumers (*e.g.*, CX's 196A, 208, 284B, 1678, 1678H, 1830A; Third CRC Admissions, Requests 9-10). Some of CRC's customers did not receive solicitations but, rather, purchased the vacations through CRC's Invite-a-Friend program (Stipulation, p. 2, n.2).

101. Therefore, CRC did not specially select the recipients of its offers (CRC Sanctions, pp. 3-4). [26]

G. "Once In a Lifetime" Opportunities

102. In its consumer solicitations, MDC has represented that its offer was a "once-in-a-lifetime" opportunity (Complaint ¶ ¶ 6(12), 7(12); *see* CX's 65B, 1331B, 1711B, 1739A, 1741B).

103. However, MDC frequently sent more than one mailing of its promotional offers to the same individual, including repeat mailings to consumers who had not responded to a first mailing (CX's 726, 820, 848, 853, 854, 855; Sarbaugh 3671-77). Thus, MDC did not present consumers with "once-in-a-lifetime" offers.

H. Contest Winners

1. *Market Development Corporation*

104. MDC has represented that recipients of its solicitations were contest or sweepstakes winners (Complaint ¶ ¶ 6(7), 7(7)). For example, MDC made the following references in its solicitations:

- (a) Dear Sweepstakes Winner: (*E.g.*, CX 65).
- (b) Dear Contest Winner: (*E.g.*, CX's 1332A, 1356A).
- (c) [E]ligible contest winner. (*E.g.*, CX's 1313B, 1332B, 1356B, 1367B).
- (d) [Y]our contest winning certificate. (*E.g.*, CX 1313B).
- (e) As a Lucky Sweepstakes winner you. (*E.g.*, CX 1332A).

(f) [M]y contest winnings. (*E.g.*, CX 1332E).

(g) [M]y Sweepstakes winnings. (*E.g.*, CX 1368A).

(h) CONGRATULATIONS, YOU ARE A WINNER. (*E.g.*, CX 1738A).

105. Small Business Data Processing Corporation, a firm providing data processing, computer letter writing and mailing list maintenance services to its customers (Sarbaugh 3624), received instructions from MDC to stamp "WINNER" on the filled-in entry blanks returned by consumers to MDC. These entry blanks were the basis of other forms sent back to consumers soliciting purchases (CX 1593; Sarbaugh 3662-64). [27]

106. As to these representations, MDC did not conduct bona fide contests or sweepstakes; such solicitations were solely for the purpose of obtaining sales or leads for sales (F. 62). Thus, recipients of MDC's solicitations were neither sweepstakes nor contest winners.

2. Columbia Research Corporation

107. CRC has represented that recipients of its solicitations were winners (Complaint ¶ ¶ 6(7), 7(7)), when, in actuality, those recipients had not won anything (*see* Fs. 112-14; CRC Sanctions, pp. 3-4).

108. Some consumers believed that they were winners (Maccarrio 3025-26; Huber 3085).

I. Prizes, Awards, Winnings, Gifts, Bonuses, Free Goods and Services

1. Market Development Corporation

109. MDC has represented that recipients of its solicitations were entitled to "awards," "gifts," "prizes," "winnings," "bonuses," and/or "free" goods and services (Complaint ¶ ¶ 6(9), 7(9)). MDC made these representations through the use of such terms as:

(a) Awards (*E.g.*, CX's 1331A, 1332A, C, D, E, 1367A-B.)

(b) Gifts (*E.g.*, CX's 1313A-B, 1326, 1331A-B, 1337B, 1353A, 1356A-B, 1367B.)

(c) Prizes (*E.g.*, CX's 1313A, 1319, 1332A-B, 1356A, 1367A-B, 1368A.)

(d) Winnings (*E.g.*, CX's 1313B, 1332B, E, 1353D, 1356B, 1367B, 1368A.)

(e) Bonuses (*E.g.*, CX's 1313A-B, 1326, 1330B, 1331A-B, 1337A, 1353A, 1357, 1367B, 1368A.)

(f) Free (*E.g.*, CX's 1313A, 1331A, 1337A, 1357A, 1357, 1368A.)

110. MDC did not conduct actual contests or sweepstakes (F. 62). Rather, MDC's solicitations presented consumers with offers that had obligations attached to them. For instance, in certain solicitations a customer would have to purchase a vacation in order to receive a "free" Treasure Chest; in other solicitations a customer would have to purchase a Treasure Chest in order to get a "free" vacation (CX 1703A, 1729A-B). On other occasions, a customer would have to purchase [28] a sewing machine or Treasure Chest in order to receive a "free" vacation and/or trivet (CX 1330A-B; Flach 3569; Harris 5152-53). Each transaction between CRC and a consumer carried with it a monetary obligation on the part of the consumer to pay the purchase price of either a sewing machine, a vacation certificate or a Treasure Chest (e.g., CX's 1330A-B, 1703A, 1729A-B).

111. Thus, the recipients of MDC's offers were not entitled to any "prizes," "awards," "winnings," "gifts," "bonuses," and/or "free" goods and services. On the contrary, they were only entitled to purchase them at MDC's stated retail price.

2. Columbia Research Corporation

112. CRC has represented that recipients of its solicitations were entitled to "gifts," "bonuses," and/or "free" goods and services (Complaint ¶¶ 6(9), 7(9)). CRC made these representations through the use of such terms as:

(a) Gifts (E.g., CX's 349A, C, D, 354A, C, D, 376A, C, D, 397A, D, 413A, C, D, 467A, D, 1677D.)

(b) Bonuses (E.g., CX's 349A, 354A, 376A, 397A, 413A, 467A, 1389C.)

(c) Free (E.g., CX's 304C, 349A, C, 354A, 376B, C, 1389C, 1677A, C.)

In certain solicitations, CRC implied that consumers would be receiving free goods and services in the following statement:

You may be asking yourself—why has the computer selected me? How can I check into a deluxe hotel and check out without paying the cashier a cent—plus get all the other money—saving benefits? (E.g., CX's 335A, 349A, 397A, 413A, 467A, 509A.)

CRC also made the representation that recipients of its solicitations would receive a free vacation (F. 120). [29]

113. Each CRC customer had to purchase CRC's vacation package in order to receive the Gift Carton. Receipt of the Gift Carton, therefore, carried with it a monetary obligation on the part of the consumer, namely, payment of a \$15.00 or \$15.95 fee (e.g., CX's 304B, 335D, 349C, 354C, 376C, 413C, 467D, 1677B).

114. Thus, the goods and services offered by CRC are neither free nor gifts nor bonuses (CRC Sanctions, pp. 3-4).

J. Free Vacation

1. *Market Development Corporation*

115. MDC has represented that it was offering a free vacation to the recipients of its solicitations (Complaint ¶ ¶ 6(13), 7(13)). The representation was made by including a certificate with the solicitation bearing the words "FREE VACATION" in bold red print on its face (CX's 1357, 1368A, 1703A). In addition, the solicitations contained words such as "special free vacation activities" (CX 1741A) and described recipients of the vacation offer as sweepstakes and contest prize winners (e.g., CX's 1356A, 1367A, 1701A, 1740; Fs. 104, 105). The \$15.00 cost to the consumer is described by MDC as a registration, handling and service charge (F. 130).

116. In order to receive the "free" vacation offered by MDC, consumers were required to pay at the outset the aforementioned \$15.00 fee (e.g., CX's 1367B, 1368A, 1701B, 1703A).

117. Moreover, MDC required its customers to pay their own transportation costs and additional charges in some instances during peak season, facts which were disclosed only in the fine print usually contained at or near the end of MDC's solicitations materials (e.g., CX's 1367D, 1368B, 1703B, 1723).

118. In order to take advantage of all the benefits of MDC's "free" vacation package, customers would have to visit numerous business locations which were frequently geographically distant from one another; customers would also have to spend their own money at each place of business. MDC's solicitations did not inform consumers of these conditions (F. 162).

119. In light of the above findings of fact, recipients of MDC's offers were not offered and did not receive free vacations. [30]

2. *Columbia Research Corporation*

120. CRC has represented that it was offering a free vacation to the recipients of its solicitations. (Complaint ¶ ¶ 6(13), 7(13)). For example, this representation was made through the use of words and phrases such as:

(a) [D]eluxe accommodations for two paid for in full. (E.g., CX's 53A, 169A, 2031A.)

(b) Are You in For a Big Jackpot Surprise!!!! (E.g., CX's 53A, 169A, 2031A.)

(c) Anytime a *casino* is giving away free rooms and money. (*E.g.*, CX's 156C, 224C, 304C, 1677C.)

(d) [A] 3-DAY-HOLIDAY-FOR-TWO "on the house." (*E.g.*, CX's 174A, 224A, 304A, 810A, 1677A.)

121. In order to receive the "free" vacation offered by CRC, consumers were required to pay at the outset a \$15.00 or \$15.95 fee which was designated as a registration, handling and service charge (*e.g.*, CX's 53B, D, 156B, 169B, 174B, 224B, 304B, 810D, 1677B, 2031B, D; Fs. 28, 132).

122. CRC required its customers to pay their own transportation costs, a fact disclosed only in the fine print on the solicitations and/or buried in the four pages of the solicitations (*e.g.*, CX's 32E, F, 39C, D, 53D, 82C, D, 2031D, 2037).

123. CRC and its agents have also often required customers to submit a refundable room deposit of \$10.00 to \$25.00 in order to confirm their reservations (*e.g.*, Peters, 45-46; CX 105; Williamson 117-18; CX 1392; Janov 285-87; CX 59; Gross 351-53; Rees 400-01, 415; CX 120A; Lawley 448-49; CX 1760A; Bratschi 638; Szitkar 744; CX 146; Dworak 908; CX's 306, 309; Bryan 1142-43; CX 257; Breece 1189-90; CX's 194, 198A; Torres 1374; Benun 1454; CX 220; Hellor 1569-70; CX 50; Darrah 1734, 1752; CX 285; Engleman 2498-2500; CX's 401, 402; Joseph Anderson 4079-80; Stipulation, p. 5).

124. In many instances, the room deposit requirement was not disclosed at all to consumers until after they sent in their initial \$15.00 or \$15.95 fee (*e.g.*, CX's 53, 194, 304, 1392, 1677D, 2031D); on some occasions, the deposit requirement was disclosed only in the fine print usually contained at the end of CRC's solicitations material (*e.g.*, CX's 156D, 169D, 224D, 810D, 2031D). [31]

125. The deposit was to be refunded to the customer either in cash or in casino script (*e.g.*, CX's 59, 204B, 319; Joseph Anderson 4080-81). In some instances, customers who had paid a deposit either never received a refund of their deposit or received a refund only after a considerable time period had elapsed, or after they had contacted various consumer protection groups and/or written several letters to CRC (*see, e.g.*, Lawley 466-67, 473-74; CX 1771; Dworak 919-20, 935, 938; CX's 315-17; Bryan 1142-45, 1156; Heller 1572, 1579-81).

126. CRC's customers often had to pay additional charges for their hotel room beyond what was disclosed in the initial solicitation. Such charges included the room tax and peak season or extra charges of \$5.00 per person per night. (Joseph Anderson 4064-65 *see, e.g.*, Lawley 485; Bratschi 644; Blackmore 694; Dworak, 934-36; Bryan, 1145-46; CX 275). In some instances, CRC's solicitations did not disclose the

existence of any such additional charges, including the existence of "peak season charges" or charges for weekend arrivals (*e.g.*, CX's 53, 156, 169, 224, 304, 810, 1677); the customer first learned of these extra charges when he or she received a reservation request form or reservation confirmation (*e.g.*, Gorman 182, 189-90; CX's 31A-B, 35A-B; Rees 393-94; CX 129; Holmes 509; Bratschi 644-45; Blackmore 694; Dworak 934, 936; Horton 1084-85; Bryan 1145-46; CX 275; CX's 46A-B, 48; CX 165; Darrah 1739-40; CX 1989; Stipulation, p. 7, n.17).

127. CRC and its agents told some consumers that there would be an additional fee for changing reservation dates even though it was CRC or its agent who provided wrong or useless dates (*e.g.*, Lawley 460-62; CX 1766; CX 165).

128. In order to take advantage of all the benefits of CRC's "free" vacation package, customers would have to visit numerous business locations which were frequently geographically distant from one another; customers would also have to spend their own money at each place of business. CRC's solicitations did not inform consumers of these conditions (Fs. 165, 216).

129. In light of the above findings of fact, recipients of CRC's offers were not offered and did not receive free vacations. [32]

K. Registration, Handling and Service Charge

1. *Market Development Corporation*

130. In its consumer solicitations, MDC has represented that prospective customers were entitled to the goods and services offered for only a registration, handling and service charge of \$15.00 (Complaint ¶¶ 6(10), 7(10)).

MDC made this representation by stating: "There is a \$15.00 (total cost to you) service charge to supplement the cost" of registration, packaging, handling, freight charges, advertising and other miscellaneous costs (*e.g.*, CX's 288B, 1337B, 1368A, 1701B, 1703A, 1716B, 1717A, 1721B, 1722A).

131. The record evidence is insufficient to support complaint counsel's allegation (CPF 101) that the \$15.00 registration, handling and service charge constituted all or part of the retail price of the goods and services offered by MDC; accordingly, no further finding can be made on this point.

2. *Columbia Research Corporation*

132. In its consumer solicitations, CRC has represented that prospective customers were entitled to the goods and services offered

for only a registration, handling and service charge of \$15.00 or \$15.95 (Complaint ¶¶ 6(10), 7(10)).

CRC made this representation by making statements such as: "There is a very small charge of \$15.00 (total cost to you) that we must charge to supplement the cost" of registration, confirmation, computer processing, handling and other miscellaneous costs (*e.g.*, CX's 53B, 169B, 1668B, 2031B; *see also, e.g.*, CX's 272D, 376C, 467D, 525C, 810D, 1677B, 1678H, 2003D).

133. The record evidence is insufficient to support complaint counsel's allegation (CPF 103) that the \$15.00 or \$15.95 registration, handling and service charge constituted all or part of the retail price of the goods and services offered by CRC; accordingly, no further finding can be made on this point.⁵ [33]

L. Number of Customers

134. MDC has represented itself as having 340,000 customers (Complaint ¶¶ 6(16), 7(16)). MDC made this representation by stating that, "Within the last two years, over 340,000 families have taken us up on our offer, and over 48,000 have placed their second order." (CX's 1337B, 1726B).

135. The record evidence is insufficient to support complaint counsel's allegation (CPF 95) that MDC did not have 340,000 customers who accepted its offered goods and services; accordingly, no further finding can be made on this point.⁶

M. Limited Time

1. *Market Development Corporation*

136. MDC has represented that recipients of its consumer solicitations had a limited time within which to respond to the "offers" in the mailings, and that failure to meet the time limit would result in forfeiture of any right to "accept" such offers (Complaint ¶¶ 6(11), 7(11)). MDC made this representation through statements such as:

(a) Unless I hear from you within the next 10 days, I must assume that you are not interested in taking advantage (*E.g.*, CX's 65B, 1313B, 1331B, 1337B, 1353D, 1711B, 1739D.)

(b) Unless I hear from you within the next seven [or 10] days, I must assume that you are not interested in taking advantage At that time, I will be compelled to pass

⁵ It is noted that this allegation of the complaint (Complaint ¶ 7(10)) must be taken as established adversely to Raymond Anderson in his personal capacity (Raymond Anderson Sanctions, p. 2).

⁶ It is noted that this allegation of the complaint (Complaint ¶ 7(16)) must be taken as established adversely to Raymond Anderson in his personal capacity (Raymond Anderson Sanctions, p. 2).

your winnings on to the next eligible contest winner. (*E.g.*, CX's 1332B, 1356D, 1367B, 1701B, 1733B, 1738D, 1741B.)

(c) I have enclosed complete details, along with acceptance form and a return envelope which must be sent to me within the next 10 days in the event you wish to accept this offer. (*E.g.*, CX 1725.) [34]

137. In view of the paucity of record evidence supporting this allegation of the complaint (CPF 97), no finding of fact can be made that recipients of MDC's offers did or did not have a limited time within which to claim the offered goods and services.⁷

2. Columbia Research Corporation

138. CRC has represented that recipients of its consumer solicitations had a limited time within which to respond to the offers in the mailings, and that failure to meet the time limit would result in forfeiture of any right to "accept" such offers (Complaint ¶ ¶ 6(11), 7(11)). CRC made this representation through statements such as:

(a) This is a very limited offer So you must act at once Unless I hear from you within the next 10 days I must assume that you are not interested in accepting. . . . (*E.g.*, CX's 53B-C, 93B-C, 124B-C, 169B-C, 2031B-C.)

(b) We ask you to act promptly and acknowledge this notification *within 10 days* to assure your eligibility for all your benefits. (*E.g.*, CX's 39D, 82D, 93H, 1802D, 1869D.)

(c) I can't promise to hold your computer-registered number longer than 10 days. (*E.g.*, CX's 335D, 346D, 509D.)

139. Some CRC customers believed this representation (Rees 386-87; Holmes 498; Bratschi 630; Tuber 822-23; Cain 867-68; Bryan 1130-31; Torres 1371; Cesario 2578; Otner 2886-87; Macario 3025; Gerstad 3279; Stipulation, p. 2). No time limit exists within which recipients of CRC's solicitations must remit their money. Recipients may make their purchases more than 10 days after receiving the solicitation (CRC Sanctions, pp. 3-4).

N. Vacation Times, Locations and Accommodations

1. Market Development Corporation

140. In its consumer solicitations, MDC has represented that recipients could select a vacation at a time of their choosing (Complaint ¶ ¶ 6(14), 7(14)). This representation was made through variations on such statements as: [35]

⁷ It is noted that this allegation of the complaint (Complaint ¶ 7(11)) must be taken as established adversely to Raymond Anderson in his personal capacity (Raymond Anderson Sanctions, p. 2).

(a) You have a full year to decide where and when you wish to take advantage of your Vacation Certificate. (*E.g.*, CX's 111B, 288B, 1367B, 1716B, 1721B.)

(b) You have one full year to take advantage of your Vacation for Two. (*E.g.*, CX's 1331B, 1332B, 1356B, 1741B.)

(c) [G]ood for one full year from date issued. (*E.g.*, CX's 1357B, 1368A, 1703A, 1708A, 1718A, 1737.)

(d) You don't have to make your reservations now. . . . You do this when you are ready to go on your vacation. You have a full year to decide. (*E.g.*, CX's 1337B, 1726B.)

141. In these consumer solicitations, MDC has represented that consumers could select a vacation at a location from among several choices. MDC usually presented prospective customers with a choice of three resort areas: Las Vegas, Nevada; Miami Beach, Florida; or Central Florida (Disney World, near Orlando) (*e.g.*, CX's 111A, 288A, 1331A, 1356A, 1701A, 1703A, 1706A, 1708A, 1722A, 1725, 1726A, 1729A, 1733A, 1741A). In addition, MDC also offered other locations, including Sarasota, Florida (*e.g.*, CX's 1744A, 1737, 1706A); New Orleans, Louisiana (*E.g.*, CX's 1332A, 1706A, 1737); St. Petersburg, Florida (*e.g.*, CX's 1706A, 1737, 1744A); Reno or Lake Tahoe, Nevada (*e.g.*, CX 1332); Palm Beach, Florida (*e.g.*, CX 1332A); Clearwater, Florida (*E.g.*, CX 1706A); and Ft. Lauderdale, Florida (*e.g.*, 1706A, 1744A).

142. MDC also has represented that recipients of its offers would receive accommodations at hotels or resorts of their choosing, including the Hacienda Hotel in Las Vegas and the Fontainebleau Hotel in Miami Beach (*e.g.*, CX's 111A-B, 288A-B, 1356A, 1367A-B, 1701A-B, 1703A, 1704B, 1708A-B, 1711A-B, 1718A).

143. Vacation accommodations provided by MDC were not always available for the particular time and/or location selected by the customer, and customers were asked to change their choices of times or locations in order to get accommodations (Juanita Anderson 3747-48). For instance, vacation accommodations for the Hacienda Hotel were not available through MDC (CX's 684, 682, 683, 685, 687). Furthermore, some of the vacation accommodations provided to customers by MDC were not for those cities or areas desired by the customers (CX's 1549-51). [36]

144. Thus, MDC's customers did not always have their choice of vacation times, locations or accommodations, with the actual arrangements made by MDC sometimes differing from customers' selections.

2. Columbia Research Corporation

145. In its consumer solicitations, CRC has represented that recipients could select a vacation at a time of their choosing (Complaint

¶ ¶ 6(14), 7(14)). This representation was made through variations on such statements as:

(a) You have a full year to take advantage of your Vacation For Two (*E.g.*, CX's 32D, 39B, 82B, 283F, 1802B, 1869B.)

(b) You don't have to make your reservations now. . . . You do this when you are ready to go on your vacation. You have one full year to decide. (*E.g.*, CX's 53B, 93B, 124B, 169B, 278B.)

(c) You have a full year to decide where and when you use your Vacation Certificate. (*E.g.*, CX's 53C, 93C, 124C, 169C, 278C.)

(d) If you act now, I can promise you all your benefits will be reserved for you to use anytime during the coming year. (*E.g.*, CX's 101C, 156C, 224C, 304C.)

146. CRC, in the regular course of business, opened and forwarded incoming orders to its computer service, Universal Data Systems, Inc., the same day (Jacobson 4946-48; F. 28). Universal processed those incoming orders, and printed vacation certificates and shipping labels in the regular course of business (F. 24). Universal Data Systems also printed reservation confirmations, normally three times per week (RX 62-231, -253).

147. Vacation accommodations provided by CRC and its agents were, and continue to be, unavailable for certain times of the year in certain locations. For instance, CRC's customers were not able to be accommodated in Las Vegas for Thursday, Friday, Saturday or holiday arrivals (CX's 218, 628, 778, 1089B-C, 1885; Joseph Anderson 4053-55; Bratschi 638-39; Banos 1664-69; Kegley 4811-12; Stipulation, p. 4, n. 8).

148. CRC and its agents repeatedly informed customers that the vacation dates they had requested were booked, [37]and that they should select alternate dates (Gorman 183-85; CX 31C; Andrews 790-91; CX 179; Tuber 824-29; CX's 1670-73; Horton 1085-87; CX 1791; Wiersma 1219-30; CX's 795-97, 1812, 1814, 1815, 1817, 1818; Benun 1428-30; CX's 218, 219; Riesenfeld 1616-17; CX's 1660, 1662). In at least one instance, a CRC customer was told, "The entire month of May is booked to capacity." (CX 1487).

149. The times selected for vacation accommodations would also be unavailable to some of CRC's Las Vegas customers because CRC oversold available accommodations (F. 258).

150. At times, CRC and its reservation agents gave consumers vacation accommodations far different from those they selected (*e.g.*, Gorman 187-90; Lawley 460-62; Cain 868-74; Bryan, 1137-40. *See also* Stipulation, p. 4, n. 8, and p. 5, n. 10; Joseph Anderson 4043-44).

151. CRC has represented that consumers could select a location of

their choice for their vacation. For instance, one solicitation made the following offer:

A luxurious Family Vacation For Two with deluxe lodging at your choice of fabulous resort areas including Orlando, Florida—home of Walt Disney World—or Las Vegas or Puerto Rico. (*E.g.*, CX's 335A, 346A.)

Other solicitations offered location choices such as: Reno, Nevada (*e.g.*, CX 509B); St. Petersburg, Florida (*e.g.*, CX 346C); and Miami Beach, Florida (*e.g.*, CX 349C); (*see also, e.g.*, Brady 228; Gellhorn 2819).

152. Vacation accommodations provided to customers by CRC and its agents were not always for the requested locations (Cesario 2588-89; CX's 374A-B, 1971; Berliner 2694-98; CX's 1988, 1989, 1994A-B). Some customers were informed by CRC and its agents that reservations were unavailable for certain locations (*e.g.*, Berliner, 2699-2704; CX's 1997, 1998, 1999; Gellhorn 2836-40, 2845-46, 2862-65; CX's 422, 423, 1058; Stipulation, p. 5, n. 10).

153. CRC represented that recipients of its offer would be accommodated at specific hotels or resorts, including the California Hotel and Casino (*e.g.*, CX's 397B-C, 1980B-C), the El Conquistador Hotel (*e.g.*, CX's 346C, 467D) and the Bay Shores Yacht & Tennis Club (*e.g.*, CX's 503A, 536A-B). [38]

154. CRC's customers were not provided with vacation accommodations at the California Hotel and Casino or El Conquistador Hotel (Boyd 1816-17; Berger 4255-56; CX 343). Vacation accommodations for the Bay Shores Yacht & Tennis Club were unable to be provided; instead, over 50 units at the Gulf Towers Motel at Indian Rocks Beach, Florida, and the Gulf Towers North Motel at Clearwater, Florida, as well as rooms at the Ramada Inn at Sarasota, Florida, were allocated for this purpose (McGuire 2347-48, 2374-75, 2435-2436; CX 1927). In February or March 1976, accommodations became available at the Bay Shores Yacht & Tennis Club; however, only 10 units were available to CRC's vacation certificate customers (McGuire 2375, 2433-35).

155. CRC represented that those of its customers who chose to go to Las Vegas for their vacation would be accommodated on the "Strip" (*e.g.*, CX's 32D, 53A, 101A, 283F, 525B, 1802B).

156. The area of Las Vegas known as the "Strip" generally extends from the Sahara Hotel on the northern end of Las Vegas Boulevard South to the Hacienda Hotel on the southern end of Las Vegas Boulevard South (Boyd 1831-32; Jenni 1892; Ralenkotter 1989; Kegley 4745).

157. CRC's Las Vegas vacation customers were accommodated at the King 8 Hotel and Casino and other hotels (Joseph Anderson 4032-33; Stipulation, p. 4). The address of the King 8 is 3330 W. Tropicana

Avenue (CX 2065F). The King 8 is not located on the "Strip," although it is located nearby (Jenni 1892; Kegley 4746).

158. CRC also has represented that recipients of its offers would be accommodated at hotels or motels that were described using terms such as "deluxe" (e.g., CX's 224A, 335A, 503A), "First Class" (e.g., CX's 39B, 169A, 1802B), "First Rate" (e.g., CX's 467C, 509C, 1908B), "First Class Deluxe" (e.g., CX 2031C) and "Luxurious" (e.g., CX 101A).

159. However, some customers of CRC testified that they were accommodated at less-than-average accommodations that did not meet the above criteria set forth by CRC in its solicitations (e.g., Gross 353; Holmes 510-12; Bratschi 645-46; Blackmore 695; Wilson 3158-60).

160. Thus, CRC's customers did not always have their choice of vacation times, locations or accommodations, with the actual arrangements made by CRC or its agents sometimes differing from customers' selections. [39]

O. Vacation Coupons

1. Market Development Corporation

161. MDC has represented that the vacation coupons offered to customers were worth \$50.00 or \$100.00, depending on the particular solicitation (Complaint ¶¶ 6(23), 7(23)). MDC made this representation in the following statements contained in its consumer solicitations:

(a) [A] \$100.00 Food Allowance Discount [Coupon] Book. (E.g., CX's 111A, 288A, 1313A, 1331A, 1356A, 1367A, 1701A, 1733A.)

(b) [O]ver \$100.00 in Food and Entertainment Coupons. (E.g., CX's 1337A, 1725, 1726A.)

(c) \$50.00 food allowance discount coupon book. (E.g., CX's 1545A, 1716A, 1721A.)

(d) [M]ore than \$100.00 in valuable Vacation Discount Coupons, redeemable for food, tourist attractions, gifts . . . and much more. (E.g., CX 1706B.)

(e) \$50.00 food and entertainment discount coupon book. (E.g., CX 1711A.)

162. MDC did not disclose in its solicitations to consumers that, in order to receive the benefits of the coupons, consumers must make additional food, drink and other purchases such as two-for-the-price-of-one deals (e.g., CX's 1752, 1753A-K, 1754A-Z9). The business enterprises listed on the MDC coupons ranged geographically from St. Augustine and Daytona Beach, Florida on the north (e.g., CX 1753F, I, J) to Miami Beach on the south (e.g., CX 1753B). Thus, MDC's customers would have to visit each place of business in order to realize the full value of the coupons.

163. Despite the above, MDC's representations concerning the monetary value of the vacation coupons were not of such a serious nature as to materially harm the public.

2. Columbia Research Corporation

164. CRC has represented that the vacation coupons offered to customers were worth over \$100 (Complaint ¶ ¶ 6(23), 7(23)). CRC has made this representation by stating in its solicitations: "[Y]ou're going to get over \$100 in valuable Vacation Coupons to save you important dollars on great restaurants, excursion boats . . . and much, much more." (CX's 376B, 503B; see also CX 2031C). [40]

165. CRC did not disclose in its solicitations to consumers that, in order to receive the benefits of the coupons, consumers must make additional food, drink and other purchases such as two-for-the-price-of-one deals (e.g., CX's 1929-33, 2054A-I). The business enterprises listed on the CRC coupons ranged geographically from 49 miles north of Tampa, Florida, on the north (CX 2054F) to 23 miles south of Ft. Myers (CX 2054C). Thus, CRC's customers would have to visit each place of business in order to realize the full value of the coupons (CRC Sanctions, pp. 3-4).

166. Despite the above, CRC's representations concerning the monetary value of the vacation coupons were not of such a serious nature as to materially harm the public.

P. Sales of Sewing Machines

167. MDC has represented that the sewing machines offered in its consumer solicitations were sold throughout the United States (Complaint ¶ ¶ 6(17), 7(17)). MDC made this representation by stating in its solicitations that its "sewing machines are sold . . . in all 50 states" (CX's 65A, 1313A, 1331A, 1353A, 1733A, 1738A, 1739A, 1741A) and that they "will be selling across the land" (CX's 1332A, 1356A).

168. There is a paucity of record evidence to demonstrate whether or not the sewing machines offered by MDC were sold throughout the United States as alleged by complaint counsel (CPF 155); thus, no finding of fact can be made on this point.⁸

Q. Servicing of Sewing Machines

169. MDC has represented that its sewing machines were guaranteed for 25 years and would be serviced under this guarantee throughout the United States (Complaint ¶ ¶ 6(18), 7(18)). MDC made

⁸ It is noted that this allegation of the complaint (Complaint ¶ 7(17)) must be taken as established adversely to Raymond Anderson in his personal capacity (Raymond Anderson Sanctions, p. 2).

this representation by stating in its solicitations to consumers that its "sewing machines are . . . serviced in all 50 states and have a 25-year guarantee bond (CX's 65A, 1313A, 1331A, 1353A, 1733A, 1738A, 1739A, 1741A). [41]

170. The only sewing machine repair department maintained by MDC was located at its Hauck Road plant in Cincinnati, Ohio (Juanita Anderson 3730, 3759-60; Flach 3513). Customers were supposedly allowed to have their machines serviced by independent sewing machine dealers and service centers, and to submit their bills to MDC for reimbursement. (Juanita Anderson 3759-60). However, MDC's sewing machine supplier, Riccar America Company, would not service sewing machines that did not bear the Riccar label, a category that included sewing machines purchased by MDC's customers (Elliott 1249-50, 1246-47, 1267-69, 1273-74; CX 923A-C).

171. Despite the above, the record evidence is insufficient to support complaint counsel's proposed finding (CPF 157) that the sewing machines sold by MDC were serviced only at MDC's Hauck Road plant in Cincinnati, Ohio; accordingly, no further finding on this point can be made.⁹

R. Use of Sewing Machines

172. MDC has represented that its sewing machines were used in home economics classes throughout the United States. (Complaint ¶¶ 6(19), 7(19)). MDC made this representation by stating to consumers in its solicitations that "the same . . . machine that [is advertised] is used in Home Economics classes of high schools throughout the country." (CX's 65B, 1313B, 1331A, 1353A, 1733B, 1738A, 1739A, 1741A).

173. MDC employees testified that they had no knowledge as to whether the sewing machines MDC marketed were used in home economics classes throughout the United States (Joseph Anderson 3974-75; Harris 5141). MDC's supplier of sewing machines, Riccar, did not sell to school districts those models of sewing machines purchased by MDC, nor did Riccar ever provide anyone at MDC with any information about the use of its sewing machines in schools or home economics classes (Elliott 1278-80, 1267-69, 1273-74; CX 923A-C).

174. Despite the above, the record evidence is insufficient to support complaint counsel's proposed finding (CPF 159) that the sewing machines sold by MDC were used in home economics classes

⁹ It is noted that this allegation of the complaint (Complaint ¶ 7(18)) must be taken as established adversely to Raymond Anderson in his personal capacity (Raymond Anderson Sanctions, p. 2).

throughout the United States; accordingly, no further finding on this point can be made.¹⁰ [42]

S. Retail Price of Sewing Machines

175. MDC has represented that the sewing machines offered in its consumer solicitations had a retail price of either \$179.50 or \$169.50 (Complaint ¶¶ 6(20), 7(20)). MDC made this representation through use of the following statements in its solicitations:

- (a) Regular Price \$169.50. (CX's 64A, 65A, 1313A, 1733A, 1736.)
- (b) Regular Price \$179.50. (CX's 1353A, 1738A.)
- (c) Comparable value \$179.50. (CX's 1331A, 1730A, 1731A, 1732A, 1741A.)
- (d) Retail value \$179.50. (CX's 1730B, 1731B.)
- (e) Comparable retail value \$179.50. (CX's 1330A, 1742A.)
- (f) Nationally advertised price of \$179.50. (CX 1739A.)

176. The only prices which consumers paid for sewing machines ordered from MDC through the mail were \$69.95 and \$79.95 (Flach 3528, 3499; Harris 5103-04).

177. On November 13, 1973, Raymond Anderson, in his capacity as president of MDC, wrote to Mickey Veraldo of G.C.L. Mercantile Corp., a New Jersey firm that shipped the Riccar Good Housekeeper 308 sewing machines to MDC, attempting to persuade G.C.L. to sell or at least advertise that machine at "\$179.00 or more" and offering MDC's services in placing any such advertisements (CX 693A-B; Harris 5103).

178. MDC sold the Riccar Good Housekeeper model 308 sewing machines during the period when it conducted in-home sales solicitation as well as in the subsequent period of mail order sales. MDC's sales personnel sold this sewing machine to consumers in their homes for \$189.95 (Harris 5028-32, 5097-98, 5100-01; *see also* Joseph Anderson 3980).

179. The record evidence is insufficient to support complaint counsel's proposed finding (CPF 125) that the sewing machines [43] purchased by consumers from MDC for \$79.50 or \$69.50 through mail order solicitations did not have a retail price of \$179.50 or \$169.50; accordingly, no further finding on this point can be made.¹¹

T. Sewing Machine Discount Certificates

¹⁰ It is noted that this allegation of the complaint (Complaint ¶ 7(19)) must be taken as established adversely to Raymond Anderson in his personal capacity (Raymond Anderson Sanctions, p. 2).

¹¹ It is noted that this allegation of the complaint (Complaint ¶ 7(20)) must be taken as established adversely to Raymond Anderson in his personal capacity (Raymond Anderson Sanctions, p. 2).

180. In its consumer solicitations, MDC has represented that it was providing prospective customers with discount certificates worth up to \$100.00 toward the regular retail price of its sewing machines (Complaint ¶¶ 6(21), 7(21)). MDC distributed such certificates in \$75.00 or \$100.00 denominations (e.g., CX's 1327, 1332C, 1357, 1734, 1745), and characterized them in terms such as:

- (a) [C]ash merchandise certificate. (CX's 1367B, 1701B, 1711A, 1716A, 1721A.)
- (b) [C]ash merchandise gift certificates. (CX's 1332A, 1356A.)
- (c) Discount Certificate. (CX's 1329, 1332C, 1353A, 1738A, 1743A-B.)
- (d) Cash Merchandise Discount Certificate. (CX's 1313A, 1353A, 1733A, 1738A, 1740, 1741A.)
- (e) Sweepstakes Discount Certificate. (CX's 1313A, 1733A, 1741A.)

181. These sewing machine discount certificates were mailed along with MDC's sewing machine solicitations (Joseph Anderson 3981-82). A large number of discount certificates were printed (Joseph Anderson 3980-81). Over 10.9 million sewing machine certificates were offered to consumers in MDC's solicitations, with each recipient either receiving a certificate along with the solicitation or being assured of receiving a certificate upon entering MDC's alleged contest (CX's 1700A-B, 1701, 1701B, 1710, 1711A, 1715, 1716A, 1720, 1721A, 1730B, 1731B, 1732B, 1733A-B, 1734, 1738A, 1739A, D, 1740, 1741A-B). [44]

182. The record evidence is insufficient to support complaint counsel's proposed finding (CPF 107) that MDC's sewing machine discount certificates were worthless (see Fs. 175-79). Accordingly, no further finding on this point can be made.¹²

U. Value of Treasure Chests and Gift Cartons

1. Market Development Corporation

183. MDC has represented that the Treasure Chest offered to consumers in its solicitations had a value of more than \$30.00 (Complaint ¶¶ 6(22), 7(22)). MDC made this representation through the use of the following statements contained in its solicitations:

- (a) [A]t least \$35.00 in nationally advertised value. (CX's 1337A, 1726A.)
- (b) [A] \$36.28 value in itself. (CX 1706B.)
- (c) [T]he \$36.28 Treasure Chest of Advertised Values. (CX's 1706D, 1708A.)

¹² It is noted that this allegation of the complaint (Complaint ¶ 7(21)) must be taken as established adversely to Raymond Anderson in his personal capacity (Raymond Anderson Sanctions, p. 2).

(d) [The] advertisers . . . guarantee the advertised and selling price to be over \$30. (CX 1729.)

184. Selective Sampling, a supplier of Treasure Chest kits to MDC (Fs. 14, 67), attempted to maintain a minimum value of \$7.00 to \$8.00 in the kits, exclusive of the perfume included therein (CX's 748, 749, 750; Karniol 2043-44, 2094). The company assigned this value range to the items in the Treasure Chest based on manufacturers' suggested retail prices which were obtained from various publications; Selective Sampling did not use discounted prices at which the items may have been offered at some discount retail outlets (Karniol 2045-46).

185. During the course of the relationship between MDC and Selective Sampling, some of the Treasure Chests shipped to consumers came to contain fewer products and products of lesser quality and lesser value because manufacturers directed Selective Sampling not to use their products in its kits because of consumer complaints (Karniol 2093-94, 2129-32). [45]

186. Value Package, another supplier of Treasure Chest kits to MDC (F. 14), assigned values to the items in the kits of between \$11.44 and \$15.49, except for one kit valued at \$24.25, and informed MDC of those assigned values and how they were determined (CX's 978-86; Taubes 2258-59). Value Package determined the value of the products in the kit by assigning either manufacturers' suggested retail prices, the actual prices at which the products were sold nationally or, for products smaller than regular retail size, a value calculated upon the fractional equivalent of the contents compared to the smallest regular retail size. If a product had both a manufacturer's suggested retail price and an actual selling price, then Value Package would use the suggested retail price as the value even though it might be higher than the actual selling price (Taubes 2253-57). Value Package made no attempt to verify that products were actually sold at the suggested retail prices which were used in making the valuations (Taubes 2257-58).

187. Value Package provided MDC with the assigned values for the products in the kits because MDC wanted its kits to have a certain value and wanted back-up material regarding that value; MDC was also informed of the methods used in computing the assigned values (Taubes 2258-59). MDC suggested that the kits contain approximately \$15.00 worth of merchandise, excluding perfume (Taubes 2278-79, 2302, 2310). This was the only information provided to MDC by Value Package concerning the value of the kits (Taubes 2259).

188. Grafton Products supplied the perfume for MDC's Treasure Chests (Fs. 15, 199). The perfume did not have the retail value claimed inasmuch as it was never placed on the retail market for sale. In fact,

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MDC purchased the perfume at a cost of approximately 33 to 40 cents per bottle (Fs. 199, 204). Inclusion of the perfume in the kits did not add significantly to the value of the Treasure Chest.

189. Therefore, the record evidence supports the finding that MDC artificially inflated the value of the Treasure Chest. The value was significantly less than \$30.00.

2. *Columbia Research Corporation*

190. CRC has represented that the Super Jackpot Package and Gift Carton offered to consumers in its solicitations had a value of at least \$25.00 and as much as \$40.00 (Complaint ¶¶ 6(22), 7(22)). CRC made this representation through use of the following statements: [46]

- (a) [A] \$40 Gift Carton of brand name household and cosmetic products. (CX's 349A, 354A, 397A, 413A, 467A, 478A, 1980A, 2000A.)
- (b) [A] \$40 Gift Carton of nationally advertised household and cosmetic products. (CX 376A.)
- (c) [T] total combined value of . . . at least \$25. (CX 53B.)
- (d) [T] total combined value of at least \$30. (CX 2031B.)

191. Some CRC customers believed this representation (Alpert 2454; Engleman 2494; Berliner 2688-89; Otner 2884; Povill 2915; Jenkins 3062-63).

192. A. M. Sampling, a supplier of household and cosmetic product kits to CRC (Fs. 39, 72), determined the value of items in the kit by assigning either manufacturers' suggested retail prices, the actual prices at which the products were sold nationally or, for products smaller than regular retail size, a value calculated upon the fractional equivalent of the contents compared to the smallest regular retail size (Taubes 2270-71). If a product had both a suggested retail price and an actual selling price, then A. M. Sampling would use the suggested retail price as the value even though it might be higher than the actual selling price. A. M. Sampling made no attempt to verify that products were actually sold at the suggested retail prices which were used in making the valuations (Taubes 2257-58, 2277-78).

193. Raymond Anderson requested that the kits contain approximately \$15.00 worth of merchandise, excluding the perfume (Taubes 2278-79, 2285-86, 2302). Consequently, A. M. Sampling assigned a value to each kit, excluding the perfume, of approximately \$15.00 (Taubes 2278, 2310).

194. A. M. Sampling included perfume in almost all the kits supplied to CRC (Taubes 2267-68). Initially, the perfume placed in the

CRC kits was named "Beau Bien" (Taubes 2268, 2273, 2308). This was the same perfume used in the MDC Treasure Chest; it did not have the retail value claimed by CRC, but had a cost of approximately 33 cents to 40 cents (Fs. 199, 204). [47]

195. Other CRC kits contained different perfumes. A. M. Sampling placed a bottle of "Tortue" in over 25,000 CRC kits. This perfume had a retail value of \$4.50 (Taubes 2272). At CRC's request, two bottles of a perfume named "Xanadu" were placed in some CRC kits in order to raise the value of those kits. "Xanadu" had a retail value of \$10.00 (Taubes 2271-74). A. M. Sampling purchased less than 20,000 bottles of "Xanadu" (Taubes 2272). Thus, less than 10,000 CRC kits contained \$20 worth of this perfume.

"Paris Now" was another perfume that was placed in about 20,000 of CRC's kits. There was no retail value assigned to "Paris Now" because it was manufactured specifically for A. M. Sampling (Taubes 2275-76). This perfume had been in limited retail distribution in certain parts of the country and had had limited sales at the full \$25 retail price assigned (Taubes 2282-85).

196. Inclusion of the "Beau Bien" perfume or the "Tortue" perfume in the CRC kits did not add significantly to the value of the CRC kits. Inclusion of one bottle of "Xanadu," two bottles of "Xanadu" or one bottle of "Paris Now" could increase the value of the CRC kits by \$10.00, \$20.00 or \$25.00, respectively (F. 195).

197. Therefore, CRC artificially inflated the value of some of the Gift Cartons and Super Jackpot Packages. The value of some of the kits was significantly less than \$25.00, although some of the kits may have had values of \$25.00 to \$40.00 depending on the perfume contained inside (CRC Sanctions, pp. 3-4).

V. Retail Price of Perfume

198. MDC has represented that its Treasure Chest contained "a rare and very expensive cosmetic" with a retail value of \$20.00 (Complaint ¶¶ 6(26), 7(26); CX's 111A, 288A, 1367A, 1701A, 1706B, 1711A, 1716A, 1721A).

199. The "rare and very expensive cosmetic" contained in MDC's Treasure Chest was a perfume named "Beau Bien." This perfume was manufactured and sold by Grafton Products, Inc. (F. 15), at a cost to MDC of approximately 33 to 40 cents per one-half ounce bottle (CX's 1011, 1915, 1917, 1918, 1922). Grafton was the sole supplier of perfume for MDC's Treasure Chests (Fs. 15, 188). [48]

200. Grafton's president, Edward Marcus (Marcus 3216), testified that "Beau Bien" was not a specific perfume, but was just a name Grafton gave to various fragrances customers wished to purchase

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(Marcus 3230, 3254-56, 3264-67). Marcus also testified that, "You can charge whatever the going rate is, whatever you can get" for a perfume (Marcus 3259).

201. Neither Grafton nor its advertising subsidiary, Beth Wendy Products, Inc. (Marcus 3242-43), had retail sales, but rather dealt only in manufacturing and in wholesale sales (Marcus 3244-45). Its "Beau Bien" perfume was an item used from time to time as a "door-opener" or give-away (Marcus 3230).

202. A *Harper's Bazaar* advertisement for "Beau Bien" was placed by Grafton (through its advertising subsidiary, Beth Wendy Products) at MDC's request (Marcus 3242-43; CX's 1920, 236). Grafton billed MDC for the *Harper's Bazaar* advertisement (CX's 1923, 1924). MDC reimbursed Grafton for the advertisement after Grafton paid the magazine by company check (Marcus 3260-61, 3268). The advertisement did not produce any business for Beth Wendy Products (Marcus 3243).

203. MDC also requested that Grafton provide a label on the "Beau Bien" bottle to say, "Nationally Advertised in Harper's Bazaar, \$20.00" (Marcus 3232-33). Grafton billed MDC for 53,500 of these labels (CX 1916; Marcus 3241, 3231-32).

204. Thus, the "Beau Bien" perfume was not placed on the retail market for general distribution and had no actual retail value. The only basis for representing its retail price as \$20.00 was the advertisement in *Harper's Bazaar*. The only basis in the record evidence for the value of "Beau Bien" is its cost of 33 to 40 cents.

W. Product Size

1. Market Development Corporation

205. In its consumer solicitations, MDC has represented that the products contained in the Treasure Chest were full-sized products (Complaint ¶¶ 6(25), 7(25)). MDC made this representation through use of the following statements contained in some of its solicitations:

- (a) They are not sample sizes, but full sizes. (CX's 1337A, 1726A.)
- (b) ALL TWELVE IN FULL SIZES. (CX 1706D.)
- (c) Not off-brand samples, these are full-size well known products. (CX 1729A.) [49]

206. The record evidence supports the finding that MDC's Treasure Chests did not always contain full-sized products; rather, some sample-sized products were also included (Karniol 2031-32; Taubes 2247, 2301-02). A "sample size" product is one specifically made by manufacturers

for sampling, and is usually smaller than normal retail size (Taubes 2236, 2301).

2. Columbia Research Corporation

207. In its consumer solicitations, CRC has represented that the products in the Gift Cartons were full-sized products (Complaint ¶ ¶ 6(25), 7(25)). CRC made this representation by stating in some of its solicitations, "[T]hey're all full-size products." (e.g., CX's 349A, 354A, 376A, 397A, 413A, 467A, 478A, 499A, 1980A, 2000A).

208. Some CRC customers believed this representation (Berliner 2688-89; Otner 2884).

209. Approximately 10% of the items included in the CRC kits were sample-sized (Taubes 2276-77). For instance, of the 16 products contained in one Gift Carton, a 0.4 oz. packet of Vitabath was marked "Trial size—not for resale," a Gillette Trac II razor carton was marked "Trial Razor Enclosed" and a can of WD-40 was marked "Sample not for resale" (CPX 5E, M, P).

210. Thus, the record evidence supports the finding that CRC's Gift Carton did not always contain full-sized products, but contained some sample-sized products (Taubes 2276-77; CRC Sanctions, pp. 3-4; Stipulation, p. 3, n. 6; Third CRC Admissions, Request 53).

X. Total Value of Offers

1. Market Development Corporation

211. MDC has represented that the total value of its Treasure Chest offer was \$250 to \$300, or represented a savings of over \$200 (Complaint ¶ ¶ 6(24), 7(24)). MDC made this representation through use of the following statements contained in some of its solicitations:

(a) [T]he total intrinsic value of your winnings amounts to approximately \$250.00. (CX's 111B, 288B, 1716B, 1721B.) [50]

(b) [T]he total intrinsic value of your winnings amounts to approximately \$300.00. (CX's 1367B, 1701B.)

(c) [A]ny customer who takes advantage of all of these offers will have a savings of over \$200.00. (CX 1706B.)

212. An examination of the individual parts of MDC's Treasure Chest offers reveals that the total value was not as represented. The \$20 retail price for the perfume and the \$30 or more value for the Treasure Chest were overstated values (Fs. 189, 204). The food and entertainment vacation coupons given to MDC's customers had various

"strings" attached such as requiring significant out-of-pocket expenditures or extensive traveling for consumers to realize the full value of the coupons (F. 162). Thus, the value of the coupons was overstated. MDC misled consumers into believing that they were to receive a free vacation, whereas they had to pay their own transportation costs, additional charges in some instances for peak season accommodations and a \$15.00 initial fee (Fs. 116, 117). Consumers not only did not receive a free vacation (F. 119), but the costs attached detract from the total value of MDC's offer.

213. Thus, the record evidence supports the finding that the values of the goods and services offered by MDC were significantly less than the \$250 to \$300 values ascribed to them in MDC's Treasure Chest solicitations. If any "savings" were realized by dealing with MDC, those savings were significantly less than the \$200 or more in savings claimed by MDC's offer.

2. Columbia Research Corporation

214. CRC has represented that the value of the total Jackpot package was \$500 or more (Complaint ¶¶ 6(24), 7(24)). CRC has made this representation through use of the following statements contained in some of its solicitations:

(a) You are going to get well over \$500 in benefits for your *Las Vegas Vacation For Two*. (E.g., CX's 32C, 39A, 43A, 233E, 712A.)

(b) [T]he more than \$500 benefit Package Paid-in-full! (E.g., CX's 32D, 39B, 233F, 712B.)

(c) [O]ver \$500 in Las Vegas benefits. (E.g., CX's 32E, 39C, 233G, 712C.) [51]

(d) [T]he Grand Total of this Las Vegas Jackpot amounts to approximately \$500 or more. (CX 53B.)

(e) [O]ver \$1400 in benefits. (CX 229A, B.)

(f) LAS VEGAS TOTAL OVER \$600. THERES MORE. . . (CX 272A.)

(g) [W]ell over \$500 in vacation benefits. (E.g., CX's 346A, 376A, 467A, 595A.)

215. Some consumers felt that they would get some of their benefits in cash (Gorman 180-81; Williamson 109-10; Blackmore 686-87; Bratschi 629). Others thought that their benefits could be realized at any casino (Cain 865), or that they would get the benefits all at once (Gorman 199). Some consumers felt that all or most meals were included (e.g., Williamson 113; Blackmore 686-87; Bratschi 629; Borstein 1314; Andrews 784; Bryan 1129-30; Wiersma 1214-15).

216. CRC's customers were required to spend significant amounts

of their own money to purchase food and drink, contrary to the representations made in the solicitations. The CRC coupon program included a two-meals-for-the-price-of-one program, requiring the customer to purchase one meal out-of-pocket in order to obtain the free meal. Moreover, the coupons were for places of business geographically distant from one another, thus making it more difficult for the consumer to realize the full value (Jenni 1929-30; Joseph Anderson 4077; e.g., CX's 708, 1479; Fs. 128, 165).

217. CRC failed to disclose in its initial solicitations the existence of conditions or restrictions which were attached to the use of the gaming packages that CRC customers received. These conditions and restrictions were often quite lengthy, complicated and confusing to consumers. For example:

(a) 1. Upon your arrival, present YOUR GAMING INVITATION VOUCHER and your ID to the Sundance West redemption booth. You must be 21 years of age and a non-resident of Nevada.

2. Your registration card MUST BE FILLED OUT COMPLETELY! The registration card along with a refundable deposit of \$1.00 must be given back to the cashier. (The \$1.00 deposit is to cover the cost of handling and registering your casino invitation and will be refunded to you as part of your casino package after invitation is registered by casino cashier.) [52]

3. A minimum time interval of one hour and a maximum of 1 1/2 hours is required between redeeming each part. Coupons become valid hourly, starting at time indicated below, then in daily sequence. Coupons must be utilized as stipulated in paragraph 3 or they become void.

4. Daily unredeemed portion is void six hours after you start your "Sundance West Casino Package."

5. Only 1 day of "Sundance West Casino Package" tickets may be used by 1 person in any one day. Only 1 invitation may be used during any 30 day period by 1 person.

6. The Lucky Bucks are match play to be used on Big 6 Wheel, and 21 tables and pay 2 to 1 on your money. Limited to 1 per person. (Bet \$1.00 Win \$2.00).

7. The drinks are in addition to the free drinks served while playing (E.g., CX 225E.)

(b) 1. Upon your arrival, present this invitation and your I.D. to our Casino Cashier.

2. You must be 21 years of age and a non-resident of Nevada.

3. A minimum time interval of one hour is required between redeeming each part.

4. Unredeemed portion is void eight hours after you start your FREE FUN SPREE.

5. Only one day of FREE FUN SPREE tickets may be used by one person in any one day.

6. The Lucky Bucks are match play on 21 table and pay 2 to 1 on your money. Or may be exchanged for two super slot tokens.
7. The drinks are of your choice (hard or soft) and are in addition to the free drinks served while playing.
8. Your food may be choice of Menu. Customer pays for highest-priced meal ordered, second meal is free. [53]
9. One invitation per person, adults only. Coupons all or in part are subject to revision at the discretion of management without prior notice. Coupons are non-refundable and non-transferrable in any amount.
10. Coupons become valid in sequence. One complete set (1-2-3) must be validated each day in order to proceed to the following day (*E.g.*, CX 1479, 1480.)

Few of the original offers mention any limitations and the one mention of "match play" is buried in the middle of a four page solicitation (CX's 32E, 224A, 278A, 1389C). The solicitations, read as a whole, emphasize the cash and the free benefits that the customer is informed will be forthcoming.

218. The gaming package was usable only at specified casinos and was not transferrable among casinos. Each package was tailored for a particular casino, with differing restrictions on the use of Lucky Bucks and super slot tokens (Joseph Anderson 4074; Kegley 4778-79; Boyd 1833-34; Jenni 1892-94; *e.g.*, CX's 708, 709, 711A, B).

219. The different casino packages offered various dollar amounts of "Lucky Bucks." "Lucky Bucks" are certificates used only in match play; they are issued by a particular hotel or casino and can only be used at that hotel or casino. In order to use the "Lucky Bucks," the consumer must match the "Lucky Buck" with his own dollar in placing a bet, *e.g.*, for a minimum two-dollar bet, only the casino's "Lucky Buck" and the customer's dollar bill could constitute the two dollars of the bet (Boyd 1832-34; Jenni 1892-93, 1959; Fs. 217(a)(6), 217(b)(6); *e.g.*, CX's 1899-1906). In the King 8 Hotel and Casino's program, "Lucky Bucks" could only be used for specified games and at designated tables (*e.g.*, CX's 708, 709A, 711A-B, 1479, 1480). Similarly, at the California Hotel and Casino, the CRC customer must match the cost of the keno ticket with his or her own money in order to use the coupon for a keno bet (Boyd 1872-73; CX's 1899-1901, 1903-06).

220. Consumers had to pay close attention to intricate instructions on how to redeem the coupons in the gaming packages. The benefits were redeemable only at certain specified stages or times; the gaming and other benefit coupons often would have to be turned in and time-stamped at hourly intervals over a [54]three-day period (Joseph Anderson 4074; Boyd 1807-09; Kegley 4743-44, 4770-73, 4778, 4837-38; F. 217; CX's 708, 711A-B, 1479, 1480, 1899, 1900; RX's 21, 22).

In order to receive the benefits of the California Hotel and Casino program, for instance, CRC customers had to redeem the gaming coupons in sequence at minimum time intervals of one hour over a three-day period (Boyd 1807-09; CX's 1899-1900). Each set of coupons had to be redeemed within eight hours from the time the customer began using the set (CX's 1899-1900). The program was similar at the King 8 Hotel and Casino for CRC customers, except each of the three days' sets of coupons expired at midnight of the date issued (Jenni 1906-09; CX's 708, 711A-B, 1749). Similar programs were common at other casinos used by CRC (Lawley 469-71; Blackmore 696; Bratschi 646-47; Bryan 1149-50; Riesenfeld 1624; Borstein 1324-28; Stipulation, p. 6).

221. Another factor that reduced the value of the gaming package was that CRC's customers had to use their own money in order to receive many benefits of the gaming coupons such as "Lucky Bucks" (F. 217; Lawley 469-70; Blackmore 700; Bryan 1146-49; Riesenfeld 1624). For instance, for every \$6.00 in nickels that a CRC customer received, the customer had to pay \$5.00 of his or her own money (Joseph Anderson 4075-76; CX's 708, 711A-B).

222. The intricate redemption features of the coupons in CRC's gaming packages led to consumer misunderstanding and consumer complaints. One witness, Billy Dale Kegley, who is familiar with and designs promotional gaming packages such as have been used by CRC (Kegley 4743-44, 4777-78), explained that casino personnel often misunderstood and incorrectly explained how the gaming package program worked, resulting in consumer complaints which were based upon the consumer's misunderstanding as to how the program should be utilized (Kegley 4756).

For instance, the California Hotel and Casino received complaints during the time in which it operated the gaming program in conjunction with CRC, September 24, 1975 to February 24, 1976, from customers who did not understand the mechanics of the gaming certificate redemption program and who expected to receive the stated value of the certificate in cash immediately (Boyd 1812, 1815-17).

223. Many consumer witnesses testified as to their dissatisfaction with the manner in which the gaming package worked (Holmes 512-15; Lawley 468-72; Blackmore 699-704; Bratschi 648, 658; Dworak 929-31; Bryan 1149-54; Heller 1577-79; Riesenfeld 1624-26; Borstein 1325-28). One consumer witness expressed his dissatisfaction as follows: [55]

Q. Did you attempt to use any of the gaming benefits?

A. Yes, I tried but there was a certain procedure you have to go through which

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resulted really in my being a captive of the casino [sic] if I wanted to take advantage of those benefits.

(Borstein 1325.)

224. Similar gambling certificates or gaming packages were available to the general public for free and could be obtained at various places in and around Las Vegas (Joseph Anderson 4073-74; Blackmore 717-20; Heller 1577-78; CPX 2B, D, F, H, J, N, P). Furthermore, the solicitations stated that free drinks were part of the gaming package value; however, Las Vegas casinos make a common practice of giving out free drinks to people who are gambling (Jenni 1959-60; Joseph Anderson 4076; Kegley 4856).

225. The CRC gaming package had limited or no value in certain other situations. Prior to late 1975, the King 8 Hotel and Casino was not approved for live gambling. Gambling was machine-operated, such as slot machines (Jenni 1895; Gross 345-46). On other occasions, CRC represented that it could give customers only up to one half of the promised gaming benefits at one time because of Nevada gaming regulations and that a second equal amount of Gaming Packages would be provided upon request for "use on a return trip to Las Vegas anytime during the coming year." (CX 1839). CRC's own defense witness, Billy Dale Kegley, who claimed to be knowledgeable about Las Vegas gambling matters, stated that no such regulation existed (Kegley 4844). Finally, the California Hotel and Casino notified CRC by letter dated February 25, 1976, that it would not honor any gaming certificates after February 29, 1976 (CX 1655; Boyd 1826-27). Raymond Anderson, in his capacity as president of CRC, responded by stating that he intended to continue distributing their certificates to the California Hotel and Casino after February 29, 1976 did not have their certificates honored (Boyd 1830).

226. Thus, the record evidence supports the finding that the values of the goods and services offered by CRC were significantly less than the \$500 or more claimed for them in CRC's solicitations. CRC significantly overstated the worth of the goods and services it offered (CRC Sanctions, pp. 3-4). [56]

Y. Connection to Other Sales Promotions

1. Market Development Corporation

227. In its Treasure Chest solicitations sent to prospective customers, MDC has implicitly represented that its offers were not connected to the sales promotion of any other products or services (Complaint ¶ ¶

6(15), 7(15)). MDC made this representation by virtue of its failure to disclose that its offers were sometimes connected to the sales promotion of other products or services (*see e.g.*, CX's 111A-B, 288A-B, 1337A-B, 1367A-D, 1701A-B, 1711A-B, 1716A-B, 1721A-B, 1729A-B). None of MDC's solicitations makes mention of any additional promotions.

228. In fact, in many instances, customers who purchased the Treasure Chest would subsequently be solicited to purchase a sewing machine (Flach 3569-72; Sarbaugh 3637-39).

229. Furthermore, the vacation certificates which MDC provided to its customers were sometimes connected with various land sales programs in Florida and/or Las Vegas (CX's 664, 679, 680, 689, 691, 867, 875). Raymond Anderson intentionally designed MDC's solicitations so as not to disclose any land sales connections. (CX 688B). Some MDC customers later complained about the high-pressure sales tactics used in these land sales presentations (*e.g.*, CX's 1550B-C, 1551A-B).

2. Columbia Research Corporation

230. In its Super Jackpot Package and Gift Carton solicitations sent to prospective customers, CRC also has represented that its offers were not connected to the sales promotion of any other products or services (Complaint ¶ ¶ 6(15), 7(15)). CRC implicitly made this representation by virtue of its failure to disclose that its offers were connected to the sales promotion of other products (*see, e.g.*, CX's 32C-F, 39A-D, 53A-D, 93A-D, E-H, 124A-C, 125, 151A-D, 272A-D, 283E-H, 335A-D, 346A-D, 376A-D, 397A-D, 467A-D, 503A-D, 712A-D, 1677A-D, 1908A-D, 2003A-D). CRC also made this representation explicitly through use of the following statement contained in some of its solicitations:

Maybe you think there's some kind of "catch" to it . . . that you'll have to pay some hidden charges or attend a land sales presentation or something like that.

Well, let me assure you nothing could be further from the truth. We wouldn't be in business if there was any "catch" to our offer. (CX's 32B, 148, 348, 468, 1808, 1871.) [57]

None of CRC's solicitations makes mention of any additional promotions.

231. Two CRC customers who went to Florida testified that they were subjected to a high-pressure time-sharing sales presentation (Wilson 3163-67; Engleman 2509-12, 2514).

232. In fact, the record evidence supports the finding that the vacation certificates which CRC provided to many of its customers were connected to the sales promotions of various condominium or

time-sharing programs in Florida, Las Vegas and Puerto Rico (Joseph Anderson 4065-71; Kegley, 4810-11; Fs. 37, 38; McGuire 2363-66, 2376-78; Wray 5236-37, 5241-42; CX's 1063, 1083, 1089A-C; CRC Sanctions, pp. 3-4; Stipulation, pp. 6-7; Third CRC Admissions, Request 11).

Z. Delivery Costs

233. MDC has represented that it would bear the cost of delivery of its products (Complaint ¶ ¶ 6(28), 7(28)). MDC implicitly made this representation with regard to its sewing machine offers by stating in its solicitations that the sewing machines were available to consumers for a "Total Cost" of \$69.50 or \$79.50 (e.g., CX's 65A, 1313A, 1331A, 1733A, 1738A, 1741A).

234. The MDC employees in charge of sewing machine orders and shipments, Lois Flach and Joseph Anderson, testified that the sewing machines were shipped Cash On Delivery (Flach 3518-19, 3549-52, 3554; Joseph Anderson 3970). MDC's parcel post shipping lists included a C.O.D. column which showed the price that the customer paid and the actual shipping cost to MDC (CX's 1587, 1588; Flach 3549-50, 3557). MDC's United Parcel Service reshipment lists also included the C.O.D. amount that the customer paid and the actual shipping rate that MDC paid (CX's 1589A-B, 1590, 1591; Flach 3553-54, 3557). These sets of lists were prepared by Lois Flach based on figures that she received from the shipping department (Flach 3557-58). MDC collected a C.O.D. charge from its customers which was substantially higher than the actual shipping charges paid by MDC (CX's 1587-91). Moreover, customers had to pay the shipping charges for returning sewing machines to MDC for repair (Flach 3513).

235. The delivery costs were substantial, e.g., \$14.95 (Land 546-48; CX's 72, 73). Disclosures regarding shipping costs were nonexistent or else confusing. CX's 65B, 1331B and 1353D list three types of payment plans. CX 65B states "freight collect" for only one of the three plans while CX's 1331B and 1353D state "freight collect" for two out of the three plans. The import of "freight collect" is unclear in light of the "Total Cost" statements on the front page of each solicitation (CX's 65A, 1331A, 1353A). [58]

236. Thus, the record evidence supports the finding that MDC's customers paid the delivery costs of the sewing machines shipped to them, contrary to the implied representation.

AA. Non-Delivery of Goods and Services

1. *Market Development Corporation*

237. In its consumer solicitations, MDC has implicitly represented to prospective customers that it would deliver its goods and services, including sewing machines, Treasure Chests, vacation certificates and trivets (Complaint ¶¶ 6(27), 7(27); F. 6). No mention is made in any offer of extended delivery time.

238. In approximately 1973, MDC began processing orders by computer because the volume of orders had grown to the point where they could not be handled manually (Flach 3515-16; Fs. 10, 11). MDC sent its sewing machine and Treasure Chest orders to its computer service, Small Business Data Processing (Sarbaugh 3630-31), on a daily basis (Juanita Anderson 3764-65). Small Business Data Processing took two days, on the average, to process these orders (Sarbaugh 3671), and returned a print-out sheet and the shipping labels to MDC. MDC employees then calculated the shipping charges, entered those charges on the labels and made up the shipping orders which were stored at Hamilton Avenue until MDC's shipping department gave instructions to send them the orders. (F. 11). Generally, MDC mailed out the shipping labels to its Treasure Chest suppliers within a day or so of receiving the labels from the computer service (Harris 5048-49).

239. During the period of time that MDC purchased its Treasure Chests from Selective Sampling, April/May 1972 to January/February 1973 (Karniol 2017-18), MDC prepared the instructions, documents and labels for shipping and forwarded these to Selective Sampling, along with a check covering the order and a computer-print-out listing the customers' names and addresses (Karniol 2021; F. 18). Selective Sampling usually shipped the Treasure Chests to consumers within three or four days, or ten days at the outside, after receiving the labels from MDC (Karniol 2023-24; F. 18). The percentage of packages returned as "undeliverable" was under one percent (Karniol 2121-23).

240. During the period of time that MDC purchased its Treasure Chests from Value Package, 1973 to 1974 (Taubes 2242), Value Package shipped the Treasure Chests directly to MDC in [59]Cincinnati for reshipment to consumers (F. 18). Value Package shipped Treasure Chests to MDC within two to three weeks after receiving the orders (Taubes 2262-63).

241. MDC developed a backlog of 10,000 to 15,000 Treasure Chest orders by June 1974, the time it went into bankruptcy. During this time, MDC was still processing 1,000 to 2,000 Treasure Chest orders a week (Harris 5058; Flach 3542-46; Joseph Anderson 4000).

242. MDC printed cartoon form letters advising customers of a delay in shipment (CX 468); such letters were sent to Treasure Chest

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customers, with a similar letter sent to sewing machine customers (Joseph Anderson 4000-04; Flach 3582). MDC's computer service also printed 19,158 letters to MDC customers concerning late shipments (CX's 1556, 1557). One of the delay-in-shipment letters sent by MDC to a customer stated, in part, as follows:

Your Treasure Chest is now being packed. The delay resulted because a few products were late arriving from the manufacturers, and naturally we wanted to include the products in your package. (CX 114.)

However, MDC did not pack its own Treasure Chests; they were packed and shipped by the suppliers (Fs. 14, 15, 16).

243. Any delay in the shipment of Treasure Chests or any failure to ship the Treasure Chests was due to MDC's failure to provide the shipping labels and payments for the shipments to its suppliers (Karniol 2065-67, 2127-28; Marcus 3235-36). In one instance, MDC's Treasure Chest supplier held up shipments to certain MDC customers for as much as 60 days because of MDC's failure to make payment (Karniol 2127-28; CX's 1572, 1573A-B, 1574). MDC did not ask its supplier to advise the listed customers of a delay (Karniol 2128-29).

244. Two MDC customers testified in this proceeding that they had sent in their money in response to the solicitation, but never received the Treasure Chest ordered (Dudley 1541; Pill 605).

245. In 1970, MDC was able to ship sewing machines to its customers within a week to ten days after the orders were received (Flach 3511, 3514). [60]

246. MDC was receiving 40 to 50 sewing machine orders per day in 1973; thus, MDC received about 11,400 to 13,000 orders in 1973 from its suppliers, G.C.L. and Riccar (CX's 896A, 923A, B). This resulted in an excess of about 5,000 to 7,000 sewing machine orders for which MDC did not purchase sewing machines in 1973. There is nothing in the record to show that the rate of incoming orders decreased until the mail stop in June 1974 (F. 248). Nevertheless, MDC purchased only 1,442 sewing machines during 1974 (CX's 896B, 923A). Thus, it is probable that there was a further increase in the number of orders that could not be filled because of MDC's failure to order a sufficient quantity of sewing machines.

247. Therefore, there was also a backlog of sewing machine shipments by MDC. By the summer of 1973, it took at least a month to six weeks to ship the sewing machines after the orders were received (Flach 3535-36). By January/February 1974, MDC took three to four months to ship the sewing machines after the orders were received from the customers, with no more than five or six sewing machines

being shipped each week. All of those shipments were in response to Better Business Bureau and state Attorneys General complaints (Flach 3536-37, 3540). The backlog as of January/February 1974 consisted of 8,000 to 10,000 sewing machine orders waiting for shipment (Flach 3541-42; Joseph Anderson 3598-99).

248. Despite the substantial backlog which was still growing, MDC employees did not receive instructions to stop processing incoming orders at anytime in 1974 (Juanita Anderson 3787-88; Flach 3607-08). The processing of incoming orders did not cease until MDC's mail was stopped just prior to its bankruptcy (Flach 3607-08).

249. MDC initially responded to customer correspondence inquiring about delays in the shipment of sewing machines by sending the customer's letter back with either a response written on it or a form marginal note enclosed (Flach 3511-12, 3522). By the end of 1973, the volume of sewing machine correspondence had increased to such an extent that MDC did not respond to all of it; according to one MDC employee, Lois Flach, about one quarter of the sewing machine mail did not receive a response but, rather was "[thrown] in the garbage" after it had been opened and read (Flach 3519-20, 3524-27). Thus, although MDC sent out several thousand delay-in-shipment letters (CX 68) to sewing machine customers over a six to eight month period (Flach 3582), some customers did not receive any explanation or response at all from MDC. [61]

250. One of MDC's customers testified that she had ordered a sewing machine from MDC in October 1973, but did not get delivery of the machine until late February 1974, and then only after numerous letters of complaint to MDC (Land 538, 541-48, 552-54, 559; CX's 66-73, 76, 79).

251. In some of its solicitations, MDC represented that purchasers would receive tickets to Disney World (CX's 111A, 288A, 1729A). In many instances, consumers who paid for the Florida vacations did not receive the Disney World tickets promised to them (CX's 1540-47, 1648). On one occasion, one of MDC's Florida agents wrote to MDC, stating:

We are receiving from two to three of your customers a week that are insisting on their Disney World Tickets. Our Hostesses are pacifying most of your customers that ask for tickets without promising anything but when the customer gets indignant and insists on the tickets, they must receive something. (CX 1648.)

MDC responded by sending 50 Disney World tickets to its Florida agent with directions that they be "distributed with discretion" (CX 1649).

252. At the time of its bankruptcy, MDC listed itself as having

90,000 to 93,000 unsecured creditors with claims of between \$15.00 and \$80.00 (F. 313).

253. Thus, the record evidence supports the finding that MDC failed, in many instances, to deliver ordered goods and services.

2. *Columbia Research Corporation*

254. In its consumer solicitations, CRC has implicitly represented to prospective customers that it would deliver its goods and services, including Gift Cartons, vacation certificates, blackjack books and buying club memberships (Complaint ¶¶ 6(27), 7(27); F. 21). No mention is made in any offer of extended delivery time.

255. CRC, in the regular course of business, opened and forwarded incoming orders to its computer service, Universal Data Systems, Inc., the same day (Jacobson 4947-48; F. 23). Universal processes those incoming orders, and printed vacation certificates and shipping labels in the regular course of business (F. 24). Universal Data Systems also printed reservation confirmations, normally three times per week (RX 62-231, 253). [62]

256. After reservation requests for accommodations in Las Vegas had been received, CRC would usually send confirmations out that same day or the next day (Joseph Anderson 4028).

257. However, CRC did not always provide vacation accommodations to its customers at the time and/or place of their choosing despite representations to the contrary. (Fs. 145-60). For instance, Thursday, Friday, Saturday and holiday arrival dates have always been unavailable to CRC customers (F. 147). Moreover, CRC and Genie Vacations could only handle an average of 50 to 60 Las Vegas check-ins per day (Joseph Anderson 4055).

258. Thus, CRC and Genie Vacations could accommodate an average of approximately 10,000 to 12,000 Las Vegas check-ins per year through CRC's program. (F. 257). However, according to the testimony of Richard Morelli (CPF, Appendix A), CRC received money from customers who indicated that they wanted to take their vacations in Las Vegas in at least the following numbers:

1975-1976	10,944 customers
1977	110,329 customers

Since the Las Vegas vacation certificates were good for one year (e.g., CX's 39B, 101B, 304B, 1869B), the customers who purchased vacations in 1975 to 1977 would have to be accommodated in 1975 to 1978. Thus, CRC promised Las Vegas accommodations to 221, 273 customers, but

had the capability of accommodating only approximately 40,000 to 48,000 customers.

259. CRC also engaged in numerous practices which had the effect of discouraging consumers from using the vacation certificates provided to them pursuant to CRC's offer or encouraging and, at times, forcing consumers to make changes in their vacations that were not described in the initial solicitation (Fs. 147-50, 152, 154, 160, 216-21, 225, 260-63, 265-67).

260. One CRC customer testified that CRC and its agents provided her with confirmations for reservations that were mailed after the date of the reservation. (Torres 1386-87; CX's 164, 165).

261. On occasion, CRC provided meal, gambling and other benefits to customers that were different than what was offered in the original solicitation (*e.g.*, Cain 874). [63]

262. One customer testified that CRC informed her that "they lost my reservation in the mail" (Breece 1196-97; CX 197A-B).

263. Respondent's witness Kegley, the supplier of the two-nights-for-the-price-of-one complimentary accommodations directory, testified that he recommended to Raymond Anderson and CRC that the two-for-one accommodations directory be used as a "conversion" from CRC's existing vacation certificate program (Kegley 4815-17). CRC did, in fact, substitute the two-for-one accommodations directory for the reservations requested pursuant to the vacation plan originally offered in the case of at least one customer (Brady 237-38; CX 229A-B). In other instances, CRC provided customers with the directory along with other materials in an attempt to persuade them to substitute a different vacation plan from that originally offered (Williamson 154-55; CX 1394; Lawley 450; Horton 1080, 1115-16; CX 1782; Torres 1372; CX 1831; Benun 1423; CX 221A-B; Holtzman 2646; CX's 487A-B, 508). CRC also solicited customers to switch vacation plans and make use of the two-for-one directory (Brady 257; Cain 875).

264. As part of some of the offers contained in its consumer solicitations, CRC represented that purchasers would receive a discount buying club membership (*e.g.*, CX's 335A, 595A). CRC failed to deliver the buying club membership to some of those customers who had ordered it (Holtzman 2651; Macario 3038; Huber 3092; Berger 4261).

265. As part of some of the offers contained in its consumer solicitations, CRC represented that purchasers would receive tickets to shows in Las Vegas (Holmes 496; Dworak 906; CX 304A; Blackmore 686-87; CX 224A; Borstein 1314-15). However, CRC failed to deliver show tickets to some of those customers who had paid for the Las

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Vegas vacation (Blackmore 687, 727; Bratschi 648; Holmes 505; Dworak 913; Borstein 1330).

266. In numerous instances, CRC delivered goods and services more than 30 days after receipt of the order from the consumer (e.g., Lawley 425-26, 440-41, 443-45; Gellhorn 2824-25, 2827-30, 2834-35; Other 2883, 2886-90; Stipulation, p. 3, n. 5).

267. CRC failed to deliver reservation request forms, which were necessary to take advantage of CRC's vacation offer, to some consumers (e.g., Birch 2999-3000, 3008), and failed to provide confirmed reservations to others (Povill 2918-27, 2931-32; Alpert 2462; Berliner 2704; Macario 3038). [64]

268. In certain instances, CRC failed to deliver Super Jackpot Packages and Gift Cartons which had been ordered and paid for by consumers (Janov 292; Alpert 2462; Engleman 2515; Berliner 2704; Gellhorn 2873; Other 2891; Birch 3000, 3008; Jenkins 3072; Gerstad 3299; Stipulation, p. 3, n. 5).

269. Thus, the record evidence supports the finding that CRC failed, in many instances, to deliver ordered goods and services (CRC Sanctions, pp. 3-4).

BB. Refunds and Guarantees

1. Market Development Corporation

270. MDC has represented in some of its consumer solicitations that its offer included an unconditional money-back guarantee (Complaint ¶ 6(29), 7(29)). MDC made this representation through use of the following statements:

(a) We take the risk, I must repeat, your money will be promptly refunded in full. . . . YOU MUST AGREE THAT YOU HAVE RECEIVED MANY TIMES YOUR MONIES [sic] WORTH. YOU HAVE EVERYTHING TO GAIN AND ABSOLUTELY NOTHING TO LOSE. (CX's 1331B, 1337B, 1353D, 1706C, 1711B, 1716B, 1721B, 1726B, 1738D, 1741B.)

(b) Naturally, if for any reason whatsoever, upon the completion of your holiday for two, you feel that you did not receive many times your original \$15.00 investment, or if you feel that you did not have the vacation of a lifetime and you were not totally delighted with your accommodations, your \$15.00 service charge will be REFUNDED IN FULL. . . . AND YOU STILL KEEP EVERYTHING THAT YOU RECEIVED IN YOUR TREASURE CHEST WITH OUR COMPLIMENTS. (CX's 1337B, 1726B.)

(c) Naturally, if for any reason whatsoever, upon receipt of your Sweepstakes Award Package, you find you are not totally and completely satisfied, you may return all prizes, certificates, etc. to us and we will promptly refund your \$15.00. (CX's 1367B, 1701B, 1706B, 1711B, 1716B, 1721B.) [65]

(d) If upon the completion of your vacation you feel that you are not completely

satisfied, you may keep each and every item received in your Treasure Chest. . . . We will still refund your \$15.00 service charge in full . . . now how is that for a 100% *MONEY-BACK GUARANTEE*. (CX's 1337B, 1726B.)

(e) Remember, you are risking nothing because your order is filled on a 100% *MONEY-BACK GUARANTEE*. (CX's 1716B, 1721B.)

(f) Remember, your satisfaction is guaranteed or we will refund your money in full. (CX 1733B.)

271. MDC also represented in its solicitations that the sewing machine offered to consumers was guaranteed for 25 years (CX's 1331A, 1353A, C, 1730A, 1733A, 1736, 1738A, C, 1739A, C, 1741A, 1742A).

272. MDC included an order form with many of its solicitations that stated in large, boldface print, "*MONEY-BACK GUARANTEE*" (CX's 1707A, 1712A, 1717A, 1722A, 1728A).

273. In some cases, customers contacted United States Senators (CX's 1615-17), consumer action columnists in the press (CX's 1606-08) and Better Business Bureaus (CX's 1609-11) in their attempts to obtain refunds from MDC. Even where such steps were taken, customers' refunds were often held up because they did not present an account number (CX's 1606, 1609, 1615), although the number was unnecessary for verifying the request (Harris 5120-21; Sarbaugh 3637-40, 3671).

274. Lois Flach, an MDC employee, testified that about one quarter of the sewing machine correspondence was "[thrown] in the garbage" without being answered (F. 249). Joseph Anderson, who was in charge of shipping and had authority to make refunds (Fs. 50, 332, 336), testified that he was aware of backlogs, but did not know of any refunds for non-delivery. (Joseph Anderson 3998). Many consumers seeking refunds from MDC for non-delivery did not receive responses from MDC indicating that a refund would be forthcoming (Land 541-42, 562; CX 66; Pill 605; CX 115A-C). [66]

275. Thus, the record evidence supports the finding that MDC did not always promptly provide refunds to dissatisfied customers and, in many instances, failed to make refunds altogether.

2. Columbia Research Corporation

276. CRC has represented in some of its consumer solicitations that its offer included an unconditional money-back guarantee (Complaint ¶¶ 6(29), 7(29)). CRC made this representation through use of the following statements:

(a) Naturally, if for any reason whatsoever, upon the completion of your holiday for two, you feel that you did not have the vacation of a lifetime and you were not totally

delighted with your accommodations, your \$15.00 service charge will be refunded in full . . . and you still keep everything that you received in your Super Jackpot Package with our compliments. (*E.g.*, CX's 53C, 93B, 124B, 169B, 278B, 1668B, 2031B.)

(b) Remember, you are risking nothing because your order is filled on a 100% money-back guarantee. (*E.g.*, CX's 53D, 93C, 124C, 196C, 278C, 1668C, 2031C.)

(c) Because your goodwill is very important to us, we make you this *guarantee*. If for any reason, upon completion of your Holiday For Two, you are not delighted or did not receive all your benefits, your \$15 will be promptly refunded upon request. (*E.g.*, CX's 82D, 93H, 151C, 283H, 1677C.)

(d) Please remember, you're fully protected with a *guaranteed* refund of the small \$15.95 charge if, after the trip, you're not satisfied in every way. Since there's no risk on your part, why not give me your okay? (*E.g.*, CX's 225, 348, 468, 479, 511, 1678B, 1979.)
[67]

(e) We guarantee if you're not totally satisfied, upon completion of your vacation, we'll promptly refund your \$15.95 upon request—and you still get to keep your Gift Carton. We couldn't be any fairer. (*E.g.*, CX's 349C, 354C, 413C, 478C, 499C, 2000C.)

277. CRC included an order form with many of its solicitations that stated in large, boldface print, "MONEY-BACK GUARANTEE" (*e.g.*, CX's 347, 416, 417, 491, 495A, 511, 2033).

278. Two of respondent's witnesses, Wava Balko and Adele Jacobson, both of whom were employees of CRC and handled the issuance of refunds (Balko 4910-11, 4925; Jacobson 4943, 4945, 4947, 4961), testified that Raymond Anderson instructed refunds to be issued only where the customer took the vacation but was very unhappy or could not take the vacation because of a death in the family, serious illness, financial difficulties or the inability of CRC to accommodate a second choice of reservations; if the customer did not fit into one of these five categories, then the refund would be denied (Balko 4930-33, 4937-38; Jacobson 4965-68, 4989-93, 5002-03).

279. Due to the conflict between the statements contained in F. 276 (a), (c), (d) and (e), which condition the refund on the customer having first taken the trip, and the statement of a money-back guarantee on the order form (F. 277), many consumers understood there to be an unconditional guarantee rather than a guarantee conditional on taking the vacation (Brady 232; Peters 60-61; Horton 1078; Wiersma 1216; Birch 2994; Huber 3084).

280. CRC has received numerous requests for refunds from consumers who have paid money to CRC (First CRC Admissions, Requests 1d-130d, 131d-211d, 212f-262f, 263d-274d, 275d-287d, 288e-322e, 323c-370c, 371d-372d, 373d-387d, 388e-389e, 390e-391e).

281. Many customers who received solicitations containing the types of statements described in F. 276, and who requested refunds

without having first taken the vacation were not given refunds by CRC (Peters 52; Williamson 125; Gorman 198; Janov 288-92; CX's 60, 61; Gross 356; Rees 396-401, 403-406; CX's 131, 119, 121-23; Szitkar 751; Tuber 830-36; CX's 1673, 1674; Cain 873-75; Horton 1099-1101; CX 1779A-B; Breece 1197-98; CX 198A-B; Wiersma 1230-31; CX 1818; Torres 1385-91; CX's 161A-B, 162, 1841; Benun 1431-33; CX 216; Riesenfeld 1625, [68]1627-32; Banos 1671-72, 1677; Alpert 2460-62; CX 1951; Cesario 2592; CX's 372A-B, 373A-B, 374A-B; Holtzman 2644-45, 2650-51; CX's 488, 481; Povill 2925-27, 2930; CX's 608, 609A-D; Birch 2999-3000; CX 350; Macario 3038; CX 594; Jenkins 3072; CX's 540-41; Huber 3087-89, 3092; CX's 513, 514A-B; Berger 4255-59, 4261). Many of these customers were unable to make use of the vacation package because of the actions taken by CRC or its agents, as described in Fs. 147-50, 152, 258, 260, 262, 267.

282. Even some of those customers who satisfied CRC's stated refund policy by having first taken the trip were not given refunds following their requests to CRC (Lawley 472-75; CX 1771; Holmes 514-15; CX 813; Blackmore 701-04; Bryan 1152-55; Engleman 2512-15).

283. Thus, the record evidence supports the finding that CRC did not always promptly provide refunds to dissatisfied customers and, in many instances, failed to make refunds altogether (*see also* CRC Sanctions, pp. 3-4).

CC. Reasonable Basis

284. In their consumer solicitations, MDC and CRC have represented, directly or by implication, that they had a reasonable basis for making the representations challenged in this proceeding prior to making them (Complaint ¶¶ 6(30), 7(30); *see, e.g.*, CX's 32C-F, 39, 101A-C, 111A-B, 124, 169, 224, 272, 283E-H, 288A-B, 335, 346, 478, 503, 525, 1677, 1842, 1868, 1869, 1908, 2003, or any other solicitation in the record). In addition, CRC's solicitations were often accompanied by a flyer (*e.g.*, CX's 32B, 492), which stated: "We wouldn't be in business if there was any 'catch' to our offer. We have had to *prove we deliver at least what we promise* to various States and U.S. Government agents." (CX 492).

Several examples of the ways in which MDC and CRC demonstrated their lack of reasonable bases for the challenged representations at the time of making them follow.

285. Both MDC and CRC were aware or should have been aware of the methods used by the suppliers of the Treasure Chests and Gift Cartons to assign values to the products in the kits, and that those assigned values had not been verified (Fs. 186, 187, 192, 193). [69]

286. MDC knew that the Hacienda Hotel and Casino was not providing lodging to MDC customers (F. 143).

287. CRC knew that the California Hotel and Casino was not providing lodging to CRC customers, and that CRC did not have any arrangements with the Hacienda, contractual or otherwise (Third CRC Admissions, Request 1).

288. CRC admitted that it could not cite any gaming regulation which prohibited it from issuing more benefits than what it provided the customer (F. 225; Third CRC Admissions, Request 35).

289. With regard to their representations of co-sponsorship and representation of other companies, MDC and CRC did not have contractual relationships with the manufacturers of the products in the Treasure Chests, Gift Cartons and Super Jackpot Packages (Fs. 86, 90; Third CRC Admissions, Requests 47-48).

290. MDC represented a retail price for the "Beau Bien" perfume placed in the Treasure Chest despite the fact that neither MDC nor the actual manufacturer of the perfume ever sold the perfume at the retail level (Fs. 198, 199, 204).

291. MDC did not attempt to verify the representations of value that were made for the vacation coupons offered to consumers in MDC's solicitations (Juanita Anderson 3829-30).

292. CRC knew or should have known that, at the time it sent many potential customers its solicitations stating a total of \$15.00 or \$15.95, the customers would have to pay at least \$5.00 per person per night extra for lodging (Third CRC Admissions, Request 49; CX 307; F. 126).

293. CRC knew or should have known that it could physically accommodate only a fraction of the consumers who requested and paid for Las Vegas accommodations (Fs. 257, 258).

294. The examples set forth above are sufficient to support the finding that both MDC and CRC knew or should have known that the challenged representations were untrue prior to making them or, alternatively, did not have a reasonable basis for making the representations prior to making them (*see also* CRC Sanctions, pp. 3-4). [70]

III. ROLES OF INDIVIDUAL RESPONDENTS

A. Raymond Anderson

1. *Market Development Corporation*

295. Raymond Anderson was president and a director of MDC, and participated in the operation of MDC in those respects (F. 45).

296. MDC was conceived by Raymond Anderson and was actually started by him (Juanita Anderson 3714-15). He determined where the

location of the company would be (Juanita Anderson 3716). He also determined that MDC would sell sewing machines, Treasure Chests and vacation certificates (Juanita Anderson 3717-18).

297. MDC was organized and operated as a family-held corporation, focused around Raymond Anderson and his family. Raymond Anderson's mother, Alberta Saal, was the treasurer and a principal shareholder of MDC (CX 660G; Juanita Anderson 3760-61). Raymond Anderson owned the residence which was listed both as her address and as the address of MDC's vice president, Wernie Hilsman (CX's 660G, 670A-B). MDC's employees included the following individuals: Raymond Anderson; his ex-wife, Juanita Anderson; Raymond and Juanita Anderson's two sons, Joseph and Daniel Anderson; his two stepsons, Rick and Steve Morgan; Raymond and Juanita Anderson's daughter-in-law, Pat Anderson; and his two nephews, Darrell and Joe Huff (CX's 672, 673A-B; Juanita Anderson 3707, 3720-22).

298. At various times, Raymond Anderson, Joseph Anderson, Juanita Anderson and Alberta Saal extended loans to MDC (CX 660I, K; Juanita Anderson 3844-45). Raymond Anderson and Joseph Anderson made a loan to MDC in the amount of \$77,419.97 (CX's 660K, 671K). Alberta Saal's loan to MDC was \$6,000 (CX 660I). Raymond Anderson also personally guaranteed loans that MDC received in the amounts of \$12,900 and \$47,488.98 (CX's 699, 700, 671G, 660M).

299. Raymond Anderson engaged in many of MDC's day-to-day activities, including:

(a) hiring employees (Juanita Anderson 3724; Joseph Anderson 3939);

(b) providing instructions to all MDC employees (Juanita Anderson 3733; CX 2110, pp. 69-70; Joseph Anderson 3952-55, 3968-69); [71]

(c) receiving reports from his employees (Juanita Anderson 3728-31; Joseph Anderson 3954-55; Harris 5135-36);

(d) dictating almost all of the non-consumer correspondence generated by MDC (Juanita Anderson 3798-3802, 3806-07; *e.g.*, CX's 848, 850, 1541);

(e) determining which companies MDC would do business with (Harris 5122);

(f) handling the correspondence from those companies that provided goods and services to MDC (Juanita Anderson 3740); and

(g) signing company checks (Karniol 2024; Juanita Anderson 3754-55).

Juanita Anderson testified that "Mr. [Raymond] Anderson was in charge of most of the things in the office. . . . He was the boss." (Juanita Anderson 3781). She also testified that "[Raymond Anderson]

was the deciding person" with regard to all the details involving MDC (Juanita Anderson 3783).

Erlene Harris testified about Raymond Anderson's role at MDC as follows:

Q. Mrs. Harris, would you tell Judge Howder what your understanding of the role of Raymond Anderson in the office was?

A. He ran the whole business. If he composed his letters, he made up his mailings. He ran the business. (Harris 5121.)

300. Raymond Anderson was responsible for the preparation and content of MDC's consumer solicitations, including deciding upon test runs (*i.e.*, what quantity of letters should be mailed where and what test criteria and parameters should be used), format, language, colors and pictures (Juanita Anderson 3778-81, 3827-28, 3830-32; CX 2110, p. 74; CX's 692A-D, 1368A-B; Joseph Anderson 3961-62, 3968-69; CX 2111, pp. 12, 49; Harris 5121). [72]

301. Mailing list brokerage services for MDC were handled by Marshall Sutton, a former employee of Florence Wolf, Inc. (Sutton 4162-65; F. 7). Sutton conducted business at MDC with Raymond Anderson, the only individual at MDC that he met in person (Sutton 4165). It was Raymond Anderson who placed MDC's orders with Sutton (Sutton 4166).

302. Small Business Data Processing supplied MDC with computer processing services (F. 238). Jay Sarbaugh, vice-president of Small Business Data Processing (Sarbaugh 3623), dealt with and received instructions from Raymond Anderson at MDC (Sarbaugh 3649; CX's 663, 854, 855).

303. Joseph Anderson provided daily reports to Raymond Anderson on MDC's Hauck Road plant operations, including reports on how many solicitations were mailed out each day, how much printing was done and which letter codes were used on the solicitations (Joseph Anderson 3954-55, 3973-74).

304. Raymond Anderson determined the price of the sewing machines sold by MDC through the mail (Joseph Anderson 3980; CX 2111, p. 32).

305. Selective Sampling supplied Treasure Chests to MDC (Fs. 14, 67, 184). Communications between Selective Sampling and MDC were directed to Raymond Anderson (CX's 748-50, 991, 992, 994, 997, 1000, 1003, 1006, 1572, 1574; Karniol 2047-48) because Selective Sampling considered him to be "the decision-maker" and in charge at MDC (Karniol 2048-49). Raymond Anderson was the individual who signed the correspondence sent to Selective Sampling (CX's 747, 993, 995, 1926). On one occasion, Raymond Anderson travelled to New York and

visited Selective Sampling in order to check on its packaging operation (Karniol 2041-42; CX 993).

306. Value Package supplied Treasure Chests to MDC (F. 14). Frank Taubes, president of Value Package (CX 978; RX 17), stated that most of his communications at MDC were with Raymond Anderson and that he dealt in person with Raymond Anderson (Taubes 2260, 2262). In 1973, Raymond Anderson went to New York to meet with Taubes and to discuss MDC's needs regarding promotional kits (Taubes 2261). Business correspondence between MDC and Value Package was from or to Raymond Anderson (CX's 697, 698, 978-81, 988; RX's 16, 17).

307. Grafton Products supplied the perfume for MDC's Treasure Chests (Fs. 15, 188, 199). Raymond Anderson initially approached Grafton with regard to supplying perfume to MDC and confirmed the relationship by verbally placing [73]the first order (Marcus 3226-28). Raymond Anderson was the only individual at MDC whom Edward Marcus, president of Grafton, dealt with in person (Marcus 3249). Communications between Grafton and MDC were directed to Raymond Anderson (CX 1011); Raymond Anderson signed correspondence sent to Grafton (CX's 1917, 1919).

308. Raymond Anderson determined the monetary value of MDC's Treasure Chest (Harris 5121; Juanita Anderson 3791-92), even though MDC was aware of the actual value of the products contained in the kits and had directed Grafton Products to place the "Beau Bien" perfume advertisement in *Harper's Bazaar* (Fs. 186, 187, 188, 202).

309. The vacation certificates that MDC offered in its consumer solicitations were supplied by several certificate companies (F. 13). Raymond Anderson dealt with and visited the certificate companies on behalf of MDC (Juanita Anderson 3777).

310. Raymond Anderson handled almost all correspondence from Attorneys General offices along with other problem correspondence (Juanita Anderson 3738-39). He also handled problems regarding the fulfillment of orders (Juanita Anderson 3743). Raymond Anderson created the "hillbilly" letters which notified customers of delays in the shipment of their orders (Juanita Anderson 3769; e.g., CX's 68, 292).

311. Raymond Anderson licensed his Treasure Chest-Vacation Certificate Program to MDC in return for royalties amounting to 20% of gross sales (CX 668B). In 1972, he received royalty payments of \$328,883.38 (CX 669). MDC also agreed to advance monies to Raymond Anderson at various times (CX 668B).

312. On June 28, 1974, separate voluntary petitions in bankruptcy were filed by Raymond Anderson and MDC (CX's 660A-CC, 671A-N; Fs. 1, 48).

313. In its bankruptcy petition, MDC stated that there existed "an additional 90,000 to 93,000 unsecured creditors . . . [whose] claims vary in value between \$15.00 and \$80.00." (CX 660L).

2. *Columbia Research Corporation*

314. Raymond Anderson has been and continues to be president and a director of CRC, and has participated in the operation of CRC in those respects (F. 45). [74]

315. Raymond Anderson and Joseph Anderson attended a bankruptcy auction of MDC's assets some time after June 1974. CRC purchased a large number of the Treasure Chests that Joseph Anderson had bought at the auction (F. 338).

316. CRC has been organized and operated as a family-held corporation, focused around Raymond Anderson and his family. Raymond Anderson's mother, Alberta Saal, was the sole stockholder of CRC (Third CRC Admissions, Requests 4-5). Raymond Anderson owned the residence which was listed as her address (F. 297). Raymond Anderson consulted with Juanita Anderson with regard to the hiring of personnel at CRC (Fs. 55, 318, 353). CRC has employed both Raymond Anderson and Joseph Anderson (Fs. 45, 52).

317. Raymond Anderson hired Joseph Anderson to work for CRC and informed the latter that his duties would be to help out with the Las Vegas operation of CRC's Vacation Certificate Program. Raymond Anderson paid for Joseph Anderson's moving expenses to Las Vegas (Joseph Anderson 4017-19; F. 52).

318. Raymond Anderson also asked Juanita Anderson to work for CRC; she was not actually employed by CRC although she did do interviewing of individuals in Chicago for employment by CRC and selected one person who was subsequently hired (Juanita Anderson 3837-40).

319. CRC has held neither shareholder meetings nor meetings of its board of directors (Third CRC Admissions, Requests 40-41). CRC's articles of incorporation contemplated that Raymond Anderson would be the sole director of the corporation (CX 1236D).

320. Raymond Anderson continued to use Marshall Sutton as CRC's mailing list broker; Sutton, at that time, was president of First National List Services, Inc. (Sutton 4148; Fs. 22, 301). Raymond Anderson approached Sutton in order to initiate the business relationship (F. 22). Raymond Anderson placed and signed CRC's orders and reorders, including orders of names from mailing lists that had been test lists (Sutton 4171-72, 4183, 4186-87).

321. Universal Data Systems, Inc. provided computer processing

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services to Raymond Anderson and CRC (Fs. 23, 24). Universal established its business relationship with CRC at a meeting arranged by Marshall Sutton; the meeting was between Raymond Anderson and Eric Tiebauer, president of Universal (RX 62-198,-206-07). Universal dealt basically with Raymond Anderson at CRC (RX 62-218). Instructions to Universal came from Raymond Anderson at CRC (RX 62-214-15,-245). [75]

322. A. M. Sampling supplied Gift Cartons to CRC (Fs. 39, 72, 192). Raymond Anderson telephoned Frank Taubes, president of A. M. Sampling which was formerly known as Value Package (Taubes 2230; see F. 14), in order to initiate the business relationship (Taubes 2263, 2286). Taubes testified that he dealt in person with Raymond Anderson who visited him in New York to discuss CRC's needs as regards the promotional kits (Taubes 2285-86). Raymond Anderson informed A. M. Sampling that he wanted the kits to contain about \$15.00 worth of merchandise (F. 193).

323. Bay Shore Yacht & Tennis Club supplied vacation certificates and accommodations in Florida to CRC customers (Fs. 26, 34). Raymond Anderson and Joseph Anderson met in person with Bryan McGuire, who had overall responsibility for Bay Shore, in June 1975, to tour Bay Shore's property in Florida (McGuire 2377, 2347-48, 2350). Business correspondence between Bay Shore and CRC was to or from Raymond Anderson (CX's 1935-37).

324. Complimentary Vacation Club has provided Las Vegas vacation services and gambling coupons to CRC (Kegley 4734, 4739-41). Its owner, Billy Dale Kegley (Kegley 4688), sent his two-nights-for-the-price-of-one accommodations directory along with a description of the program to Raymond Anderson in spring 1975 in order to solicit CRC's business (Kegley 4732, 4734). Kegley's testimony shows the success of his efforts:

Q. As a result of the sending of this booklet to Columbia Research Corporation, did you and Columbia subsequently begin to do business?

A. Yes.

Q. During what period did you initially start doing business with Columbia Research Corporation?

A. Approximately two to four weeks after I sent him [Raymond Anderson] the directory.

Q. When was that?

A. Sometime in 1975, April or May, I think.

Q. And during what period, after that time, did you do business with Columbia Research Corporation? [76]

A. I did business with him [Raymond Anderson] for approximately six, eight, ten months and then I stopped doing business with him.

Q. During that period of time, what did you sell him?

A. I sold him my Complimentary coupons and my casino package.

(Kegley 4734).

In late 1976, approximately six to eight months after Kegley stopped doing business with CRC, he resumed selling his directory and casino packages to CRC (Kegley 4738-39); in May 1978, he began handling reservations for CRC customers in Las Vegas (Kegley 4803). Kegley sought to have Raymond Anderson convert the CRC program so as to use more two-nights-for-the-price-of-one accommodations directories (F. 263). Kegley also testified that, "I have had hundreds of phone calls from Mr. [Raymond] Anderson." (Kegley 4817).

325. The King 8 Hotel and Casino supplied accommodations and gambling packages to CRC customers in Las Vegas (Fs. 30, 36, 157, 219). Raymond Anderson arranged and signed the business agreement between CRC and the King 8 (Jenni 1903-04; CX's 703A-B, 706A). Billings to CRC and Genie Vacations and letters for payments past due were sent to Raymond Anderson (CX's 710, 1909).

326. The California Hotel and Casino provided gambling benefits to CRC customers in Las Vegas (Fs. 219, 220, 222). Raymond Anderson wrote a letter to the California Hotel and Casino stating that CRC and he intended to continue distributing certificates for the gambling benefits (CX 1656A-B) in response to a letter from the California Hotel and Casino notifying CRC that the gaming certificates would no longer be honored (CX 1655).

327. Miami-Las Vegas Vacation Bureau, Inc. provided vacation certificates and reservation booking services to CRC (Fs. 26, 30, 33). Raymond Anderson initiated and developed CRC's business relationship with Miami-Las Vegas Vacation Bureau (Joseph Anderson 4042, 4084-86). Raymond Anderson decided that Miami-Las Vegas Vacation Bureau would take over reservation bookings from Genie Vacations, Inc., and purchased several thousand vacation certificates from Miami-Las Vegas Vacation Bureau (Joseph Anderson 4085-86; CX 2111, p. 74). [77]

328. Raymond Anderson established the criteria by which CRC employees would decide whether or not to grant a refund to a customer (F. 278).

329. During CRC's period of active operation, a corporation named

Las Vegas V.I.P. Connection, Inc. also solicited some CRC customers to go on "ALL-EXPENSE-PAID MINI-MONEY GAMBLING JUNKETS." (CX's 543, 1953, 1961). The solicitation sent to prospective customers began as follows: "Dear G. Jenkins. . . Columbia Research Corp. has advised us you plan to vacation in Las Vegas. . . ." (CX 543A). It also stated, "[W]e are affiliated with Genie Vacations (Genie Enterprises) of Las Vegas. . . ." (CX's 543D, 1953D, 1961D); Genie was CRC's Las Vegas reservation booking agent (Fs. 30, 32). The solicitation provided what it called an "Invite-a-Friend" form (CX's 543D, 547A-D, 1953D, 1958A-D, 1961D, 1966A-D), a term and form also used by CRC (e.g., CX's 303, 341A). Las Vegas V.I.P. Connection, Inc. provided a toll-free telephone number for ordering by phone (CX's 544, 1957, 1964); the document was pictorially identical to CRC's document listing its toll-free telephone number (CX 591). The photograph that Las Vegas V.I.P. Connection, Inc. used in its solicitation (CX's 546A, 1955A, 1965A) was identical to a photograph that CRC used in its advertising (e.g., CX's 536A, 1959). The solicitation provided for a "Special CRC Customer Price" of \$50 rather than the normal membership cost of \$65 a year (CX's 543A, D, 1953A, D, 1961A, D). The solicitation was signed by Toni Waldman (CX's 543B, 1953B, 1961B), and had a 505 North Lake Shore Drive, Chicago, Illinois address on the letterhead as well as on the pre-addressed envelope provided to consumers to return their orders in (CX's 543A, 545, 1953A, 1954, 1961A, 1963). Raymond Anderson has lived at 505 North Lake Shore Drive, Chicago, Illinois (Fifth CRC Admissions, Request 60; Joseph Anderson 4015). He has resided with Toni Waldman, and has used her name in the Las Vegas V.I.P. Connection, Inc. solicitations (Fifth CRC Admissions, Requests 58-59). Therefore, the inference can be made that Las Vegas V.I.P. Connection, Inc. is a company controlled by Raymond Anderson.

330. Thus, Raymond Anderson has formulated, directed and controlled the acts and practices of MDC and CRC, including those enumerated in Parts I and II of this decision (Third CRC Admissions, Request 30; Raymond Anderson Sanctions, p. 2). [78]

B. Joseph Anderson

1. Market Development Corporation

331. Joseph Anderson was an employee of MDC from 1969 until its termination in June 1974 (F. 49). He received a salary as well as commissions during the course of his employment (Joseph Anderson 4007; CX 720).

332. Joseph Anderson held a succession of positions of responsibility at MDC. At various times, he served as a sewing machine salesman,

sales manager of the door-to-door sewing machine sales force based at MDC's Hamilton Avenue address and general manager of MDC's Hauck Road plant where he was instructed by Raymond Anderson to oversee the printing, mailing, shipping and sewing machine repair operations (F. 50).

333. Joseph Anderson reported on a daily basis to Raymond Anderson, providing the latter with detailed information on MDC's Hauck Road plant operations (Fs. 51, 299(c)).

334. As part of his position at MDC's Hauck Road plant, Joseph Anderson answered consumer correspondence (Joseph Anderson 3991-92; CX 2111, p. 46). Correspondence also issued from MDC with his name on it; on at least one occasion, he used the title of "Sales Manager" in correspondence generated from MDC (Joseph Anderson 3949; CX 721).

335. Joseph Anderson dealt with Frank Taubes, of Value Package, by telephone regarding the contents of the kits that Value Package supplied to MDC (Joseph Anderson 3991; Taubes 2261). He was Small Business Data Processing's contact at MDC's Hauck Road plant (Sarbaugh 3649).

336. There are other indicia of Joseph Anderson's involvement in MDC's operations. He had the authority to hire employees for MDC (Joseph Anderson 3991). He made several trips on behalf of MDC, including a trip to New Jersey with Raymond Anderson to examine whether GCL Mercantile's sewing machines would be appropriate for MDC's program (Joseph Anderson 3989-91). He received blank checks from MDC's bookkeeping department and handled some of MDC's accounts payable, including authorizing the issuance of checks (Joseph Anderson 3996-97, 4005-06; CX 2111, p. 45; CX's 718, 19). [79]

337. Joseph Anderson was supervised by Raymond Anderson (Fs. 51, 299). However, Joseph Anderson testified that, "I operated under his instructions, but there was no—if I saw something that need[ed to be] done or something like that I could take it upon myself." (Joseph Anderson 3954). Therefore, Joseph Anderson exercised independent decision making responsibility at MDC.

2. Columbia Research Corporation

338. After MDC and Raymond Anderson filed voluntary petitions in bankruptcy in June 1974 (Fs. 1, 48, 312). Joseph Anderson and Raymond Anderson attended the bankruptcy auction of MDC's assets. Joseph Anderson bought a sizeable number of Treasure Chests at the auction and sold a large number of them to CRC (Joseph Anderson 3986-89).

339. Joseph Anderson was employed by CRC from May 1975 to July 1976. His duties involved managing CRC's vacation certificate program in Las Vegas, including eventually taking over the functions of Mike Alpert who was in charge of Genie Vacations, CRC's Las Vegas reservation booking agent. (F. 52; CX 2111, pp. 59, 62). He and Mike Alpert performed similar functions concerning CRC's Las Vegas operations (Joseph Anderson 4084; CX 2111, p. 111; Jenni 1915). Specifically, Joseph Anderson took care of incoming request forms, processing reservations and obtaining room accommodations (Joseph Anderson 4019; CX 2111, p. 62).

340. Joseph Anderson was a signatory on CRC's Las Vegas checking account (Joseph Anderson 4099).

341. While in Las Vegas, Joseph Anderson had a private office situated at Genie Vacations' 2128 Paradise Road office location (Joseph Anderson 4023). He hired and trained employees to undertake the same functions as Genie Vacations' employees. (Joseph Anderson 4026). He was involved in sending out reservation confirmations and supervising other employees who sent out reservation confirmations (Joseph Anderson 4028).

342. Acting in his capacity as manager of CRC, Joseph Anderson negotiated contracts with hotels and motels in Las Vegas to provide accommodations for CRC customers, including the King 8 Hotel and Casino, the Lucerne Motel, and Colonial House and the Bali Hai (Joseph Anderson 4027, 4032-33; CX 2111, pp. 69-70, 78; CX 706A-B; Jenni 1912, 1914-15). He delivered checks from CRC to the motels and hotels as payment (Joseph Anderson 4061). He also purchased gaming certificates for CRC customers. (Joseph Anderson 4073). [80]

343. Joseph Anderson and the King 8 Hotel and Casino worked closely together in implementing CRC's Las Vegas program. Joseph Anderson was physically at the King 8 at a Genie Vacations' desk counter in the lobby almost every day. He supplied CRC customer names to the King 8 by means of a manifest (Jenni 1910-11). The King 8 submitted billings to Joseph Anderson for the rooms and gambling packages used by CRC under its program (Jenni 1909-10, 1916-17; CX's 1913, 1914, 1909). Joseph Anderson was responsible for the scheduling of rooms at the King 8 and taking care of CRC's customers when they arrived at the King 8 (Jenni 1918-19). He made suggestions to the King 8 about the problem of people standing in line to redeem their gaming certificates (Jenni 1961-62). When the King 8 received complaints from CRC customers about CRC's program, it brought the complaints to the attention of Joseph Anderson (Jenni 1925-26).

344. Even when both Joseph Anderson and Mike Alpert were in Las Vegas together, the King 8 Hotel and Casino dealt with Joseph

Anderson (Jenni 1914-15). Joseph Anderson dealt with Phil Gold, the owner of Miami-Las Vegas Vacation Bureau, Inc., and sought, along with Genie Vacations, to remedy problems relating to services that Gold was to perform for CRC's Las Vegas customers (Joseph Anderson 4042-51, 4085).

345. Joseph Anderson handled consumer complaint correspondence, including requests for refunds (Joseph Anderson 4082, 4095).

346. Joseph Anderson continued to receive checks from CRC for a period of time after he left Las Vegas (Joseph Anderson 4110).

347. In June 1975, Joseph Anderson and Raymond Anderson went to meet Bryan McGuire to tour McGuire's Bay Shore Yacht & Tennis Club property in Florida (F. 323).

348. Thus, Joseph Anderson has taken part in formulating, directing and controlling the acts and practices of MDC and CRC, including those enumerated in Parts I and II of this decision.

C. Juanita Anderson

349. Juanita Anderson was an MDC employee from the company's inception in 1969 until its termination in June 1974 (F. 54). [81]

350. Juanita Anderson held a supervisory position during the course of her employment by MDC (F. 54). She had the authority to sign Raymond Anderson's name to company checks, including customer refund checks (Juanita Anderson 3754-55).

351. Juanita Anderson's functions included handling customer complaints sent to MDC from Better Business Bureaus, attorneys and Attorneys General offices (Juanita Anderson 3741-42; Flach 3531, 3525). She decided which complaints concerning non-delivery of sewing machines were to be responded to by shipping sewing machines from MDC, and instructed a subordinate, Lois Flach, in that regard (Flach 3537-41). Juanita Anderson also had the power to order refunds by MDC to customers (Juanita Anderson 3751-52).

352. Juanita Anderson occasionally dealt with William Karniol of Selective Sampling and Marshall Sutton of Florence Wolf for business purposes (Karniol 2047, 2115-16; Sutton 4165-66).

353. Juanita Anderson had the authority to hire employees both at MDC and, initially, at CRC even though she was not employed by CRC (Flach 3506; Fs. 55, 316, 318).

354. The record evidence is insufficient to support the contention (Complaint ¶ 1; CPF 266) that Juanita Anderson took part to a significant degree in formulating, directing or controlling MDC or CRC's acts and practices. [82]

LEGAL DISCUSSION

It is a violation of Section 5 of the Federal Trade Commission Act to offer goods and services to the public through unfair or deceptive means. Accordingly, it is unlawful to disseminate statements and representations in advertising and promotional materials which have the tendency and capacity to mislead or deceive prospective purchasers. *See, e.g., Speigel, Inc. v. F.T.C.*, 494 F.2d 59 (7th Cir.), *cert. denied*, 419 U.S. 896 (1974). And, it is settled law that when advertising on its face demonstrates the requisite tendency and capacity, the Commission may find violation without seeking out actual instances of deception to the public. *F.T.C. v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965); *Mongtomery Ward and Co. v. F.T.C.*, 379 F.2d 666 (7th Cir. 1967); *Double Eagle Lubricants, Inc. v. F.T.C.*, 360 F.2d 268, 270 (10th Cir. 1965); *Regina Corp. v. F.T.C.*, 322 F.2d 765 (3d Cir. 1963); *Charles of the Ritz Dist. Corp. v. F.T.C.*, 143 F.2d 676 (2d Cir. 1944). Nevertheless, many consumer witnesses testified in this proceeding, as noted throughout the previous factual discussion (*see, e.g.,* Fs. 108, 125, 139, 191, 215, 223, 231, 244, 250, 260, 262).

The Violations Found And Not Found

Based upon the facts as found, I hold that respondents have violated Section 5 in the following particulars:

A. MDC has represented to consumers that it conducted contests or sweepstakes whereas, in numerous instances, MDC's millions of mail solicitations involved no contest, nor any element of skill or chance, but were solely for the purpose of obtaining sales or leads for sales (Fs. 59, 60, 61, 62). Furthermore, MDC has represented that it would award a specific number of products as contest prizes in a "giant \$300,000 Sweepstakes" (CX 1332B). In this instance, MDC specified, *inter alia*, that 10 Dodge Challengers and 50 Zenith color TV sets would be given away. However, no such automobiles or TV sets were awarded (Fs. 63, 64). The utilization of fictitious promotional plans and illusory contests as a device to obtain leads to prospective purchasers has been held to constitute a deceptive practice violative of Section 5. *Household Sewing Machine Co.*, 76 F.T.C. 207, 229-31, 238 (1969); *Twentieth Century Business Builders, Inc.*, 23 F.T.C. 1311, 1316-19 (1939). [83]

B. Both MDC and CRC have falsely represented to consumers, through the use of their trade names and various promotional statements, that they were engaged in market research and analysis (Fs. 65-75). To misrepresent the character of one's business in order to induce the purchase of goods or services has long been proscribed.

Colgate-Palmolive, 380 U.S. at 388; *F.T.C. v. Royal Milling Co.*, 288 U.S. 212 (1933); *Niresk Industries, Inc. v. F.T.C.*, 278 F.2d 337, 340 (7th Cir.), *cert. denied*, 364 U.S. 883 (1960); *Product Testing Co.*, 64 F.T.C. 857, 882-83, *aff'd*, 339 F.2d 603 (3d Cir. 1964).

C. Both MDC and CRC have falsely represented to consumers that they were engaged in incentive programs or promotions (Fs. 76-83). *See, e.g., Basic Books, Inc.*, 56 F.T.C. 69, 79-81 (1956), *aff'd*, 276 F.2d 718 (7th Cir. 1960).

D. Both MDC and CRC have represented to consumers that they had co-sponsors or represented other companies when, in fact, no such special relationship with the manufacturers and suppliers of goods and services distributed by either MDC or CRC actually existed (Fs. 84-91). Representations that falsely claim, directly or by implication, a relationship with or a connection to other entities, such as arrangements for co-sponsorship or other representation, violate Section 5. *Sterling Drug, Inc.*, 47 F.T.C. 203, 209-10, 213 (1950); *The Richmond Brothers Co.*, 36 F.T.C. 482, 485-86 (1943); *Champion Battery Co.*, 34 F.T.C. 433, 443-46 (1941).

E. Both MDC and CRC have represented that consumers were specially selected to receive their offers. However, each respondent company disseminated its solicitations by means of mass mailings sent to millions of consumers throughout the United States (Fs. 92-101). Moreover, MDC has falsely represented that its offer was a "once-in-a-lifetime" opportunity (Fs. 102-03). The Commission's power to proscribe false representations that prospective customers were specially selected recipients of offers has long been established. *F.T.C. v. Standard Education Society*, 302 U.S. 112, 113-15, 117 (1937); *Kalwajtys v. F.T.C.* 237 F.2d 654, 656 (7th Cir. 1956), *cert. denied*, 352 U.S. 1025 (1957); *American Music Guild, Inc.*, 68 F.T.C. 13, 22-23, 34-35 (1965); *Basic Books*, 56 F.T.C. at 79-81. [84]

F. (1) MDC has represented that consumers receiving its solicitations were contest or sweepstakes winners and, as such, were entitled to "awards," "gifts," "prizes," "winnings," "bonuses," and/or "free" goods and services (Fs. 104, 105, 109). However, in numerous such instances, consumers did not actually win anything because MDC did not conduct actual contests or sweepstakes; moreover, consumers were only entitled to purchase the goods and services offered by MDC at the stated price (Fs. 62, 106, 110, 111). Misrepresentations that mislead the consumer into believing that a particular product or service is being given away at no charge have long been considered unlawful. *Standard Education Society*, 302 U.S. at 113-17; *Kalwajtys*, 237 F.2d at 656; *American Music Guild*, 68 F.T.C. at 32; *Basic Books*, 56 F.T.C. at

79-81; *Moye Photographers*, 50 F.T.C. 926, 930 (1954); *Champion Battery*, 34 F.T.C. at 444, 446.

(2) CRC has represented that consumers receiving its solicitations were winners and, as such, were entitled to "gifts," "bonuses," and/or "free" goods and services (Fs. 107, 112). However, consumers did not actually win anything, but rather had to pay CRC a fee of \$15.00 or \$15.95 in order to receive the goods and services offered by CRC. (Fs. 107, 113, 114). The same case law applicable to MDC in the previous paragraph governs here as well.

G. Both MDC and CRC have represented to consumers that they were offering a "free" vacation (Fs. 115, 120). However, consumers responding to each of respondents' solicitations were required to pay transportation charges to the vacation site and, often, peak season accommodations charges; consumers often also had to take substantial and even extraordinary steps in order to realize all the benefits of MDC and CRC's "free" vacation packages (Fs. 116-19, 121-29). Representations such as these, which convey the false impression that something is being given away for nothing, tend to mislead the consumer as to the cost of the product or service and, therefore, are deceptive and unlawful. The caselaw discussed in Section F, above, is applicable here as well. Moreover, in their solicitations, respondents have failed to disclose, or have failed to disclose clearly and conspicuously, some of these additional costs and conditions imposed upon consumers (Fs. 117, 122, 124, 126). The failure to affirmatively disclose material facts which would affect a consumer's decision to purchase constitutes an unfair and deceptive act or practice under Section 5. *Pfizer, Inc.*, 81 F.T.C. 23, 58, 62 (1972); *All-State Industries of North Carolina, Inc.*, 75 F.T.C. 465, 490-94, *aff'd*, 423 F.2d 423 (4th Cir.), *cert. denied*, 400 U.S. 828 (1970). And, as [85]the court stated in *Ward Laboratories, Inc. v. F.T.C.*, 276 F.2d 952, 955 (2d Cir.), *cert. denied*, 364 U.S. 827 (1960), "[t]he power of the FTC to require affirmative disclosure where necessary to prevent deception has long been recognized [citations omitted]."

H. CRC has falsely represented that consumers had a limited time, usually 10 days, within which to respond to the offers contained in the solicitations, and that failure to meet the time limit would result in forfeiture of any right to "accept" such offers (Fs. 138, 139). Such a misrepresentation is misleading and constitutes a deceptive practice. *E.g.*, *Basic Books*, 56 F.T.C. at 80-81; *National Optical Stores Co.*, 46 F.T.C. 694, 701-02, 703 (1950).

I. Both MDC and CRC have falsely represented that consumers responding to solicitations could choose the time, location and accommodations for their vacations (Fs. 140-60). For instance, certain hotels

and resorts which MDC and CRC specified as choosable accommodations to choose from were not available (Fs. 142, 143, 153, 154). CRC customers were not able to be accommodated in Las Vegas for Thursday, Friday, Saturday or holiday arrivals (F. 147). The Commission has held that misrepresentations of this nature are violative of Section 5. *American Music Guild*, 68 F.T.C. at 33-34, 35.

J. Both MDC and CRC have represented to consumers that the goods and services offered in the solicitations had specific values, retail values and total values (Fs. 183, 190, 198, 211, 214). MDC also represented that consumers responding to its offers would realize specific monetary savings (F. 211). However, the products and services offered by MDC and CRC did not have the values that they were represented to have and their purchase did not result in the promised savings. Rather, MDC and CRC artificially inflated the actual values; moreover, the use of the goods and services provided was often conditioned in such a way that it was difficult or impossible for consumers to realize the values that were represented (Fs. 184-89, 192-97, 199-204, 212, 213, 215-26). Misrepresentation as to the price of the product or service being offered has been deemed misleading and deceptive in a long series of court and Commission cases. *See, e.g., Colgate-Palmolive Co.*, 380 U.S. at 387; *Standard Education Society*, 302 U.S. at 113-17; *Niresk Industries*, 278 F.2d at 340; *Kalwajtys*, 237 F.2d at 656; *Thomas v. F.T.C.*, 116 F.2d 347, 348-49 (10th Cir. 1940); *Grolier, Inc.*, 91 F.T.C. 315, 482-83; *Estee Sleep Shops, Inc.*, 65 F.T.C. 274, 284-85 (1964); *Giant Food, Inc.*, 61 F.T.C. 326, 344-51 (1962), *aff'd*, 322 F.2d 977 (D.C. Cir. 1963), *cert. denied*, 376 U.S. 967 (1964); *George's Radio and Television Co.*, 60 F.T.C. 179, 192-94 (1962). *See also Guides Against Deceptive Pricing*, 16 CFR 233 (1978). [86]

K. Both MDC and CRC have falsely represented that all of the household and cosmetic products contained in the Treasure Chests and Gift Cartons offered in their solicitations were full-sized, as opposed to sample-sized, products (Fs. 205-10). Misrepresentation of this type has been held to be misleading and deceptive under Section 5. *See Consumers Home Equipment Co. v. F.T.C.*, 164 F.2d 972, 973 (7th Cir. 1947); *Tri-State Printers, Inc.*, 53 F.T.C. 1019, 1032-33 (1957); *Champion Battery*, 34 F.T.C. at 444, 445, 446.

L. Both MDC and CRC have falsely represented that their offers were not connected to the sales promotion of other goods or services, *i.e.*, land sales programs, by failing to affirmatively disclose to consumers in their solicitations that the offers were, in fact, sometimes connected to such sales promotions (Fs. 227-32). The failure to affirmatively disclose material facts which would affect a consumer's decision to purchase constitutes an unfair and deceptive act or practice

under Section 5. The case law discussed in Section G, p. 84, is applicable here as well.

M. MDC has implicitly represented to consumers that it would bear the delivery costs of its sewing machines (F. 233). However, MDC's customers had to pay the delivery costs of the sewing machines shipped to them, often paying charges that were substantially higher than the actual shipping charges (Fs. 234-36). Representation that the cost of a product or service is all-inclusive, or free, are false and misleading when the customer is required to pay delivery costs. *Tri-State Printers*, 53 F.T.C. at 1033. Such representation failed to reveal the total out-of-pocket costs that consumers would incur. The failure to affirmatively disclose material facts which would affect the consumer's decision to purchase constitutes an unfair and deceptive act or practice under Section 5. The caselaw discussed in Section G, p. 84, is applicable here as well. As the court stated in *Tashof v. F.T.C.*, 437 F.2d 707, 714 (D.C. Cir. 1970), "we have long since passed the point where the power of the Commission to reach statements that are deceptive because they contain less than the whole truth can be doubted."

N. Both MDC and CRC have implicitly represented to consumers that the goods and services ordered would be delivered (Fs. 237, 254). However, in many instances, MDC and CRC failed to deliver ordered goods and services (Fs. 238-53, 255-69). For example, both respondents continued to accept and process customer orders that they were unable to fill, and did so for significant periods of time after they had become unable to fill [87]such orders, because of the build-up of large backlogs of orders and their failure to purchase sufficient quantities of and make sufficient arrangements for ordered goods and services (Fs. 241, 246-48, 258). On occasion, CRC also failed to fill customers' orders properly by making substitutions for what had been ordered (Fs. 261, 263). Failure to deliver is an appropriate matter for regulation under Section 5. *Jay Norris Corp.*, 91 F.T.C. 751, 836-37, 839 (1978), *aff'd*, No. 78-4151 (2d Cir., decided May 1, 1979); *Tri-State Printers*, 53 F.T.C. at 1032, 1033-35. *See also* Trade Regulation Rule on Mail Order Merchandise, 16 CFR 435 (1978).

O. Both MDC and CRC have represented to consumers that there was no financial risk involved in accepting the offers because of an unconditional refund policy and a "100% moneyback guarantee" (Fs. 270, 272, 276, 277). Contrary to such representation, dissatisfied consumers did not always receive, or did not always promptly receive, refunds from MDC and CRC. (Fs. 273-75, 281-83). Representation that refunds will be made where, in fact, there is a failure to provide refunds constitutes a deceptive practice under Section 5. *Goodman v. F.T.C.*, 244 F.2d 584, 600-01 (9th Cir. 1957); *Jay Norris*, 91 F.T.C. at

836-39; *National Optical Stores*, 46 F.T.C. at 701-02, 703; *Cookware Associates*, 40 F.T.C. 654, 660 (1945). See also Trade Regulation Rule on Mail Order Merchandise, 16 CFR 435 (1978).

P. It is well established that the Commission has the power to regulate the dissemination of advertising claims where respondents do not, at the time they make such claims, have a reasonable basis for so doing. *Tashof*, 437 F.2d at 715; *Jay Norris*, 91 F.T.C. at 852-54; *Porter and Dietsch, Inc.*, 90 F.T.C. 770, 866 (1977); *National Commission on Egg Nutrition*, 88 F.T.C. 84, 191 (1976), modified, 570 F.2d 157 (7th Cir. 1977), cert. denied, 99 S. Ct. 86 (1979); *National Dynamics Corp.*, 82 F.T.C. 488, 549, 553 (1973), remanded in part on other grounds, 492 F.2d 1333 (2d Cir.), cert. denied, 419 U.S. 993 (1974); *Firestone Tire and Rubber Co.*, 81 F.T.C. 398, 463 (1972), aff'd, 481 F.2d 246 (6th Cir.), cert. denied, 414 U.S. 1112 (1973); *Pfizer, Inc.*, 81 F.T.C. 23, 62-64 (1972). The record evidence clearly demonstrates that MDC and CRC did not have a reasonable basis for the claims contained in their solicitations prior to disseminating such solicitations (Fs. 284-94). [88]

I further hold that the following allegations of the complaint were not adequately supported by the record evidence and, therefore, are not found to violate Section 5 on that basis:¹²

A. Both MDC and CRC have represented that consumers were entitled to the goods and services offered for only a registration, handling and service charge (Fs. 130, 132). However, any relationship between such charges and the retail price of the goods and services offered by MDC and CRC was not demonstrated (Fs. 131, 133).

B. MDC has represented that 340,000 consumers accepted its offers (F. 134). However, the truth or falsity of this representation was not established (F. 135).

C. MDC has represented that consumers had a limited time, usually 10 days, within which to respond to the offers contained in the solicitations, and that failure to meet the time limit would result in forfeiture of any right to "accept" such offers (F. 136). The record evidence did not sufficiently address this allegation (F. 137).

D. Both MDC and CRC have represented that the vacation coupons offered to consumers had specific total values (Fs. 161, 164). Although it would have been difficult or impossible for consumers to realize the full value of such coupons, the respondents' representations regarding such monetary value were not shown to be unlawful (Fs. 162, 163, 165, 166).

E. MDC has represented that the sewing machines offered to

¹² As noted below, all of Paragraph seven of the complaint was taken as established adversely to Raymond Anderson in his individual capacity based upon the Raymond Anderson sanctions order.

consumers were sold throughout the United States (F. 167). Complaint counsel did not meet their burden of proof as to this allegation (F. 168).

F. MDC has represented to consumers that its sewing machines had a 25-year guarantee and would be serviced under this guarantee throughout the United States. (Fs. 169, 271). Complaint counsel did not meet their burden of proof as to this allegation (Fs. 170, 171).

G. MDC has represented to consumers that its sewing machines were used in home economics classes throughout the United States (F. 172). Complaint counsel did not meet their burden of proof as to this allegation (Fs. 173, 174). [89]

H. MDC has represented that the sewing machines offered to consumers had a specific retail price. (F. 175). However, complaint counsel did not sufficiently demonstrate that the sewing machines purchased by consumers from MDC did not, in fact, have such retail prices (Fs. 176-79).

I. MDC has represented to consumers that they would receive discount certificates having specific monetary values that could be applied toward the regular retail price of the sewing machines being offered (F. 180). However, the worth of such discount certificates was not established (F. 182).

A few additional points require comment:

The Sanctions. As mentioned heretofore, sanctions under Rule 3.38 were imposed upon respondents CRC and Raymond Anderson for their failure to comply with discovery subpoenas in this case. In opposing such sanctions, these respondents contended, *inter alia*, that the Commission lacked the legal authority to promulgate Rule 3.38. This, however, is not a matter upon which I am authorized to make a ruling. As an administrative law judge of this agency, I am bound to accept the validity of its Rules of Practice. Any challenge to the sanctions provisions of Rule 3.38 should be brought before the Commission itself or the federal courts.

Two sanctions orders were issued on November 1, 1977 one pertaining to CRC, the other to Raymond Anderson in his individual capacity. The CRC order, incorporating sanctions (2), (3) and (4) of Rule 3.38(b), established adversely to CRC complaint paragraphs one, three and subparagraphs 1, 3-9, 11-12, 15, 22-27, 29-30 of paragraph seven; prohibited the use on defense of the withheld information; and permitted the introduction by complaint counsel of secondary evidence, including self-authenticating consumer complaint letters.¹³ The Raymond Anderson order, incorporating sanctions (2) and (3) of the rule,

¹³ In addition to the consumer letters in evidence, there was testimony concerning the receipt of almost 4,000 consumer complaint letters by the Commission's Cleveland Regional Office (Benowitz 4325; CX 2067).

established adversely to Raymond Anderson complaint paragraphs one, three, four and all of seven, and applied sanction (3) insofar as it related to testimony concerning Raymond Anderson's defense. [90].

Despite the imposition of these sanctions, some testimony and evidence concerning CRC and Raymond Anderson was permitted to be introduced into the record pertaining to "sanctioned" matters. My reasoning for so doing was based upon the difficulty anticipated in segregating information pertaining to these two respondents from that pertaining to the other respondents. I also believed that in terms of framing any order which might issue, it would be useful and desirable to have an evidentiary picture of the business practices of all respondents.

Independent Contractors. Respondents contend that they should not be held responsible for the acts of certain individuals or companies who handled vacation reservations for CRC. Respondents describe companies such as Miami-Las Vegas Vacation Bureau, Inc. and Genie Vacations (or Genie Enterprises) as "independent contractors" rather than as "agents," and seek insulation from any wrongdoing these nonparties may have done.¹⁴ There is no dispute, however, that these companies were authorized to act on CRC's behalf in fulfilling customer orders, or that such authorized acts lasted for significant periods of time. Under controlling case law, respondents may not avoid liability for their actions despite claimed efforts to ameliorate problems caused by their representatives. See *Goodman v. F.T.C.* 244 F.2d 584, 588-93 (9th Cir. 1957), citing *inter alia*, *Standard Distributors, Inc. v. F.T.C.*, 211 F.2d 7, 13 (2d Cir. 1954) and *International Art Co. v. F.T.C.*, 109 F.2d 393, 396 (7th Cir. 1940). See also *Star Office Supply Co.*, 77 F.T.C. 383, 444-46 (1970); *Wilmington Chemical Corp.*, 69 F.T.C. 828, 925-26 (1966).

Satisfied Customers. Respondents refer to the stipulated testimony of 40 satisfied customers as establishing "that the program offered by CRC is not misleading or deceptive in any aspect." (RPF p. 7). They go on to state (*id.* at 7-8):

The consumer testimony of people who actually took advantage of CRC's promotion established that they received the items ordered on time. After taking advantage of the program each felt that the program was not misleading or deceptive in any respect. Each of these 40 customers stated that the meal and beverage package, the gaming package accommodations, and package of household goods were as [91]represented. They even went as far as to say that if given the opportunity they would take advantage of the offer of CRC again. This is testimony which was stipulated to by complaint counsel. (Stipulation as to consumer testimony filed 10/30/78).

¹⁴ RPF 97 states, *inter alia*, that Miami-Las Vegas Vacation Bureau "breached agreements with numerous persons. It failed to refund deposits, and honor reservations in numerous instances."

Respondents' argument is legally unsound. In *Basic Books v. F.T.C.*, 276 F.2d 718, 720-21 (7th Cir. 1960), the court held:

It may have been possible and may be assumed *arguendo* that Basic Books could have called twenty trustworthy witnesses to testify that such representations had not been made to them. Such evidence, however, would not refute the testimony which was previously given by the fifteen witnesses that such misrepresentations had in fact been made to them. That a person or corporation, through its agents, may have made correct statements in one instance has no bearing on the fact that they made misrepresentations in other instances. The fact that petitioners had satisfied customers was entirely irrelevant. They cannot be excused for the deceptive practices here shown and found, and be insulated from action by the Commission in respect to them, by showing that others, even in large numbers, were satisfied with the treatment petitioners accorded them.

See also *Independent Directory Corp. v. F.T.C.*, 188 F.2d 468, 471 (2d Cir. 1951).

Miscellaneous. Respondents assert that irregularities in their operations were not their fault. Blame is assigned to a number of individuals and events which respondents say were beyond their control, such as: (1) "enormous" problems existing in the mail order industry, including nondelivery, misdelivery, computer error, consumer error and theft; (2) a dock strike, causing delays in shipments; (3) a strike of culinary workers in Las Vegas, temporarily closing lodging facilities; (4) the strength of the Japanese yen and devaluation of the dollar, putting financial pressure on sewing machine prices; (5) gasoline shortages due to the Arab oil embargo, making consumers unwilling to drive to vacation locations; (6) adverse publicity concerning respondents' business problems, causing further consumer alarm; (7) certain hotels failing to honor vacation certificates; (8) misunderstandings on the part of various casino personnel; and (9) business disputes between third parties, affecting respondents' operations. [92]

Without minimizing any of the above, I cannot make a finding as to the extent such factors had a bearing upon the violations found in this case. Certainly enough has been shown in the factual discussion to lay the principal blame on the respondents. Respondents created their promotional literature; they are responsible for the content contained therein. Most of the challenged representations made in such solicitations do not have, on their face, any relationship to these factors. Accordingly, respondents' attempt to exculpate themselves by placing blame elsewhere must be rejected.

Respondents also maintain that "any practices which could have even been remotely attributable to [them] and which would have caused consumer dissatisfaction have been voluntarily corrected, or are of such an insignificant nature as to not require the issuance of any order . . . other than one dismissing the complaint." (RPF, pp. 1-2). O

TRADE COMMISSION DECISIONS

Initial Decision

95 F.T.C.

the issue of voluntary cessation of challenged practices, the cases are legion that the defense of "abandonment" is not available at this stage of a proceeding. Respondents have shown no reason why an exception to this rule should be made here. As to the insignificant nature of respondents' acts and practices, I note that while only a small amount of money is involved in each consumer transaction, those amounts become substantial when multiplied by the many thousands of consumers who have entered into transactions with respondents. An order is, therefore, necessary in this case.

The Remedy. The provisions of the order issued in this case are specifically tailored to prevent recurrence of each of the violations found. In framing the order, I declined to adopt complaint counsel's proposal that a provision effectively excluding respondent Raymond Anderson from ever again engaging in any way in the mail order business be included. However, complaint counsel's contentions in this respect deserve some attention.

It is urged that this type of relief is necessary because of the widespread and permeating nature of the deceptive acts and practices found in this case, and because of Raymond Anderson's past and present involvement with law enforcement authorities.¹⁴ Complaint counsel argue in their brief:

The reason why more drastic relief is required is because Raymond Anderson is an habitual offender and a civil recidivist. As pointed out by [Proposed] Findings of Fact 283-285, Raymond Anderson has been [93]committed to perpetrating unfair acts upon the public for an extended period of time. See, e.g., *Kugler v. Market Development Corp.*, 124 N.J. S.Ct. 314, 306 A.2d 489 (1973); *Minn. v. Market Development Corp.* (Minn. D.C. 2nd Dist.), File No. 386646 (1973). Several states which resorted to legal action against CRC and Raymond Anderson previously had to resort to legal action against MDC and Raymond Anderson. California, by the District Attorney of San Francisco, has filed grand theft felony criminal proceedings against CRC and Raymond Anderson for alleged violations of the civil order entered in California. The Federal Trade Commission's involvement with Raymond Anderson goes back at least to 1957 with the entry of an order against Raymond Anderson, in *Universal Sewing Service, Inc.*, 54 F.T.C. 643 (1957), which involved deception in the sale of sewing machines; deception which has been shown to have occurred approximately fifteen years later in *Market Development Corporation*. Raymond Anderson has been the subject of Postal Service proceedings which were mooted because of his bankruptcy in 1974. Yet, even before the final adjudication in bankruptcy, Raymond Anderson had resumed the same business by a subsequent corporation, and branches out to other corporations such as Las Vegas V.I.P. Connection, Inc. ([Proposed] Findings of Fact 253).

B p. 47). Despite the above, and despite all the power of this agency "fence in" or to "close all roads," care must be taken that an order be punitive. As stated in *Arthur Murray Studio of Washington*,

¹⁴In making my factual findings and reaching my legal conclusions in this case, I have accorded no weight to the force of any other legal proceeding involving respondents.

Inc. v. F.T.C., 458 F.2d 622, 625 (5th Cir. 1972), "the remedy should be no broader in restricting legitimate acts than is reasonably necessary," and "[t]he right of petitioners to contract must be accommodated by the Commission if at all possible with its statutory duty to formulate a remedy to eliminate unfair and deceptive trade practices, once such practices have been found." I believe that legal principle to be controlling in the case of respondent Raymond Anderson, and that my order accomplishes the goal stated.

There is no question, however, that Raymond Anderson must be included in the order in his individual capacity. As detailed in the Findings, he has been and is the central figure in the business operations of both corporate respondents, and was instrumental in the violations found in this case. [94]

As to respondent Joseph Anderson, he too must be included in the order in his individual capacity. The Findings indicate that, although he operated under his father's instructions, the extent of his participation in the corporate affairs of CRC and MDC render him individually liable.

On the other hand, no useful purpose would be served by issuing an order as to respondent Juanita Anderson. She had no significant involvement with CRC, and the record does not indicate that she participated to any substantial degree in the formulation, direction and control of the business operations of MDC. And, as stated by complaint counsel, "it does not appear that she is likely to resume illegal activity." (CB p. 49). Hence, the complaint will be dismissed as to Juanita Anderson in her individual capacity.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over respondents Market Development Corporation, Columbia Research Corporation, Raymond Anderson, Juanita Anderson and Joseph Anderson.
2. This proceeding is in the public interest.
3. The aforesaid acts and practices of the respondents as herein found were and are to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.
4. The order entered in this proceeding is proper in scope and reasonably related to the violations found. [95]

Initial Decision

ORDER

I.

It is ordered, That respondents Columbia Research Corporation, Raymond Anderson and Joseph Anderson, their successors and assigns, officers, directors, 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 vacation certificates and packages, sewing machines, household and cosmetic products, mail order goods, or other goods or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Making or participating in the making, in any manner and by any means, of false, misleading or deceptive representations for the sale or purpose of aiding in the securing of leads or prospects for the sale of any product or service, the demonstrating of any product or service, or any other purpose.

(2) Representing, in any manner and by any means, that respondents are conducting a contest, unless:

(a) the contest is bona fide;

(b) all prizes advertised to be awarded will be awarded; and [96]

(c) respondents maintain all records pertaining to such contest for three (3) years subsequent to the end of the contest.

(3) Representing, in any manner and by any means, that recipients of respondents' solicitations are winners, or that prizes, awards or gifts will be given, or the conditions under which such prizes, awards or gifts will be given, including, but not limited to, representation by use of such terms as "prizes," "awards," "winnings," "gifts," "bonuses," "free" or terms of similar import and meaning, unless the recipients of such prizes, awards or gifts incur no financial or other obligation.

(4) Misrepresenting, in any manner and by any means, the character of any business conducted by respondents, including, but not limited to, misrepresentation through misleading corporate names, misleading titles for corporate officers, or statements or expressions conveying that respondents engage in market research and analysis, conduct incentive programs or promotions, or make use of a special method of selecting prospective customers to receive respondents' solicitations.

(5) Representing, in any manner and by any means, that respondents have co-sponsors or represent other companies, unless: [97]

(a) the co-sponsorship or representation of another company is bona fide; and

(b) the co-sponsors or represented companies have actual knowledge

of and have approved the use of any such representation by respondents prior to respondents' representation to any third party.

(6) Representing, in any manner and by any means, that recipients of respondents' solicitations have a limited time within which to reply to or accept respondents' offers, unless such time limitation is bona fide.

(7) Representing, in any manner and by any means, that recipients of respondents' solicitations can exercise a choice regarding the selection of any product or service offered by respondents, including, but not limited to, vacation times, locations or accommodations, unless such choice selections are actually made available and recipients receive a response to their indication of such choice within a reasonable time period. For purposes of this paragraph, "a reasonable time period" shall be:

(a) that period of time specified in respondents' solicitation if such period is clearly and conspicuously disclosed in the solicitation; or [98]

(b) if no period of time is clearly and conspicuously disclosed, a period of thirty (30) days following the date that the recipient's indication of choice is received by respondents or by a designated agent of respondents.

(8) Misrepresenting, in any manner and by any means, the nature of respondents' goods and services, the stated value of their goods and services, the total cost of their goods and services, the retail price of their goods and services, or any other price or value against which the goods and services offered in respondents' solicitations are being compared, including, but not limited to, misrepresentation by use of such terms as "full-size," "savings," "value," "special," "retail price," "regular price," "list price," "former price" or terms of similar import and meaning, or misrepresentation by failing to clearly and conspicuously disclose, in the solicitation or other promotion, that purchasers will or may incur additional costs in connection with the purchase of respondents' goods and services, such as delivery costs, and the approximate amount of each additional cost.

(9) Failing to clearly and conspicuously disclose, in any manner and by any means, in any solicitation or other promotion, any relationship between respondents' offer [99] and the subsequent sales promotion of other products or services by respondents and/or other companies, including, but not limited to, the promotion of land or property sales programs.

(10) Failing to deliver goods or perform services ordered by purchasers from respondents within a reasonable time period. If delivery or performance is unable to be completed within such a reasonable time period, then respondents shall clearly and conspicuously offer in writing to such purchaser, no later than at the expiration of

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the reasonable time period, an option either to consent to a delay in delivery or performance or to cancel his or her order and receive a full refund which shall be sent by respondents by first class mail within seven (7) working days of the date on which respondents receive such purchaser's notice of cancellation.

For purposes of this paragraph, "a reasonable time period" shall be: (a) that period of time specified in respondents' solicitation if such period is clearly and conspicuously disclosed to the purchaser in the solicitation; or [100]

(b) if no period of time is clearly and conspicuously disclosed, a period of thirty (30) days following the date that the purchaser's order is received by respondents or by a designated agent of respondents.

(11) Representing, in any manner and by any means, that any product or service offered in respondents' solicitations is guaranteed or warranted, including, but not limited to, representation by use of such terms as "guarantee," "warranty," "money-back guarantee" or terms of similar import and meaning, unless the terms, conditions and limitations of the guarantee or warranty, the identity of the guarantor or warrantor and the manner in which the guarantor or warrantor will perform thereunder are clearly and conspicuously disclosed in writing in the solicitation, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of such guarantee or warranty.

(12) Failing to respond to each and every written inquiry concerning transactions with customers within seven (7) working days after the date respondents receive such inquiry.

(13) Making or participating in the making, in any manner and by any means, of any of the above representations [101] unless respondents actually have a reasonable basis for so doing.

II.

It is further ordered, That respondents Columbia Research Corporation, Raymond Anderson and Joseph Anderson, their successors and assigns, officers, directors, 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 vacation certificates and packages, sewing machines, household and cosmetic products, mail order goods, or other goods or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain:

(1) Legible copies of all written inquiries concerning transactions with customers, and the responses thereto. Such correspondence shall

be maintained for a period of not less than three (3) years from the date each piece of correspondence is received or sent by respondents.

(2) Records which disclose the following information:

- (a) the name and address of each customer requesting a refund;
- (b) the date that respondents receive each request for a refund; [102]
- (c) if a refund has been granted, the amount of the refund and the date that it was sent to the customer;
- (d) if a refund has been denied, a copy of the written request, the date a written explanation of the denial was sent to the customer and a copy of the written explanation.

Such records shall be maintained for a period of not less than three (3) years from the date that the customer sent in the request for a refund. Respondents shall grant any duly authorized representative of the Federal Trade Commission, upon reasonable notice of time and place, access of all records that are required to be maintained under Part IV of this order, and shall furnish to the Federal Trade Commission any copies of such orders that are requested by any of its duly authorized representatives.

III.

It is further ordered, That the complaint be, and hereby is, dismissed as to respondent Juanita Anderson.

IV.

Compliance with the terms of this order in no way relieves respondents from the obligation to comply with all applicable statutes and Trade Regulation Rules of the Federal Trade Commission [103] pertaining to mail order sales, warranties or any other subject, whether or not related to this order. In the event that any such statute or Trade Regulation Rule imposes upon respondents contradictory, as opposed to additional or more stringent, duties, respondents may petition the Federal Trade Commission for a modification of this order or for an exemption from the pertinent Trade Regulation Rule.

It is further ordered, That respondents shall distribute a copy of this order to all operating divisions of Columbia Research Corporation and to present or future employees, agents or representatives of said corporation, and that respondents shall secure from each such individual a signed statement acknowledging receipt of said order.

It is further ordered, That, for a period of twenty (20) years following the effective date of this order, respondent Raymond Anderson and, for a period of ten (10) years following the effective date of this order, respondent Joseph Anderson shall, respectively,

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promptly notify the Commission of the discontinuance of his then current business or employment and of each affiliation with a new business or employment. Each such notice shall include the individual 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 the respondent's duties, responsibilities and financial interest in connection with the business or [104]employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate assignment, Columbia Research Corporation, such as dissolution, 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 respondents herein shall within sixty (60) days and one (1) year following the effective date of service of the order, and at such other times as the Commission may require, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order. [1]

APPENDIX

ABBREVIATIONS

For purposes of this Initial Decision, the following abbreviations are used:

F.: Finding
 MDC: Market Development Corporation
 CRC: Columbia Research Corporation
 CX: Commission's Exhibit
 CPX: Commission's Physical Exhibit
 RX: Respondents' Exhibit
 Tr: Transcript
 CPF: Complaint Counsel's Proposed Findings
 RPF: Respondents' Proposed Findings
 CB: Complaint Counsel's Brief In Support of Proposed Findings

CRC Sanctions:
Order Ruling Upon Complaint Counsel's Motion For Imposition of Sanctions, And For Partial Summary Decision Or, In The Alternative, To Certify To The Commission Complaint Counsel's Request That The Commission Seek Federal Court Enforcement Of The Subpoena Duces Tecum Served On Respondent Columbia Research Corporation, dated November 1, 1977.

Raymond Anderson Sanctions:
Order Ruling Upon Complaint Counsel's Motion For Imposition Of Sanctions,

And For Partial Summary Decision Or, In The Alternative, To Certify To The Commission Complaint Counsel's Request That The Commission Seek Federal Court Enforcement Of The Subpoena Ad Testificandum Served On Respondent Raymond Anderson, dated November 1, 1977. [ii]

First CRC Admissions:

First Request for Admissions Directed to Respondent Columbia Research Corporation, dated June 7, 1977. Answer, August 15, 1977. Portions were deemed admitted by the Administrative Law Judge's Ruling Upon Complaint Counsel's Motion To Determine Sufficiency Of Respondents' Columbia Research Corporation's And Raymond Anderson's Answers And Objections To The First Request For Admissions, dated October 13, 1977.

Second CRC Admissions:

Second Request for Admissions Directed to Respondent Columbia Research Corporation, dated December 29, 1977. This Request was deemed admitted by oral order of the Administrative Law Judge on November 29, 1978. (Tr. 5411).

Third CRC Admissions:

Third Request for Admissions Directed to Respondent Columbia Research Corporation, dated January 23, 1978. This Request was deemed admitted by oral order of the Administrative Law Judge on November 29, 1978. (Tr. 5411).

Fourth CRC Admissions:

Fourth Request for Admissions Directed to Respondent Columbia Research Corporation, dated January 31, 1978. Answered in part, April 5, 1978; in part, June 22, 1978; and deemed admitted in part, November 29, 1978. (Tr. 5411).

Fifth CRC Admissions:

Fifth Request for Admissions Directed to Respondent Columbia Research Corporation, dated August 14, 1978. This request was deemed admitted by oral order of the Administrative Law Judge, November 29, 1978. (Tr. 5411). [iii]

Stipulation:

Stipulation as to testimony of thirty-nine (39) of respondents' consumer witnesses, filed October 30, 1978.

OPINION OF THE COMMISSION

BY DIXON, *Commissioner*:

Complaint in this matter was issued on December 19, 1975, and charged respondents with a variety of deceptive practices in connection with the mail order sale of vacation certificates and other merchandise. After more than two years of pre-trial proceedings, a trial was held before administrative law judge (ALJ) Thomas Howder, beginning on January 31, 1978. The trial consumed most of the year 1978, and generated a record in excess of 6000 pages of testimony and 1100

exhibits. The initial decision of the law judge was filed on June 7, 1979, [2]and was generally adverse to respondents.¹ Two respondents, Columbia Research Corporation and Raymond Anderson, have filed an appeal, arguing principally that various procedural infirmities in the conduct of the case necessitate dismissal of these proceedings. Our review of the appeal follows.

The Parties and the Challenged Practices

A. Market Development

Market Development Corp. (MDC) began operating in late 1969, and terminated operations in June, 1974, when it filed for bankruptcy, listing 90-93,000 unsecured creditors with claims of between \$15 and \$80. (I.D. 1, 313)² After first offering sewing machines through door to door sales, Market Development shifted to mail order selling. (I.D. 4) It would customarily advise recipients of its solicitations that they had been specially selected or were winners of a contest that entitled them to purchase for only \$69.50 (later \$79.50) a sewing machine alleged to retail regularly for \$100 more. (I.D. 175) Although \$69.50 or \$79.50 was represented to be the "Total Cost" of the sewing machines (I.D. 233) they were shipped to the customer C.O.D. with a substantial shipping charge added (*e.g.*, \$14.95)—a charge that sometimes exceeded the actual cost of shipment. (I.D. 234-5) Market Development also offered "Treasure Chests", promotional packets of samples of name brand products that it purchased for \$1.60-\$2.00 (I.D. 17) and advertised falsely as containing \$30 or more worth of products. (I.D. 189) The Treasure Chests were often sold in connection with offers of free vacations. Typically, a customer would be contacted and advised that he or she had "won" a right to a free vacation, and the right to receive the Treasure Chest, for which he or she need only submit the sum of \$15. (I.D. 110) [3]

Market Development encountered numerous delays in shipping its sewing machines and Treasure Chests, to the point that by January 1974, MDC required three to four months to ship the sewing machines after orders were received from the customers. Despite the substantial backlog, no effort was made to halt the receipt of incoming orders, or

¹ By consent of the parties, however, respondent Juanita Anderson was dropped from the complaint.

² The following abbreviations will be used in this opinion:

I.D. - Initial Decision, Finding No.
I.D. p. - Initial Decision, Page No.
Tr. - Transcript of Testimony (Page No.)
CX - Complaint Counsel's Exhibit No.
RX - Respondents' Exhibit No.
CPX - Complaint Counsel's Physical Exhibit No.
TROA - Transcript of Oral Argument Before the Commission

to refrain from cashing incoming checks, with the result, as noted above, that by the time of its bankruptcy Market Development listed itself as having 90-93,000 unsecured creditors, mostly consumers, with claims of between \$15 and \$80 each. (I.D. 237-253)

B. Columbia Research Corporation

Soon after Market Development's bankruptcy, Columbia Research Corporation (CRC), commenced operation. (I.D. 19-20), under the control and direction of the same individual, Raymond Anderson, who had run MDC. (I.D. 45, 295-330) CRC offers vacation certificates, "Gift Cartons", blackjack boots, and memberships in a buying club. (I.D. 21) Of principal concern are the vacation certificates.

As with MDC, the consumer typically receives a mailing advising that he or she has "won" (I.D. 107-8), or been specially selected to receive (I.D. 112) a "free" vacation (I.D. 120) in Miami or Las Vegas, essentially consisting of two or three nights lodging at a hotel or motel, and a package of benefits (in Las Vegas, for example, a "gaming package") touted as being worth a large amount of money (although comparable packages were available for free to any visitor to Las Vegas, I.D. 224). To qualify for this apparent windfall, the consumer need only remit within 10 days (lest the opportunity no longer be available) a "registration, handling, and service" charge of \$15.00 or \$15.95. (I.D. 121)³ According to the Order Form that accompanied many of its solicitations, the \$15.00 payment was subject to a "Money-Back" guarantee. (I.D. 277) Careful reading of the text of the solicitation letter, however, would reveal that the Money-Back guarantee was conditioned upon the "winner" first taking his or her "free" trip, (I.D. 276) an occurrence that subsequent events might render highly inconvenient if not impossible.

What happens *after* the consumer remits money to CRC is really what determines whether he or she is a winner—or a victim. Typically the consumer receives back from CRC information pertinent to the consumer's choice of vacation site, and is directed to make arrangements for an arrival date either via CRC or through Genie Vacations in Las Vegas or Miami-Las Vegas Vacation Bureau. (I.D. 29-30) At this point the consumer also begins to learn that there is less to the "free" vacation than meets the eye. Additional charges or [4]conditions may be revealed, for example, an allegedly refundable deposit of \$10 to \$25 to ensure the customer's arrival; (I.D. 123)⁴, an extra charge of \$5.00

³ Record evidence indicates that in fact orders would be accepted even after 10 days. (CX 1015F) See also pp. 20-21 *infra*.

⁴ The deposits were sometimes not refunded, or refunded only after considerable exertion by the consumer. (I.D. 125)

per night for reasons ascribed variously to "tax", "peak season", or "extra charge", (I.D. 126); an extra charge for weekend arrivals (I.D. 126); or the unavailability of any rooms on weekends and hence, the impossibility of a weekend vacation. (I.D. 147) Receipt of the gaming package also reveals it to be something less than advertised; realization of the hundreds of dollars of benefits is contingent upon one's compliance with a variety of highly restrictive conditions. (I.D. 211-226) More knowledgeable customers sometimes recognized upon receiving these gaming packets that they are similar to those routinely given away to any visitor to Las Vegas. (I.D. 224) In general, realization of the benefits promised usually requires substantial expenditures of one's own funds, (I.D. 221) and the passage of long periods of time in a casino. (I.D. 217-18; 220; 223)

The foregoing affirmative misrepresentations and misleading failures to disclose important facts, as well as numerous other deceptions recounted in the initial decision, have an obvious capacity to mislead individuals into remitting \$15.00 or \$15.95 on the assumption they are to receive something more than they actually do. Subsequent revelation of the conditions, not surprisingly, induces some consumers to conclude that they no longer desire to avail themselves of their "free" vacation. However, because CRC's "money back guarantee" is contingent upon the consumer's first taking the proffered vacation, these consumers are frequently unable to secure refunds, and simply forfeit the \$15.00 or \$15.95. (I.D. 281)

Those consumers not deterred by the discovery of additional conditions may try to reserve accommodations for given nights. Many encounter considerable difficulty in this regard, both because it is usually not possible to use the vacation certificates on weekends, and because of repeated lack of vacancies on week nights. (I.D. 148) This occurrence is hardly surprising in view of record evidence indicating that CRC sold vacation certificates to far more "winners" than it could possibly accommodate at their desired locations. (I.D. 258)⁵ Once [5] again, however, efforts to obtain refunds in these circumstances are met with the argument that the trip must be taken for the guarantee to apply, even though it is frequently by virtue of CRC's own failure to have available sufficient accommodations at the time they are desired that the customer is unable to take the vacation for which he or she has paid. (I.D. 257, 259, 260)

Those consumers undeterred by the additional conditions and able to obtain reservations at an acceptable time do take their "free" vacation.

⁵ The record reveals that CRC collected money for Las Vegas vacations from more than 200,000 customers who were required to take the trip during a period of time in which CRC was able to accommodate fewer than 50,000 customers. (I.D. 258)

Some of these consumers upon taking the trip discover further departures from what they have been led to believe would occur. For example: (1) accommodations differ from those selected by, and promised to the consumer, and previously undisclosed charges are sometimes made (I.D. 150); (2) some accommodations advertised as being on the Las Vegas "strip" are in fact at some remove from it (I.D. 155-157); (3) accommodations advertised as "First Class", "First Class Deluxe", and the like are not as described (I.D. 158); (4) consumers have been subjected to high pressure sales pitches for land sales operations or time-sharing condominiums connected to certain of the vacation programs sold by CRC. That fact was not disclosed in its solicitations (despite its obvious materiality to the willingness of some consumers to accept the package) and in some solicitations it was even stated falsely that no land sales promotions were involved. (I.D. 230-232) The foregoing occurrences result, predictably, in considerable dissatisfaction by some consumers with their "free" vacations. Even some of these consumers, however, have had difficulty obtaining refunds or have not received them at all. (I.D. 282)

Finally, of course, there are those consumers who take the trip, and find themselves satisfied. These, as we say, are the real "winners".⁶ Unfortunately, their numbers are considerably less than those scores of thousands to whom the term is indiscriminately applied by CRC in its mass mailings.

The foregoing describes, in brief outline only, the misrepresentations alleged by the complaint and found by the ALJ. Others are detailed at length in the 104 page initial decision. Some of the misrepresentations, or deceptive failures to disclose material facts, are obviously of major consequence. Others, standing alone, are of less significance, but in *combination* they help create the misleading impression that CRC's \$15.00 or \$15.95 vacation is considerably more than it really is. [6]

In their appeal, respondents have dealt sparingly with the specific allegations of the complaint, and the specific misrepresentations found by the ALJ. They do, however, deal generally with them, alleging that the ALJ looked at specific representations in "isolation" rather than in total context, and that since CRC "substantially delivered the items which it said it would" (Respondents' Brief at 15) its advertising cannot be considered deceptive.

This contention (which comes unaccompanied by any reference to those specific findings of violation which it is alleged to refute) cannot be accepted. That some consumers were satisfied by what CRC

⁶ The parties stipulated that 39 witnesses to be called by respondents would have testified that they were not misled by CRC's solicitations and that they were satisfied with what they received in return for their money. (Stipulation, Filed 10/30/78, pp. 1-8)

furnished them proves only that for *some* people the misleading statements and failures to reveal certain facts proved immaterial. For many others, however, the evidence is clear that CRC's solicitations were misleading in a highly material way.⁷ The Commission, of course, may infer materiality having first found an untruthful claim, *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 391-92 (1965). This case hardly requires such an exercise of our expertise, however, for the record reveals numerous witnesses who testified to having been deceived in material fashion by express statements and the omission of various facts in CRC's solicitations.

By way of illustration, according to the testimony of one witness who paid her \$15.95, and later found herself unable and unwilling to take advantage of a Las Vegas vacation after discovering that she was required to give 45 days notice of plans, make a \$25.00 deposit, and stay in the sponsoring casino for six hours at a time in order to avail herself of each "free" meal advertised in the initial solicitation: [7]

Q. In conjunction with the 45-day notice [and the \$25 deposit] would you have purchased the package?

A. No.

Q. Had you known the mechanics of how the gambling package worked would you have purchased the package?

A. No.

Q. If you had understood in advance how the meal allowance program was to work would you have purchased the package?

A. No, I really didn't understand it any way.

Q. But had you known you received only one meal in six hours [one meal for staying in the casino for six hours] would you have purchased the package?

A. No, definitely not. (Williamson, Tr. 126)

Another witness, more familiar with the range of competing vacation opportunities in Las Vegas, testified as follows:

Q. Please think back, Mr. Janov, to when you received your original solicitation. At that time if you had known you were going to be asked to put down a \$25 deposit, would you have sent in your \$15?

A. If I had been asked—if I had known that I would have to send another \$25

⁷ As the Seventh Circuit Court of Appeals has observed:

The fact that petitioners had satisfied customers was entirely irrelevant. They cannot be excused for the deceptive practices here shown and found, and be insulated from action by the Commission in respect to them, by showing that others, even in large numbers, were satisfied with the treatment petitioners accorded them. *Basic Books, Inc. v. FTC*, 276 F.2d 718, 721 (7th Cir. 1960).

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deposit, I would not have given it any consideration at all because for \$40 at that time, you can get all the accommodations you want without going through this. (Janov, Tr. 296)

A third witness who took the trip and discovered upon arrival that she was required to pay an extra \$5 per night per person, for the two night stay, testified as follows: [8]

Q. Would you have sent in your \$15.95 if you had known that you would be charged an additional \$20.00 for the room?

A. No, I would not.

Q. Would you have sent in your \$15.95 if you had known what you were getting in the way of the gaming package?

A. No. (Bratschi, Tr. 658)

A fourth witness, Ms. Blackmore, testified that after remitting her \$15.95 and making the \$25 deposit subsequently requested, she received reservations on the night of her choice for the Colonial House. (Tr. 692-3) Upon arrival, she and her husband were advised that the Colonial House would not accept them; after some wait they were taken to the "Mini Price Motor Inn" where, after paying an additional charge of \$10.00 per night, they were allowed to occupy a room with a posted rate of \$12.99 per night. (Tr. 694) The witness further described various efforts to avail herself of the gaming package provided by CRC (Tr. 696-700); and the subsequent discovery that similar or identical packages were routinely available for free to any visitor to Las Vegas. (Tr. 710-711; CPX 2-3) The witness noted that upon returning from her trip, she requested a refund from CRC, but received neither the \$20.00 extra charged by the hotel, nor the \$15.95 charged originally by CRC. (Tr. 704) She did, however, subsequently receive three additional solicitations from CRC urging her to take advantage of their vacation packages. (Tr. 704)

While it is not possible to quantify the consumer injury and abuse wrought by respondents (and such is not necessary for a finding that Section 5 has been violated) it is apparent that the scores of consumers who testified in this proceeding are but the tip of an iceberg. Below them, one finds the 3847 consumers who, as of February 2, 1978, had written to the Federal Trade Commission to complain either of non-delivery of merchandise by CRC, or of failure to honor its guarantees. (CX 2067) These 3847 consumers, in turn, pale in comparison with the more than 200,000 consumers who paid for Las Vegas vacations that they were required to take during a period of time in which the record

reveals that CRC was capable of accommodating [9]no more than 50,000 customers.⁸ (p. 4 *supra*) The foregoing figures are cited not because they are necessary to findings of violations of Section 5, but because in combination with record testimony of misrepresentations, they serve to furnish some notion of the magnitude of injury involved in this case.

A further substantive argument raised by respondents is that they are not responsible for certain of the more egregious failures to perform recounted in the record because these resulted from breaches of contract by third parties engaged by CRC to help effectuate the promises made in its solicitations. As a purely legal matter we do not find this position acceptable, nor, under the circumstances of this case, is the legal result an inequitable one.

The law judge in finding liability on CRC's part for certain actions of the Miami—Las Vegas Vacation Bureau (MLV) cited cases such as *Goodman v. FTC*, 244 F.2d 584 (9th Cir. 1957) and *Standard Distributors, Inc. v. FTC*, 211 F.2d 7 (2d Cir. 1954) in which corporations and individuals were held liable for misrepresentations made by sales personnel alleged to be "independent contractors" by the respondents, but found to be "agents" by the Commission and reviewing courts. While respondents seek to distinguish their situation from those of *Goodman* and *Standard Distributors*, we think in fact that the argument for liability is stronger here. This is because there is here no question but that the challenged misrepresentations were made by the respondents themselves. Having made [10]certain representations to consumers, in or affecting commerce, respondents are liable for the truth of their claims. They cannot, unbeknownst to their customers, delegate responsibility for making their claims come true, and rely upon such delegation as a defense to a charge of committing deceptive acts or practices. CRC benefited from its untruthful statements, to the tune of receiving \$15 or \$15.95 from hundreds of thousands of customers. It cannot thereafter disclaim responsibility for whether or not those statements were true on grounds that it had contracted with others to ensure their accuracy.

To be sure, were this a case presenting isolated instances of representations rendered untrue by the contractual breaches of third

⁸ Respondents have assigned as error the ALJ's conclusion with respect to the number of CRC's customers during a given time period, arguing that it is based upon computer tapes, which constitute unauthenticated hearsay evidence, and which were interpreted by a witness unqualified to do so. For the numerous reasons noted by complaint counsel in their Answer Brief, to which respondents have made no Reply (although permitted by rule to do so), the Commission finds this challenge to the ALJ's conclusion unpersuasive. Witness Morelli was clearly qualified by virtue of 7-1/2 years' experience as a systems analyst, programmer analyst, or programmer, and related training, to testify with reference to the issues he was called to resolve. The tapes themselves were properly admitted, if not as admissions by the respondents, then as business records. And, the tapes were suitably authenticated by other record evidence so as to warrant the conclusion of the witness as to what they showed.

parties, in which the respondent had made immediate efforts to make its customers whole for the injury they had suffered, and had taken immediate steps to terminate the contractual relationship, the public interest in pursuing the breach of Section 5 might be nil. This case, however, presents no such circumstances.

In the first place, it is apparent even from the contract signed between CRC and MLV that CRC should have had reason to anticipate at least some of those precise actions that it blames for rendering its mass mailings deceptive. For example, the contract between CRC and MLV specifies that "there will be certain times during the year when the cost to the user may increase" and further that "there will be certain times during the year when certificates will not be honored." (CX 1089-B,C) It should, therefore, have come as no surprise to anyone except the customers of CRC (who were led to believe they were getting a no-strings-attached vacation for their initial payment) when it transpired that MLV added extra charges and restricted availability to the point that many people were unable, or, with good reason no longer willing, to avail themselves of its services.⁹ [11]

Moreover, the evidence suggests that whatever CRC's fore-knowledge as to MLV's behavior may have been, once CRC became aware of the behavior of its contract partner it (1) failed to make whole customers injured thereby [for example, by refunding their money and refunding unauthorized and disclosed extra charges and then seeking reimbursement from MLV (I.D. 281-282)];¹⁰ and (2) continued to solicit purchases and utilize the services of MLV (*e.g.*, Rees, Tr. 392-395; CX 127, 129; Horton, Tr. 1088-1093; CX 1797; Cain, Tr. 870-872; Gorman, Tr. 188-190; CX-35(b), (c); Lawley, Tr. 460-462; CX 1765-6; Bryan, Tr. 1134-1142; CX 255-260; Heller, Tr. 1568-1570; CX 50, 52; Bornstein, Tr. 1317-18) despite having been informed of the alleged breaches of contract. (*e.g.*, CX 177A, Tr. 791-92) Under these circumstances, it is plainly in the public interest that CRC be held liable for the deceptive acts and practices in which it has engaged.¹¹ [12]

⁹ While CRC's contract with MLV specified that MLV would notify CRC before imposing additional charges or other restrictions, it is not at all clear how such notice was designed to assist consumers who were induced to send in \$15.00 or \$15.95 on the assumption that they would receive in return a no-strings-attached right to a vacation good for one year. What, for example, was expected to become of the consumer who paid his or her money in August, anticipating a vacation in January, if MLV gave notice in September that it was changing its terms? The consumer was induced to pay the money without disclosure of added charges or restrictions, even though CRC's contract with MLV contemplated that such charges or restrictions might subsequently be imposed.

¹⁰ CRC did make certain efforts to contact at least some consumers who were injured by virtue of the actions of MLV, but its efforts appear generally to have been confined to the furnishing of extra gaming coupons or extensions of time in which to take vacations that many customers were understandably unwilling to accept as a result of the trouble they had already encountered.

¹¹ Moreover, the proffered defense, even if accepted, would excuse only a fraction of the violations found, and is not asserted as to the actions of some of CRC's booking agents, such as Genie Vacations.

Procedural Objections

As noted before, respondents' principal objections to the outcome of this case derive from alleged procedural deficiencies in the conduct of their trial, which, in respondents' view, mandate dismissal of all charges. We shall consider these alleged errors below:

A. Alleged Constructive Exclusion of Defendant Raymond Anderson from Presence at His Trial

Respondent Anderson urges that he has been denied Due Process of Law because he was constructively precluded from attending at least certain segments of the trial. The argument is primarily raised with respect to those portions of the case-in-chief heard in California, where Mr. Anderson had been the subject of a state criminal indictment, and was subject to arrest if he appeared.

Some recitation of the facts surrounding this claim is needed in order to place it in proper perspective. In March, 1977, the Superior Court of California for the County of San Francisco docketed the case of *People v. Columbia Research Corporation*, Docket No. 38988. Thereafter, proceedings were begun to extradite defendant Raymond Anderson from Illinois.¹²

On April 29, 1977, Complaint Counsel filed a "Motion to Set Initial Trial Date and Location", requesting that the initial hearing be scheduled for July 18, 1977, in Los Angeles, California, on grounds that all of complaint counsel's intended initial witnesses were located in Southern California.

On May 23, 1977, respondents Raymond Anderson and Columbia Research Corporation filed a motion to stay pending discovery requests and to stay the initial hearing in the case *until the criminal action was resolved*. No reference was made in this motion to the alleged inconvenience of complaint counsel's proposed Los Angeles trial site.

By order of June 30, 1977, Judge Howder denied the request of respondents for a stay pending completion of the criminal trial, noting that no prejudice would be created by simultaneous proceedings. Thus, as of June 30, 1977, respondents were on notice that the judge would not stay the proceedings pending resolution of either Mr. Anderson's extradition fight, or an eventual criminal trial. [13]

Following efforts by complaint counsel to obtain pretrial discovery, of which more shall be said later, complaint counsel by letter dated November 14, 1977, proposed a pre-trial and beginning-of-trial schedule, including a renewal of their request of April 29, 1979, that the first

¹² According to respondents' counsel, no decision as to Mr. Anderson's extradition from Illinois had been reached as of November 5, 1979. (TROA, p. 10)

hearing be held in Los Angeles, California. By order of November 17, 1977, Judge Howder ordered commencement of initial hearings in the case in Los Angeles, California on January 31, 1978, with the exact location to be established later. (Order Respecting Remaining Pretrial Procedures and Scheduling Commencement of Hearings) By order of December 7, Judge Howder established the site in Los Angeles at which the first set of hearings would be held. (Order Scheduling Commencement of Hearings)

Still no objection was heard from respondents. Finally, on January 20, 1978, twelve days before the Los Angeles hearings were set to begin, respondents communicated their constitutional objection to the Los Angeles trial site.¹³ [14]

Under these circumstances, the reaction of Judge Howder is not surprising. By order dated January 26, 1978, he denied the request for a change in the location of hearings, noting:

The complaint in this case issued over two years ago, on December 19, 1975. As I have previously ruled, respondent Anderson has been completely recalcitrant throughout the entire course of discovery, resulting in much delay in this proceeding. The initial hearings were scheduled on December 7, 1977. I feel Mr. Anderson's request for a change in this schedule, coming at so late a date, is unwarranted. [Order Denying Request for Change in Location of Hearings, p. 1]

As complaint counsel observe, rescheduling of the hearings as requested by respondents would have entailed considerable delay and disruption in already protracted proceedings. It should be noted in this regard that respondents' request was not merely that the proceedings be held elsewhere than in California, but that they be held *only* in Illinois, the one state in which Mr. Anderson was apparently subject to the least unfavorable legal consequences. (TROA p. 9; Tr. 1773) Illinois however, was the one state in which Mr. Anderson made no mail solicitations, and so was the one state in which no complaining witnesses were to be found. To conduct complaint counsel's entire case-in-chief in Illinois would, therefore, have caused maximum cost to the government (for transporting, housing, and feeding witnesses) and maximum disruption to consumer witnesses.

Though we are not entirely certain from respondents' brief which

¹³ Respondents contend that they planned to tender their objection to the Los Angeles trial site at a pre-hearing conference scheduled for Cleveland on January 7, 1978. This conference was cancelled because of a major snowstorm that prevented the ALJ and respondents' counsel from attending. (TROA 7; Order Cancelling Prehearing Conference dated January 10, 1978) The record reflects no reason as to why respondents chose to wait until January, 1978, to present their objection to the Los Angeles trial site when they were on notice at least since November 17, 1977 (if not since April, 1977) that Los Angeles would be chosen. While respondents did file on December 8, 1977 a motion for continuance of the January 31, 1978, hearing date (which Judge Howder denied on January 12, 1978), the pendency of that motion can hardly excuse the failure to raise other objections to the trial order. By raising their objections *seriatim*, respondents all but ensured that their objection to the trial location would not be entertained until such time as a change in trial locations would be rendered extremely inconvenient and expensive to the government. Whatever the purpose of this method of proceeding, its obvious effect was to invite delay, and it cannot be condoned.

provision of law they claim was breached by conduct of the hearings in Los Angeles, we must presume it to be the Fifth Amendment's guarantee of due process. The Sixth Amendment's explicit guarantees apply only in criminal cases *Bell v. Burson*, 402 U.S. 535, 540 (1971) and even there, may be waived by consent or conduct. *Illinois v. Allen*, 397 U.S. 337, 342, *reh. den.* 398 U.S. 915 (1970). The Administrative Procedure Act confers on a party only the right "to appear in person or by or with counsel or other duly qualified representative in an agency proceeding." 5 U.S.C. 555(b)(1976) (emphasis added.) There is no doubt that Mr. Anderson has been ably represented by counsel in this case. Finally, the Commission's Rules of Practice, 16 CFR 3.41(c) to which respondents refer, do no more than confer "all . . . rights essential to a fair hearing." This provision does not refer specifically to a party's right to attend a hearing and should not be construed to enlarge upon or derogate from the guarantees of the APA. [15]

This leaves the Fifth Amendment's guarantee of due process. As the Supreme Court has instructed, "'due process', unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). It is a flexible concept that "calls for such procedural protections as the particular situation demands," *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), and accordingly, the requirements of due process in a particular case depend upon a balance of the private and public interests involved. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976).

The application of these broad general principles to the specific issue involved here does not appear to have arisen very often, and neither side has pointed out, nor have we been able to discover, a single case that remotely suggests that a respondent's physical presence at an administrative hearing is a linchpin of due process. The case on which respondents chiefly rely, *Jeffries v. Olesen*, 121 F. Supp. 463 (S.D. Cal. 1954), was technically not even resolved on due process grounds, but rather by interpretation of regulations promulgated by the Postmaster General. 121 F. Supp. at 474ff. The case, however, has heavy overtones of due process, and is illustrative of the balancing of interests required to determine a claim such as that made by respondent Anderson. In *Jeffries* the court held that an administrative determination of postal fraud was invalid for failure to transfer an administrative hearing to Los Angeles, where the defendant and his lawyer were located.

In *Jeffries*, a hearing on charges was set only 22 days after issuance of the complaint, and only 19 days after notice of hearing was served upon the administrative respondent. Promptly filed motions for transfer of the hearings from Washington to Los Angeles were denied,

and the trial was held in Washington, D.C. only 36 days after issuance of the complaint. The refusal to transfer precluded the impoverished defendant, whose wife was ill with polio at the time, from attending in person *or by attorney*, and the refusal to transfer the hearings precluded the administrative defendant's attorney from cross-examining scientific witnesses for the government, a fact that the judge apparently considered to have been of some possible relevance to the outcome of the case. 121 F.Supp. at 474-76. [16]

The court in *Jeffries* construed a Postal Service regulation requiring that motions to transfer the site of hearings be resolved with "due regard" for the "convenience and necessity" of the parties. As the court observed,

"Due regard" like "fairness" is a term of varying content. What is "fair" in one situation may be grossly unfair in another; determination must be made in the light of reason and common sense and the circumstances of the case. 121 F. Supp. at 475.

So must it be here. The balance that weighed so heavily for the respondent in *Jeffries* tilts markedly the other way in this case. Mr. Anderson's request for transfer was raised at the last possible moment, long after it could have been made, and at a time when it was certain to cause maximum inconvenience and expense for other parties involved.¹⁴ Respondent's difficulty in coming to California, moreover, in no way foreclosed the presence of his counsel, who did attend all hearings and cross-examined witnesses vigorously.

Moreover, respondents have not pointed to a single example of the manner in which Mr. Anderson's physical absence from the site of some hearings resulted in less effective presentation of his case. Nothing precluded Mr. Anderson from reviewing transcripts of the testimony elicited at hearings outside Illinois, and had there been lines of questioning that he could have suggested to his counsel had he been in attendance, their timely mention might have permitted at least the selective re-examination of certain witnesses. Respondents, however, have at no time indicated any respect in which Mr. Anderson's physical absence from the hearing room in any way may have rendered his counsel's interrogation of witnesses less effective. Nor is this at all surprising given that the testimony elicited was drawn largely from consumers testifying as to their own experiences in trying to take advantage of the vacation opportunities they had purchased from CRC. Most of this experience would [17] have been outside the scope of Mr. Anderson's own observation.¹⁵ While certain rights are so fundamental

¹⁴ We believe that on these grounds alone, the claim may be considered to have been waived, although even had it been presented in more timely fashion, we believe that the other factors listed here would have necessitated its denial.

¹⁵ Respondent did file a motion, dated October 2, 1978, six months after the end of complaint counsel's case, in which they asked for the recall of all of complaint counsel's witnesses for further cross-examination. No indication was

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as to require no showing of possible injury for their assertion, the realistic possibility of prejudice is clearly an important factor to be considered where the existence of a right depends upon a balance of competing interests. *Arthur Murray Studio of Wash. Inc. v. FTC*, 458 F.2d 622, 624 (5th Cir. 1972).¹⁶

Finally, it must be observed that a principal reason why so many consumer witnesses have been called in this case (thereby rendering it extremely impracticable to hold the case-in-chief entirely in Illinois) is that respondents have adamantly refused to respond to discovery orders issued by CRC, or the willingness of respondent Raymond Anderson to be deposed as ordered, might well have diminished the number of witnesses called. [18]

Under the foregoing circumstances, we believe that the administrative law judge acted properly in refusing to transfer the site of all trial proceedings to Illinois.¹⁷

Nor did reversible error result from the failure of complaint counsel to provide respondents with a "telephonic hook-up" whereby Mr. Anderson would have been able to hear the proceedings live from his sanctuary in Illinois. The record reveals that after the request for hook-up was made on the first day of trial, its possibility was explored and it was determined that the Federal Trade Commission lacked the facilities to provide one. Complaint counsel took the position that the Commission should not be obliged to pay the cost for a hook-up through a private telephone company. Thereupon, Judge Howder invited counsel for respondent to forward his request to the full Commission (Tr. 531), but the request was not pursued. Respondent

given as to what questions might have been asked of these witnesses that had not previously been asked. At an oral hearing on the motion, counsel for respondents indicated that he might be satisfied with recall of only 15-20 witnesses (Tr. 541B), but still gave no indication of what questions might be asked of these witnesses, why such questions could not have been asked earlier, or why an employee of CRC other than Mr. Anderson could not have been present at the hearings to assist counsel in the formulation of those undisclosed questions that it was deemed necessary to ask. Under these circumstances, we believe that Judge Howder properly denied the request for a further round of cross-examination.

¹⁶ It is also noteworthy that respondents offered to conduct their own defense hearings in Los Angeles and numerous other locations in which they contend it was or would have been impermissible for complaint counsel to present their side of the case. [The necessity for these hearings was obviated when both sides stipulated to what respondents' consumer witnesses would have said.] It should also be observed that the record reflects that complaint counsel were interviewing witnesses in California (in obvious anticipation of Los Angeles hearings) long before Mr. Anderson's indictment. No suggestion is made, nor could one be, that the choice of hearing sites by complaint counsel was made for any purpose other than convenience of the witnesses.

¹⁷ We should note, incidentally, that the foregoing analysis assumes, without deciding, a central premise of respondents' position, namely that the decision of Judge Howder to hold hearings in states other than Illinois amounted, in a legal sense, to "exclusion" of Mr. Anderson from personal attendance at such hearings. This premise seems, at the least, questionable. Mr. Anderson was not physically excluded from the courtroom, or otherwise physically prevented from attending by reason of financial hardship, illness, or other disadvantage. Rather, the complained-of "exclusion" occurred simply because Mr. Anderson preferred not to enter any state other than Illinois, including the state in which one of the hearings was held. The alleged violation of due process consists, ironically, in the scheduling of a federal trial in such a way as to condition the respondent's attendance at hearings upon the respondent's submission to the due process of a state.

relies for support upon language in Justice Brennan's concurring opinion in *Illinois v. Allen*, *supra*, 397 U.S. at 347. Justice Brennan suggested in his concurrence that a trial judge who has excluded a contumacious criminal defendant should attempt to mitigate the effect of the exclusion to the extent that to do so is technologically feasible. 397 U.S. at 351. We do not believe that the Justice's suggestion can be taken as authority for the necessity of a telephonic hook-up in this civil proceeding. [19]

B. Use of Sanctions for Failure to Comply with Discovery Orders

Respondents also assign as error the ALJ's imposition of sanctions upon respondents for their refusal to comply with discovery orders. There is no question that the sanctions were imposed in a fashion consistent with the provisions of §3.38 of the Commission's Rules of Practice, 16 CFR 3.38, but respondents argue that the rule as applied exceeds the Commission's lawful authority.

Sanctions were entered by Judge Howder following the refusal of respondents CRC and Raymond Anderson to respond to discovery orders served upon them, and following denial by Judge Howder of various motions to quash these discovery orders. Respondent CRC refused to respond to a subpoena *duces tecum* issued by Judge Howder on February 3, 1977, while Mr. Anderson refused to respond to a subpoena *ad testificandum* served on November 2, 1976. Thereafter, Judge Howder ordered that by virtue of the refusals to testify, certain of the complaint allegations would be taken as proved against respondents CRC and Raymond Anderson. Respondent Anderson was forbidden to testify in his defense, and both parties were precluded from entering into the record documents that would have been responsive to the dishonored subpoenas. Complaint counsel were also accorded the right to introduce secondary evidence without objection to show facts that the withheld documents would have shown.¹⁸

As with their other procedural objections, respondents have not suggested how, in particular, they have been prejudiced by the sanctions, in light of the very extensive trial that was ultimately conducted. Respondents' position appears to be that the entire proceeding must be dismissed, even though it is evident that most of the charges of the complaint were found by Judge Howder to be sustained by competent evidence adduced by complaint counsel, and without necessity for resort to the sanctions. [20]

Complaint counsel for their part, contend that every order provision,

¹⁸ It was pursuant to this grant that letters from 3847 complaining consumers were introduced.

save one, may be justified on the basis of record evidence of deceptive practices, without need to resort to the sanctions.¹⁹ Our own review of the record reveals that, in fact, *all* order provisions are warranted by testimonial and/or documentary evidence of law violations, and, accordingly, the issue of the sanctions is moot.

The one order paragraph that complaint counsel aver depends for its validity upon the sanctions is Paragraph I(6) which forbids representations that consumers have only a limited time to respond to offers if in fact the stated time limit is fictitious. This paragraph derives from the complaint allegation that MDC and CRC misrepresented to consumers that they must remit their money within 10 days in order to take advantage of various offers. Misrepresenting that an offer extends for a limited time only is a standard way of misleadingly enhancing the value of the offer in the consumer's mind, and thereby inducing its acceptance. [21]

While the ALJ found the evidence insufficient, absent resort to the sanctions, to justify a conclusion that the 10 day limit was not bona fide, our review of the record suggests the contrary. In responding to a California state official who inquired as to the validity of the 10 day period in 1975, Columbia Research Corporation wrote:

The offer may be accepted after the 10 day period if we can still accommodate those persons sending in their acceptances. CX 1015F.

In fact, however, it is evident from the record that Columbia Research Corporation showed little regard for whether the number of people it solicited, and the number who sent in their \$15, corresponded in any way to the number of people who could be accommodated over the course of the ensuing year (p. 4 *supra*) and the logical inference is, therefore, that the condition stated in CRC's response to the California official constituted no meaningful restraint upon its readiness to accept money remitted after the 10 day deadline. This inference is supported by the experience of Professor Walter Gellhorn, whose testimony revealed that his check was accepted weeks after the alleged 10-day deadline. (Tr. 2818-2825) Professor Gellhorn subsequently

¹⁹ The distinction between violations charged, and order provisions entered should be noted. The complaint alleged approximately 30 separate deceptive practices. The order contains a far smaller number of prohibitory paragraphs, some of which are cast to prevent recurrence of several of the violations charged in the complaint and found by Judge Howder. Thus, an order provision may be independently supported by several separate findings of violation. To illustrate, Paragraph I(8) of the Order proscribes a variety of misrepresentations regarding the retail price and value of items sold by CRC. This provision is fully justified on the basis of Judge Howder's findings as to misrepresentations of the retail value of the Treasure Chests and Gift Cartons distributed by MDC and CRC. (I.D. 183-204) This provision is also justified on the basis of Judge Howder's finding that the regular retail price of MDC's sewing machines was misrepresented to be \$100 more than the price at which MDC offered the sewing machine. Judge Howder's finding that the retail price of the sewing machines was misrepresented depends in part upon reliance on the sanctions. (I.D. 175-79) His finding that the retail price and value of the Treasure Chests and Gift Cartons was misrepresented is fully supported by record evidence exclusive of the sanctions.

found that he could not obtain accommodations at the time and place promised, and after a lengthy series of correspondence with various governmental agencies received a refund. (Tr. 2827 ff.)²⁰

While we believe that this finding as to the falsity of the 10-day provision in respondents' solicitations is adequately supported by other evidence,²¹ the sanctions drawn by the administrative law judge do lend support in an entirely permissible way to this conclusion. Respondents themselves were obviously the parties best situated to shed light on the truth of the charge. If it was their policy to return, uncashed, checks received after the 10 day period, only they could have so specified. Their failure to respond to discovery requests bearing [22] upon the bona fides of the 10 day enrollment period invites the inference that the withheld response would have confirmed that the 10 day period was a sham.

The drawing of an adverse inference from the unjustified failure of a party in litigation to respond to a valid discovery request has been recognized to be an entirely proper and indeed necessary exercise of an administrative agency's adjudicative responsibilities. *International Union (UAW) v. N.L.R.B.*, 459 F.2d 1329 (D.C. Cir. 1972); *N.L.R.B. v. Ship Shape Maintenance Co.*, 474 F.2d 434, 448 (D.C. Cir. 1972), drawn by analogy from both common law procedures, e.g., *Armory v. Delamirie*, Str. 505 (K.B. 1722); 2 J. Wigmore, *Evidence* §285 (3d ed. 1940) and the Federal Rules of Civil Procedure [Fed. R. Civ. P. 37(b)(2)(A)]. Without such a capability, the express Congressional grant of adjudicative authority to an administrative agency would be profoundly frustrated. *International Union (UAW) v. N.L.R.B.*, *supra*, 459 F.2d at 1338-39.

Respondents argue that the application of sanctions amounts to an impermissible effort to enforce agency process without resort to the courts. Since the Commission's organic statute prescribes that the enforcement of a subpoena must be undertaken in Federal District Court, respondents argue that efforts to attach sanctions for a party's refusal to comply with a subpoena in effect amount to extrajudicial enforcement of the subpoena.

With this argument we cannot agree.²² The drawing of adverse inferences or conclusions from a party's refusal to comply with

²⁰ This occurrence is also prevalent throughout the record. Of those witnesses who had received refunds, many obtained them only after a lengthy train of correspondence and intervention by various governmental agencies and better business bureaus.

²¹ It should also be noted that the District Court of Minnesota in a proceeding involving Market Development also concluded that its 10 day deadline was fictitious. CX 725-F.

²² Nor, we should observe, could the Court of Appeals in *International Union (UAW) v. N.L.R.B.*, *supra*, which affirmed the NLRB's ability to impose sanctions notwithstanding that the Board, like the Commission, must enforce its subpoenas in court. 459 F.2d at 1338-39, 1343-44. See also *Association of National Advertisers v. FTC*, CCH 1979-2 Trade Cas. ¶62950 at 79406 (D.C. Cir. 1979) (Wright, J. concurring).

adjudicative discovery demands does not amount to enforcement of a subpoena, but rather compensates the moving party for its adversary's failure to comply with a subpoena, and, thereby, maintains the integrity of the administrative process. A party that resists discovery demands justifiably is not properly liable to sanction, and may ultimately obtain review of the legitimacy of its refusal to comply if sanctions are imposed and a final order is based upon them. [23]

As the Commission has recently observed:

Application of the adverse inference rule may only be made when the party's failure to produce documentary or other evidence is not adequately explained. *Evis Mfg. Co. v. FTC*, 287 F.2d 831, 847 (9th Cir. 1961); *cert. denied*, 368 U.S. 824 (1961). Thus, the adverse inference rule makes the conduct of the person withholding the material an evidentiary fact in and of itself. The resulting inference may be strong or weak, depending upon the person's conduct and the surrounding circumstances. See 2 J. Wigmore, *Evidence* §285 (3d ed. 1940); *McCormick's Handbook of the Law of Evidence* §272 at 659 (2d ed. 1972). For example, an inference drawn against a respondent offering a weak explanation for its refusal to produce relevant evidence will be stronger than an inference drawn against a respondent providing a more plausible explanation. *American Medical Association*, Docket No. 9064, slip op. p. 55 (October 12, 1979).

In this case, respondents' reasons for refusing to comply with the ALJ's discovery orders are hardly compelling. Particularly inexplicable is the refusal of respondent Anderson even to appear in response to a subpoena *ad testificandum*. The asserted reason for this refusal is that Mr. Anderson was concerned that use might be made of the proffered testimony in connection with anticipated and later pending criminal matters. This argument, however, takes no account of the fact that Mr. Anderson would have been free at any time in his deposition to assert his Fifth Amendment privilege against self-incrimination, at which point, the record reveals, he would have been granted use immunity.²³

Mr. Anderson was in intimate control of the operations of MDC and later CRC. He was obviously the party best situated to shed light on numerous issues involved in this case. His [24]adamant and wholly unjustified refusal to do so fully justifies the inferences drawn by Judge Howder therefrom.²⁴

We also find that it was not improper for the law judge to prohibit

²³ Respondents during trial made the imaginative argument that a grant of immunity pursuant to 18 U.S.C. §6004 would have been insufficient to protect them because it contemplates immunity only for "witnesses", not "parties." "Parties", however, can be "witnesses" and we can find no support for the notion that the statute would be inapplicable to a party in a civil proceeding who is subpoenaed to testify as a witness. Nor would the Department of Justice appear to be concerned by the distinction, for it routinely authorized granting of immunity to each of the parties in this proceeding.

²⁴ Respondents also argue that complaint counsel were unjustified in seeking discovery from CRC and Mr. Anderson without a showing that the information could not be obtained elsewhere. This, however, is not the proper standard for discovery. Of course, some of the information sought by complaint counsel could have been obtained elsewhere, and was and has been, at enormous cost. It is obvious, however, that CRC and Mr. Anderson were the best possible sources of a large amount of relevant information.

Mr. Anderson from testifying on his own behalf, following Mr. Anderson's adamant refusal to appear for a deposition. It is standard practice that where a party to litigation refuses to respond to valid discovery orders, that party will not subsequently be allowed to introduce at trial documentary or testimonial evidence withheld during discovery, e.g., *NLRB v. American Art Industries*, 415 F.2d 1223 (5th Cir. 1969), *cert. denied*, 397 U.S. 990, *reh. denied*, 398 U.S. 944, (1970), *cert. denied*, 401 U.S. 912 (1971) (administrative proceeding); Fed. R. Civ. P. 37(b)(2)(B); *Chesa International Ltd. v. Fashion Associates, Inc.*, 425 F. Supp. 234, 237, 22 FRServ. 2d 1191 (S.D.N.Y. 1977); *SEC v. American Beryllium Oil Corp.*, 303 F.Supp. 912, 921 (D.C.N.Y. 1969); *Bernat v. Pennsylvania R.R.*, 14 FRD 465, 18 FRServ. 37b.232, Case 1 (E.D.Pa. 1953). In this case, Mr. Anderson refused repeatedly and without credible justification to be deposed with respect to any of the allegations of the complaint, or his possible defenses thereto. It was, accordingly, appropriate that he not be permitted to testify later.²⁵ [25]

Similarly, the other sanctions imposed by Judge Howder—refusing to permit introduction of documents withheld during discovery, and permitting introduction of secondary evidence without objection to shed light on issues as to which discovery had been resisted were also proper exercises of the trial judge's discretionary authority to maintain the integrity of the adjudicative process in the face of respondents' recalcitrance, e.g., *NLRB v. C.H. Sprague & Son Co.*, 428 F.2d 938 (1st Cir. 1970); *NLRB v. American Art Industries, Inc.*, *supra*, 415 F.2d at 1229-30.

For the foregoing reasons we shall sustain those findings of violation (all of which pertain only to Mr. Anderson) for which documentary and testimonial evidence introduced by complaint counsel is alone insufficient support, and which, therefore, depend for their sustenance upon the sanctions entered by the ALJ. These findings appear at I.D. 133, 135, 171, 174, 179, and 182. We note again, however, that insofar as our *order* in this case is concerned, the foregoing conclusions are irrelevant, inasmuch as each order provision is independently warranted by findings of other deceptive practices that do not depend upon the sanctions for their support.

C. Miscellaneous Allegations of Procedural Error

²⁵ Preclusion of testimony by Mr. Anderson was also justified in order to prevent unfair surprise to complaint counsel, a point recognized by Mr. Anderson's counsel, who acknowledged that if Mr. Anderson chose to testify it would be appropriate that complaint counsel be permitted to depose him beforehand. (Response of Raymond Anderson to Motion for Imposition of Sanctions, etc., filed August 29, 1977, p. 6.) At no time following this suggestion does it appear that Mr. Anderson ever indicated a desire to testify at the hearings, or that he offered complaint counsel the opportunity to depose him.

Respondents' remaining contentions merit little discussion. It is alleged that Judge Howder erred by admitting a variety of documents into the record, including a summary of 3847 consumer complaints received by the Federal Trade Commission against respondents. As noted above (p. 19) these documents were admitted pursuant to the sanctions, to compensate complaint counsel for evidence as to the magnitude of abuse that they might have obtained had respondents complied with discovery requests. The consumer complaints were utilized only as an adjunct to massive record testimony of deceptive practices, and serve merely as one quantitative indicator of the volume of consumer injury. They were properly admitted, under the circumstances, for this limited purpose. [26]

Respondents allege that other documents were improperly admitted. One of these documents was not admitted (CX 1045), some do not exist (CX 4575-6), and of those that were admitted, Judge Howder acted well within the discretion of an administrative law judge in so doing.

Respondents also allege error in the failure of Judge Howder to grant them discovery to determine whether certain evidence introduced into the record may have been improperly obtained by complaint counsel. Respondents have, however, made no plausible showing that would warrant this sort of fishing expedition. The fact that complaint counsel have made contact with various other law enforcement authorities concerned with CRC's practices is no basis for any inference that protective orders or grand jury secrecy have been breached. Denial of the discovery requests was well within the discretion of the judge.

Finally, respondents contend that a consent agreement executed by CRC with the United States Postal Service on the day Judge Howder's initial decision was entered obviates the need for a Commission order in this case. The Postal Service order, however, is in several important respects less extensive than that entered by Judge Howder. Of greatest significance, the order covers only vacation certificates, while Judge Howder's covers all products.

Many of the deceptive practices involved in this case are readily transferable to a wide range of products, and the public requires protection against such transference. Indeed, the record already reflects the use of deceptive practices with respect to a variety of products other than vacation certificates (*e.g.*, sewing machines, treasure chests). Moreover, the Postal Service order appears to extend only to Columbia Research Corporation, not to Raymond Anderson individually. It, therefore, leaves open the possibility that Mr. Anderson will simply walk away from a bankrupt CRC as he left the 93,000 unsecured creditors of MDC—free of their claims and free to resume

the same exploitive practices through yet another corporate shell. The order entered herein will forbid this on pain of civil penalties.

Order

Respondents have not objected to any specific provisions of the order, arguing only that no order should enter for the reasons discussed herein. We have entered the order recommended by Judge Howder with minor stylistic changes, and with one small change of substance. [27]

The change of substance is that the phrase "thirty (30) days" in Paragraph I(7)(b) has been changed to "fifteen (15) days". As revised, Paragraph I(7) now requires, *inter alia*, that respondents acknowledge requests by their customers for accommodations within (a) any time period specifically, clearly, and conspicuously disclosed in their initial solicitation, or (b) if no time period is disclosed, then within 15 days.

The record reveals that one of the difficulties encountered by consumers who sent in their \$15 expecting a reasonable vacation opportunity in return, was that long periods of time were consumed in attempting to obtain confirmed reservations. In some cases, the long lead times rendered the opportunity unsuitable to the consumer; in other cases, the long lead times, followed by rejection of the proposed choice and the necessity to make another, made use of the vacation opportunity virtually impossible.

Judge Howder's proposed order would allow respondents to specify a time within which reservation requests will be acknowledged, and require acknowledgment within 30 days if no time period is specified. A 30-day acknowledgment period is, we believe, too long. Consumers reasonably expect (absent disclosure to the contrary), that it should be possible to acknowledge a request for accommodations within less than 30 days from the time the vacation arranger receives the request. Complaint counsel, in their proposed order submitted to ALJ Howder suggested a time period of 15 days, and we agree that this is reasonable.²⁶ Again, we note that if respondents require a longer period of time within which to acknowledge requests for reservations, they need only *inform* consumers before they send in their money that the consumers can expect to wait some specified longer period of time

²⁶ A worthwhile comparison may be made with order Paragraph I(10), which requires respondents to ship ordered merchandise within 30 days of receipt of an order unless a different time period is specified. This tracks the Commission's Trade Regulation Rule on Mail Order Merchandise. It is obviously more difficult to arrange for the shipment of merchandise than it is to mail a postcard advising a consumer that a reservation request has been accepted or rejected. Accordingly, absent disclosure of how long either process should take, consumers will normally expect the shipment of merchandise to take longer than the acknowledgment of a reservation request. It is, therefore, appropriate that Paragraph I(7) specify a shorter time period than Paragraph I(10), although again, we note that respondents are free to establish any time period they wish for acknowledging reservations or shipping merchandise, so long as consumers are advised of this time period before having to commit money.

before they will [28]be told as to whether their request has been accepted. This bit of highly material information will then permit consumers to assess more acutely whether the proffered vacation opportunity is worth the risk of \$15.00.

With the foregoing substantive change, and minor stylistic changes, the order framed by Judge Howder, to the specifics of which respondents have not objected, is appended and will be entered.

FINAL ORDER

This matter has been heard by the Commission upon the appeal of counsel for respondents Raymond Anderson and Columbia Research Corporation from the initial decision, and upon briefs and oral argument in support of and in opposition to the appeal. The Commission, for the reasons stated in the accompanying Opinion, has denied the appeal. Therefore,

It is ordered, That the initial decision of the administrative law judge, pages 1-94, be adopted as the Findings of Fact and Conclusions of Law of the Commission, except to the extent inconsistent with the attached opinion. Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered, That the following order to cease and desist be entered: [2]

ORDER

I

It is ordered, That respondents Columbia Research Corporation, Raymond Anderson and Joseph Anderson, their successors and assigns, officers, directors, 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 vacation certificates and packages, sewing machines, household and cosmetic products, mail order goods, or other goods or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Making or participating in the making, in any manner and by any means, of false, misleading or deceptive representations for the purpose of aiding in the securing of leads or prospects for the sale of any product or service, the demonstrating of any product or service, the selling of any product or service, the distributing of any product or service, or any other purpose.

(2) Representing, in any manner and by any means, that respondents are conducting a contest, unless:

(a) the contest is bona fide;

(b) all prizes advertised to be awarded will be awarded; and

(c) respondents maintain all records pertaining to such contest for three (3) years subsequent to the end of the contest.

(3) Representing, in any manner and by any means, that recipients of respondents' solicitations are winners, or that prizes, awards or gifts will be given, or the conditions under which such prizes, awards or gifts will be given, including, but not limited to, representation by use of such terms as "prizes," "awards," "winnings," "gifts," "bonuses," "free" or terms of similar import and meaning, unless the recipients of such prizes, awards or gifts incur no financial or other obligation as a condition of obtaining such prizes, awards, or gifts. [3]

(4) Misrepresenting, in any manner and by any means, the character of any business conducted by respondents, including, but not limited to, misrepresentation through misleading corporate names, misleading titles for corporate officers, or statements or expressions conveying that respondents engage in market research and analysis, conduct incentive programs or promotions, or make use of a special method of selecting prospective customers to receive respondents' solicitations.

(5) Representing, in any manner and by any means, that respondents have co-sponsors or represent other companies, unless:

(a) the co-sponsorship or representation of another company is bona fide; and

(b) the co-sponsors or represented companies have actual knowledge of and have approved the use of any such representation by respondents prior to respondents' representation to any third party.

(6) Representing, in any manner and by any means, that recipients of respondents' solicitations have a limited time within which to reply to or accept respondents' offers, unless such time limitation is bona fide.

(7) Representing, in any manner and by any means, that recipients of respondents' solicitations can exercise a choice regarding the selection of any product or service offered by respondents, including, but not limited to, vacation times, locations or accommodations, unless such choice selections are actually made available and recipients receive a response to their indication of such choice within a reasonable time period.

For purposes of this paragraph, "a reasonable time period" shall be:

(a) that period of time specified in respondents' solicitation if such period is clearly and conspicuously disclosed in the solicitation; or [4]

(b) if no period of time is clearly and conspicuously disclosed, a period

of fifteen (15) days following the date that the recipient's indication of choice is received by respondents or by a designated agent of respondents.

(8) Misrepresenting, in any manner and by any means, the nature of respondents' goods and services, the stated value of their goods and services, the total cost of their goods and services, the retail price of their goods and services, or any other price or value against which the goods and services offered in respondents' solicitations are being compared, including, but not limited to, misrepresentation by use of such terms as "full-size," "savings," "value," "special," "retail price," "regular price," "list price," "former price" or terms of similar import and meaning, or misrepresentation by failing to clearly and conspicuously disclose, in the solicitation or other promotion, that purchasers will or may incur additional costs in connection with the purchase of respondents' goods and services, such as delivery costs, or extra room charges, and the approximate amount of room charges, and the approximate amount of each additional cost.

(9) Failing to clearly and conspicuously disclose, in any manner and by any means, in any solicitation or other promotion, any relationship between respondents' offer and the subsequent sales promotion of other products or services by respondents and/or other companies, including, but not limited to, the promotion of land or property sales programs.

(10) Failing to deliver goods or perform services ordered by purchasers from respondents within a reasonable time period. If delivery or performance cannot be completed within such a reasonable time period, then respondents shall clearly and conspicuously offer in writing to such purchaser, no later than at the expiration of the reasonable time period, an option either to consent to a delay in delivery or performance or to cancel his or her order and receive a full refund which shall be sent by respondents by first class mail within seven (7) working days of the date on which respondents receive such purchaser's notice of cancellation. [5]

For purposes of this paragraph, "a reasonable time period" shall be:

(a) that period of time specified in respondents' solicitation if such period is clearly and conspicuously disclosed to the purchaser in the solicitation; or

(b) if no period of time is clearly and conspicuously disclosed, a period of thirty (30) days following the date that the purchaser's order is received by respondents or by a designated agent of respondents.

(11) Representing, in any manner and by any means, that any product or service offered in respondents' solicitations is guaranteed or

warranted, including, but not limited to, representation by use of such terms as "guarantee," "warranty," "money-back guarantee" or terms of similar import and meaning, unless the terms, conditions and limitations of the guarantee or warranty, the identity of the guarantor or warrantor and the manner in which the guarantor or warrantor will perform thereunder are clearly and conspicuously disclosed in writing in the solicitation, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of such guarantee or warranty.

(12) Failing to respond to each and every written inquiry concerning transactions with customers within seven (7) working days after the date respondents receive such inquiry.

(13) Making or participating in the making, in any manner and by any means, of any of the above representations unless respondents actually have a reasonable basis for so doing.

II.

It is further ordered, That respondents Columbia Research Corporation, Raymond Anderson and Joseph Anderson, their successors and assigns, officers, directors, 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 vacation certificates and packages, sewing machines, household and cosmetic products, mail order goods, or other goods or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain: [6]

(1) Legible copies of all written inquiries concerning transactions with customers, and the responses thereto. Such correspondence shall be maintained for a period of not less than three (3) years from the date each piece of correspondence is received or sent by respondents.

(2) Records which disclose the following information:

- (a) the name and address of each customer requesting a refund;
- (b) the date that respondents receive each request for a refund;
- (c) if a refund has been granted, the amount of the refund and the date that it was sent to the customer;
- (d) if a refund has been denied, a copy of the written request, the date a written explanation of the denial was sent to the customer and a copy of the written explanation.

Such records shall be maintained for a period of not less than three (3) years from the date that the customer sent in the request for a refund.

Respondents shall grant any duly authorized representative of the Federal Trade Commission, upon reasonable notice of time and place,

access to all records that are required to be maintained under Parts I, II and IV of this order, and shall furnish to the Federal Trade Commission any copies of such records that are requested by any of its duly authorized representatives.

III

It is further ordered, That the complaint be, and hereby is, dismissed as to respondent Juanita Anderson.

IV

Compliance with the terms of this order in no way relieves respondents from the obligation to comply with all applicable statutes and Trade Regulation Rules of the Federal Trade Commission pertaining to mail order sales, warranties or any other subject, [7] whether or not related to this order. In the event that any such statute or Trade Regulation Rule imposes upon respondents contradictory, as opposed to additional or more stringent, duties, respondents may petition the Federal Trade Commission for a modification of this order or for an exemption from the pertinent Trade Regulation Rule.

It is further ordered, That respondents shall distribute a copy of this order to all operating divisions of Columbia Research Corporation and to present or future employees, agents or representatives of said corporation, and that respondents shall secure from each such individual a signed statement acknowledging receipt of said order.

It is further ordered, That, for a period of twenty (20) years following the effective date of this order, respondent Raymond Anderson shall promptly notify the Commission of the discontinuance of his then current business or employment and of each affiliation with a new business or employment. Each such notice shall include the individual 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 the respondent's duties, responsibilities and financial interest in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That, for a period of ten (10) years following the effective date of this order, respondent Joseph Anderson shall promptly notify the Commission of the discontinuance of his then current business or employment and of each affiliation with a new business or employment. Each such notice shall include the individual 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 the respondent's duties, responsibilities and financial interest in connection with the business or employment. The expiration of the obligations of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, Columbia Research Corporation, 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. [8]

It is further ordered, That respondents herein shall within sixty (60) days and one (1) year following the effective date of the order, and at such other times as the Commission may require, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order.