

Modified Order

96 F.T.C.

IN THE MATTER OF  
SKF INDUSTRIES, INC., ET AL.

MODIFIED ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 9046. Decision, July 5, 1979—Modified Order, October 21, 1980*

In accordance with the settlement agreement reached by respondents and Commission counsel without adjudication, and filed with the Court of Appeals for the Second Circuit on July 23, 1980, this modified order revises the "final order" issued by the Commission on July 5, 1979 (44 FR 47926, 94 F.T.C. 6), by changing, among other things, the amount of TRB that SKF may sell to Federal Mogul and the requirements for publishing the provisions of the order.

MODIFIED ORDER TO CEASE AND DESIST

Respondents SKF Industries, Inc. ("SKF"), and Federal-Mogul Corporation ("FM") having filed in the United States Court of Appeals for the Second Circuit petitions for review of the Commission's "Final Order" herein dated July 5, 1979; and a stipulation dated July 23, 1980, by and among SKF, FM and counsel for the Commission having been entered into and filed with the Court of Appeals, pursuant to which the parties agreed and consented to entry by the Court of Appeals, without adjudication of any issue of law or fact, of an order modifying said "Final Order" in accordance with said stipulation and directing that said "Final Order," as so modified, be enforced; and the Court of Appeals having thereupon entered an Order, dated August 25, 1980, remanding the proceeding to the Commission with directions to modify said "Final Order" in accordance with said stipulation:

*Now, therefore, it is hereby ordered,* That the aforesaid "Final Order" be, and hereby is, modified in accordance with the order of the Court of Appeals to read as follows:

FINAL ORDER

I

This Order shall be deemed to be final as of December 31, 1979, and be binding on Federal-Mogul Corporation ("FM"), SKF Industries, Inc. ("SKF"), their subsidiaries or any person under the control of FM or SKF, their successors and assigns, and their officers, agents, representatives and employees.

## II

*It is ordered.* That the agreement signed by SKF and FM on December 17, 1974, and any similar arrangements between or among respondents, including the understandings reflected in the exchange of documents on January 27, 1972, shall be cancelled as of the date as of which this Order becomes final.

## III

*It is ordered.* That, for purposes of this Order, the following definitions shall be applicable:

(i) *0"-4" TRB*—tapered roller bearings having an outside diameter of zero to four inches.

(ii) *Automotive Aftermarket*—the domestic replacement market, including all intermediate suppliers to such market (but excluding FM and the manufacturers of original equipment who purchase 0"-4" TRB for distribution to service customers through their dealers and franchisees), for 0"-4" TRB for use in passenger cars, light and heavy trucks, buses, trailers, tractors, self-propelled agricultural equipment and vehicles, such as trailers, and agricultural equipment pulled by self-propelled vehicles.

(iii) *FM TRB Requirements*—the total dollar value of purchases of 0"-4" TRB by FM from all sources (including sources owned or controlled by FM) for distribution in the United States. The value of purchases of 0"-4" TRB by FM from sources which it owns or controls shall be either cost to FM or the fair market value, whichever is less.

(iv) *FM TRB Purchases from SKF*—the total dollar value of direct or indirect purchases by FM of 0"-4" TRB from SKF, Aktiebolaget SKF ("AB SKF"), or any person under the control of SKF or AB SKF for distribution in the United States, which shall include (A) purchases by FM or 0"-4" TRB manufactured by SKF, AB SKF, or any person under the control of SKF or AB SKF, and (B) purchases by FM under the arrangement to which SKF, AB SKF, or any person under the control of SKF or AB SKF is a party or from a supplier in which SKF, AB SKF, or any person under the control of SKF or AB SKF has an interest.

(v) *TRB Units*—0"-4" TRB as purchased by Automotive Aftermarket customers of SKF. Purchases may be (i) an assembled TRB, (ii) a TRB outer ring (cup), or (iii) a TRB inner ring (cone), each being a single TRB unit.

(vi) *SKF Net Aggregate Sales to the Automotive Aftermarket*—that

number of TRB Units which is the difference between (i) the aggregate number of TRB Units sold by SKF to the Automotive Aftermarket and (ii) the number of TRB Units, if any, which must be subtracted therefrom so that of the resulting number of TRB Units sold by SKF to the Automotive Aftermarket no more than 15% represents TRB Units sold by SKF to or through any national organization of independent warehouse distributors by or through which, as of the effective date of this Order, all the members of such organization secure all of their needs of 0"-4" TRB from the same single source, other than SKF.

#### IV

With respect to FM TRB Purchases from SKF, *it is ordered*, That the following limitations shall apply during the periods described below:

(i) The time period covered by any given purchase order or related agreement concerning FM TRB Purchases from SKF shall not exceed twelve (12) months.

(ii) The aggregate dollar value of any FM TRB Purchases from SKF during the first thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1980, 1981 and 1982) shall not exceed 60% of the FM TRB Requirements during that period. The allowable percentage under this subparagraph shall include any 0"-4" TRB purchased, but not sold, by FM from SKF, AB SKF, or any person under the control of SKF or AB SKF prior to the date as of which this Order becomes final.

(iii) The aggregate dollar value of any FM TRB Purchases from SKF during the second thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1983, 1984 and 1985) shall not exceed 50% of the aggregate FM TRB Requirements during that period.

(iv) The aggregate dollar value of any FM TRB Purchases from SKF during the third thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1986, 1987 and 1988) shall not exceed 40% of the aggregate FM TRB Requirements during that period; *provided, however*, that if the SKF Net Aggregate Sales to the Automotive Aftermarket shall have been 1,250,000 or more TRB units during the second thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1983, 1984 and 1985), the aggregate value of any FM TRB Purchases from SKF shall not exceed 50% of the aggregate FM TRB

752

## Modified Order

Requirements during the third thirty-six (36) month period (calendar years 1986, 1987 and 1988).

(v) The aggregate dollar value of any FM TRB Purchases from SKF during the fourth thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1989, 1990 and 1991) shall not exceed 40% of the aggregate FM TRB Requirements during that period; *provided, however*, that if the SKF Net Aggregate Sales to the Automotive Aftermarket shall have been 1,250,000 or more TRB Units during the third thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1986, 1987 and 1988), the aggregate value of any FM TRB Purchases from SKF shall not exceed 50% of the aggregate FM TRB Requirements during the fourth thirty-six (36) month period (calendar years 1989, 1990 and 1991).

(vi) This Order shall automatically terminate as of December 31, 1991.

## V

*It is further ordered*, That each respondent shall notify all persons having sales and policy responsibilities in its organization of the terms of this Order, and respondents together shall publish same in a major trade journal or periodical within six months following the conclusion of the first twelve (12) month period (calendar year 1980) and again within six months following the conclusion of the second twelve (12) month period (calendar year 1981) following the date as of which this Order becomes final; *provided, however*, that if during either such twelve (12) month period (calendar year 1980 or 1981) the aggregate dollar value of any FM TRB Purchases from SKF shall not have exceeded 50% of the aggregate FM TRB Requirements during that period, then such publication following the conclusion of that period may be omitted.

## VI

*It is further ordered*, That each respondent shall notify the Commission at least thirty (30) days prior to any proposed change in said respondent which may affect compliance obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or joint ventures.

## VII

*It is further ordered,* That within sixty (60) days after the date of issuance of this Order, and within sixty (60) days after the end of each calendar year during which this Order is effective, each respondent shall file with the Federal Trade Commission a written report setting forth in detail the manner and form of its compliance with this Order.

## VIII

*It is further ordered,* That after the end of calendar year 1984, after the end of each quarter during calendar year 1985, and after the end of calendar year 1985, respondent SKF shall report to the Commission the SKF Net Aggregate Sales to the Automotive Aftermarket during the period beginning January 1, 1983, to and including the effective date of the report. These reports shall be filed within forty-five (45) days after the end of the respective reporting periods and shall be made available to respondent FM at the time they are filed with the Commission. This reporting obligation shall automatically terminate upon the filing by SKF of such a report indicating that the SKF Net Aggregate Sales to the Automotive Aftermarket have equalled or exceeded 1,250,000 TRB Units during such period.

## IX

*It is further ordered,* That after the end of calendar year 1987, after the end of each quarter during calendar year 1988, and after the end of calendar year 1988, respondent SKF shall report to the Commission the SKF Net Aggregate Sales to the Automotive Aftermarket during the period beginning January 1, 1986, to and including the effective date of the report. These reports shall be filed within forty-five (45) days after the end of the respective reporting periods and shall be made available to respondent FM at the time they are filed with the Commission. This reporting obligation shall automatically terminate upon the filing by SKF of such a report indicating that the SKF Net Aggregate Sales to the Automotive Aftermarket have equalled or exceeded 1,250,000 TRB Units during such period.

757

Complaint

IN THE MATTER OF  
THE MENTHOLATUM COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3047. Complaint, Oct. 22, 1980—Decision, Oct. 22, 1980*

This consent order requires, among other things, a Buffalo, N.Y. producer of denture cushions to use advertisements which are consistent with labeling information included with the product concerning health, safety or efficacy; to disclose, in those instances where the firm makes claims of duration of use, such labeling warnings in a clear and conspicuous manner; and, further, to affirmatively state that its product is intended for short-term use only.

*Appearances*

For the Commission: *Leslie Fax.*

For the respondent: *Samuel Magavern, Magavern, Magavern, Lowe, Beilewech, Dompkins & Fadale, Buffalo, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Mentholatum Company ("Mentholatum"), a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and that a proceeding with respect to such violations would be in the public interest, hereby issues its complaint, setting forth its charges as follows:

PARAGRAPH 1. Mentholatum is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1360 Niagara St. in the city of Buffalo, New York.

PAR. 2. Respondent Mentholatum is now, and for some time last past has been engaged in the production, advertising, offering for sale, sale and distribution of denture cushions designated by the trade name "Snug Denture Cushions." This product, as advertised, is a "device" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. In the course and conduct of its business, responder Mentholatum causes and has caused the said products, when sold, to be transported from its place of business in one State of the United States to another State of the United States.

States to purchasers thereof located in various other States of the United States and the District of Columbia. Respondent Mentholatum maintains, and at all times mentioned herein has maintained, a substantial course of trade in Snug Denture Cushions in or affecting commerce.

PAR. 4. In the course and conduct of its business, respondent has disseminated or caused the dissemination of various advertisements for Snug Denture Cushions across state lines by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertisements inserted in magazines and newspapers and also advertisements broadcast on national television networks. The purpose of all these advertisements has been to induce, directly or indirectly, the purchase of Snug Denture Cushions, and it is likely that these advertisements have succeeded in inducing consumers to purchase this product.

PAR. 5. Typical, but not all inclusive, of the statements and representations in said advertisements are those found in Exhibits A-G attached to this complaint, including such representations as the following:

a. Newspaper and magazine advertisements:

- (1) ELIMINATES DAILY DENTURE "FIXINGS" FOREVER—Snug Cushions hold dentures comfortably tight for weeks.
- (2) HOLDS DENTURES FIRM WITHOUT DAILY "FIXINGS"—Snug Cushions hold dentures comfortably tight for weeks.
- (3) NEW FREEDOM FROM DAILY DENTURE "FIXINGS"—Snug Cushions hold dentures comfortably tight for weeks.

b. Television Advertisements:

- (1) Sara: Didn't I tell you about Snug? It's different—you don't need to apply it every day . . . Snug lasts for weeks. And it'll hold your dentures firm and comfortable. . . . [At a point later in time]  
Sara: Didn't you switch to Snug  
Helen: Sure . . .
- (2) Thousands of denture wearers have long suffered with loose, wobbly, uncomfortable plates. Now many use Snug Brand Denture Cushions . . .

PAR. 6. Through the use of said advertisements and others similar hereto not specifically set out herein, disseminated as aforesaid, respondent has made or is making the following representations:

- (a) that Snug Denture Cushions are appropriate for long-term use;
- (b) that Snug Denture Cushions are for use other than temporary use only until a dentist can be seen.

PAR. 7. In fact, the labeling on Snug Cushions states:

(a) On the package:

Caution: Long term use of an ill-fitting denture, reliner, pad or cushion may lead to swelling, faster bone resorption, or continuing irritation. Use Snug temporarily until you can see your dentist.

(b) On the package insert:

(1) Snug Denture Cushions are for *temporary* use only . . .

(2) Dentures that do not fit properly cause irritation and injury to the gums and faster bone loss which is permanent and may require a completely new denture. Changes in the gums caused by dentures that do not fit properly may require surgery for correction. Continuing irritation and injury may lead to tumors in the mouth. Use of denture reliners, pads, and cushions may temporarily decrease the discomfort. However, their use will not make the denture fit properly. Special training and tools are needed to fit properly. You must see your dentist for a new denture or a repair as soon as possible.

PAR. 8. The representations referred to in Paragraph Six are inconsistent with, negate, and contradict the labeling on respondent's product as set forth in Paragraph Seven hereof. Such inconsistency, negation, and contradiction has the tendency and capacity to mislead and deceive purchasers of said product as to its proper duration of use, and to negate the import and purposes of and to detract from the effectiveness of the warnings, cautions, limitations and instructions for use found in the labeling.

Therefore, the advertisements, acts and practices, referred to in Paragraph Six above were and are unfair and deceptive.

PAR. 9. Furthermore, in its advertising for Snug Denture Cushions, respondent has been and now is making claims as to the duration of use of said product without clearly and conspicuously disclosing to the purchasing public that the labeling for Snug Denture Cushions states that said product should be used only on a temporary basis until a dentist can be seen.

PAR. 10. The existence and substance of the above-mentioned labeling warning is a material fact in light of the representations set forth in Paragraphs Five and Six regarding duration of use, in that disclosure of the warning to consumers would be likely to affect their decisions of whether or not to purchase said product and of how properly to use it. Respondent's failure to disclose this material fact has the tendency and capacity to mislead and deceive consumers into the mistaken belief that no such warning exists.

Therefore, the advertisements, acts and practices referred to in Paragraphs Five and Six above were and are false, deceptive, and unfair.

PAR. 11. In the course and conduct of its business as aforesaid, and

at all times mentioned herein, respondent Mentholatum has been in substantial competition in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those advertised and/or sold by respondent.

PAR. 12. The aforesaid unfair and deceptive acts and practices of respondent have had and now have, the capacity to induce members of the purchasing public to purchase substantial quantities of said product.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

757

Complaint

# SNUG DENTURE CUSHIONS

SEE INSTRUCTIONS INSIDE

SNUG DENTURE CUSHIONS

# SNUG

BRAND  
DENTURE CUSHIONS

Ever-soft Plastic Cushions

*Snug makes loose false teeth fit firm and tight. Soothes sore gums due to loose-fitting dentures. Holds in to plate. Easy to apply or remove. Caution: Long term use of an ill-fitting denture, which, part or cushion may lead to swelling of the bone resorption, or continuing irritation. Use SNUG temporarily until you can see your dentist.*



For Upper or Lower Plates



Contents  
2 Cushions

THE MENTHOLATUM CO., BUFFALO, N. Y. 14212

PD-214

Masius, Wynne-Williams, Street &amp; Finney, Inc. EDITORIAL DEPARTMENT

IDENTIFICATION NO.  
 ADVERTISER The Mentholatum Company  
 FOR SNUG DENTURE CUSHIONS  
 "POWDERS & STICKERS" (A)  
 (#SN-11-300)

DATE August 22, 1969  
 JOB NO. 100TV33  
 As filed: 8/19/69  
 As recorded: 8/22/69

VIDEO

1. OPEN ON CAN OF ADHESIVE POWDER, POURING POWDER ONTO LINED SURFACE.
2. PULL BACK - ACTION CONTINUES.
3. HAND SETS CAN ON SURFACE BEHIND SPRING OF POWDER.
4. BESIDE FILE OF POWDER, RIBBON OF ADHESIVE CREAM IS SQUEEZED OUT ONTO LINED SURFACE.
5. TUBE OF CREAM IS SET DOWN BEHIND RIBBON. NOW BOTH PRODUCTS AND THEIR CONTENTS ARE SEEN SIDE BY SIDE.
6. THE CAN AND FILE OF POWDER POPS OFF.
7. THE TUBE AND RIBBON OF CREAM POP OFF.
8. CU PKG OF SNUG.
9. PULL BACK AS HAND REMOVES CUSHION WITH BOTH LINENS ON FROM BOX.  
SUPER: "LASTS FOR WEEKS".
10. WITH ONE LINEN ON BACK, SHOWING SNUG CUSHION ON TOP, HAND BEGINS TO CUT SHAPE OF DENTURE.

AUDIO

1. ANNCR: (VO) Some people with 1 wobbly dentures.
2. ANNCR: (VO) use adhesive powder every morning and
3. ANNCR: (VO) every night.
4. ANNCR: (VO) Others use cream
5. ANNCR: (VO) day after day.
6. ANNCR: (VO) But some never bot!
7. ANNCR: (VO) with daily fixing--
8. ANNCR: (VO) they line their de- with Snug Brand De- Cushions.
9. ANNCR: (VO) One lining lasts for weeks.
10. ANNCR: (VO) Apply Snug at home minutes.

## Complaint

## IDENTIFICATION NO.

ADVERTISER The Mentholator Company  
 FOR SMUG DENTURE CUSHIONS

"POWDERS & STICKERS" (A)  
 (FSN-11-3CC)

Page 2.

DATE August 22, 1969

JOB NO. 100T733  
 As filmed: 8/19/69  
 As recorded: 8/22/69

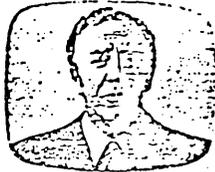
VIDEO

11. NOW "U" SHAPE OF DENTURE IS HELD IN HAND, WHILE BACKING LIGN IS REMOVED. SUPER: "HOLDS DENTURES TIGHT".
12. HAND FLEXES CUSHION.
13. CUT BACK TO SET UP OF POWDER AND CREAM WITH CONTAINERS.
14. POWDER IS POPPED OFF.
15. CREAM IS POPPED OFF.
16. CU SMUG PACKAGE. SUPER: "HOLD DENTURES TIGHT". THEN POP ON: "2 CUSHIONS \$1.50".

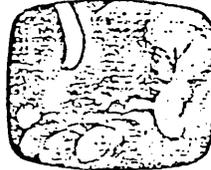
AUDIO

11. ANNCR: (VO) It holds dentures tight
12. ANNCR: (VO) and cushions the gum lasts for weeks
13. ANNCR: (VO) without daily fixing
14. ANNCR: (VO) Try the no-mess
15. ANNCR: (VO) no-bother way ...
16. ANNCR: (VO) get Smug to hold dentures tight.

SNUG DENTURE CUSHIONS  
TELEVISION COMMERCIAL, 1976-77  
"SPOKESMAN"



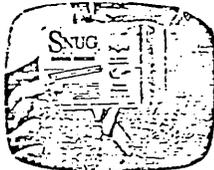
1. SPOKESMAN: (DV) What do you use to hold loose wobbly dentures comfortably tight?



2. Powder?



3. Cream?



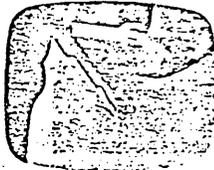
4. Or long-lasting Snug Brand Denture Cushions.



5. Snug is a cushion -



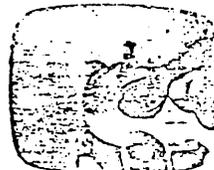
6. not only holds plates tight, but makes them feel so comfortable.



7. (VO) Easy to fit...



8. Snug sticks to your plates... lasts for weeks...



9. so no daily fixing... no mess... no after taste.



10. Easily cleaned or removed.



11. (DV) To hold dentures comfortably tight for weeks...



12. (VO) get Snug Denture Cushions!

757

## Complaint

MASHUS, WYNN- WILLIAMS INC.

CLIENT THE MENTHOLATUM COMPANY

TITLE "SPOKESMAN" (C) (MVS2123)  
:30 TV COMM'L.SNUG DENTURE CUSHIONS  
As Produced: 8/30/72  
As Filmed: 8/17/72

DATE SEPT. 15, 1972 70 w

OPEN ON CU SPOKESMAN

SPOKESMAN (OC): What do you use to hold  
loose, wobbly dentures  
comfortably tight?CUT TO CU AS HE SHAKES  
POWDER ON HIS PALM

Powder?

CU AS HE SQUEEZES CREAM  
ON PALMCream?  
Or long-lastingCUT TO CU SNUG PKG AS HE  
PICKS IT UPSnug Brand Denture  
Cushions.HOLD CU AS HANDS SLIP OUT  
SNUG

Snug is a cushion --

PULL BACK TO MCU MAN

not only holds plates  
tight...but makes them  
feel so comfortable.CUT TO CU MAN'S HANDS CUTTING  
SNUG INTO SHAPE WITH SCISSORS

Easy to fit...

DISS TO HIS HANDS FITTING U-SHAPED  
SNUG ONTO CLEAR LUCITE U-SHAPESnug sticks to your plate  
lasts for weeks...so no  
daily fixing...no mess...  
no after-taste.PAN AS HIS HANDS SCRUB SNUG ON  
LUCITE U-SHAPE, WITH TOOTHBRUSH  
UNDER RUNNING FAUCET

Easily cleaned or removed

CUT TO CU MAN

To hold dentures com-  
fortably tight for weeks

CUT TO CU SNUG PKG

get Snug Denture Cushion

## Complaint

96 F.T.C.

SNUG DENTURE CUSHIONS  
TELEVISION COMMERCIAL  
"SPOKESWOMAN"



1. SPOKESWOMAN: (DV) Thousands of denture wearers have long suffered



2. with loose, wobbly, uncomfortable plates.



3. Now many use Snug Brand Denture Cushions and



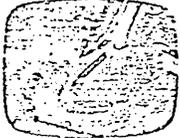
4. are so grateful for the way Snug holds dentures tight.



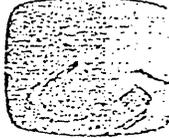
5. and being a cushion, Snug makes dentures feel so comfortable.



6. (VO) Easy to fit —



7. Snug sticks to your plates... lasts for weeks —



8. so no daily fiving — no mess — no aftertaste.



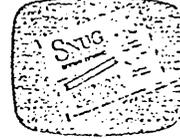
9. (SFX) Easily cleaned



10. or removed.



11. (DV) To hold dentures comfortably tight for weeks.



12. (VO) get Snug Denture Cushions.

THE MENTHOLATUM CO., INC.

757

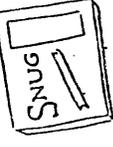
Complaint

MASHUS, WYNNE-WILLIAMS INC.

CLIENT THE MENTHOLATUM COMPANY  
TITLE "SPOKESWOMAN" (C) (#MVS2133) SNUG DENTURE CUSHIONS  
:30 TV COMM'L As Produced: 8/30/72  
DATE SEPT 15, 1972 75 w As Filmed: 8/17/72

OPEN ON CU SPOKESWOMAN	SPOKESWOMAN (OC): Thousands of denture wearers have long suffered with loose, wobbly, uncomfortable plates.
SHE PICKS UP SNUG PKG	<u>Now</u> many use...
CUT TO CU PKG IN HER HAND	Snug Brand Denture Cushion and are so grateful
CUT TO CU WOMAN	for the way Snug holds dentures tight...and being a cushion, Snug makes dentures feel <u>so comfortable</u> .
CUT TO CU WOMAN'S HANDS CUTTING SNUG INTO SHAPE WITH SCISSORS	Easy to fit...
DISS TO HER HANDS FITTING U-SHAPED SNUG ONTO CLEAR LUCITE U-SHAPE	Snug sticks to your plates. lasts for weeks... so no daily fixing...no mess... no after-taste.
PAN AS HER HANDS SCRUB SNUG ON LUCITE U-SHAPE, WITH TOOTHBRUSH UNDER RUNNING FAUCET	Easily cleaned or removed.
CUT TO CU WOMAN	To hold dentures comfortably tight for weeks...
CUT TO CU SNUG PKG	get Snug Denture Cushions.



67			
		<p>MAISON, WYOMING WILLIAMS INC.</p> <p>6401 100 WEST PALMER LINDSEY ROAD, LINDSEY, WYOMING 82503</p> <p>BY _____</p> <p>DATE _____</p>	
	<p>6401 100 WEST PALMER LINDSEY ROAD, LINDSEY, WYOMING 82503</p> <p>BY _____</p> <p>DATE _____</p>		

P  
58  
N  
6

Amazing soft plastic cushion  
**holds dentures  
 comfortably  
 tight for weeks**

without messy "slickums!"  
 Not a paste! Not a powder! Not a cream or wax pad! But amazing soft plastic adhesive cushions that hold loose, wobbly dentures comfortably tight and firm. Snug! Brand Denture Cushions are the long lasting, clear way to hold loose dentures tight. Snug lasts for weeks... does away with bothersome mess of daily "Slickums." Snug Cushions are easy to wipe and clean... stick to your plate not to your gums. Easy to clean or remove... won't wash off and can't flake away. Get Snug Denture Cushions to hold your dentures tight for weeks... in comfort. At all drug counters.

The Manufacturer Co.—U.S. (Snug) Ad No. SN 75-702  
 1/20 Page (12 x 3 1/2)  
 Bureau Registration—1975  
 Job No. 74188  
 Printed in U.S.A.  
 D.A.R.C.Y., MANHATTAN & MASSIVE, Inc., New York

No paste or powder  
**holds dentures  
 comfortably  
 tight for weeks**

like Snug Denture Cushions  
 Not a paste! Not a powder! Not a cream or wax pad! But amazing soft plastic adhesive cushions that hold loose, wobbly dentures comfortably tight and firm. Snug! Brand Denture Cushions are the long lasting, clear way to hold loose dentures tight. Snug lasts for weeks... does away with bothersome mess of daily "Slickums." Snug Cushions are easy to wipe and clean... stick to your plate not to your gums. Easy to clean or remove... won't wash off and can't flake away. Get Snug Denture Cushions to hold your dentures tight for weeks... in comfort. At all drug counters.

The Manufacturer Co.—U.S. (Snug) Ad No. SN 75-704  
 1/20 Page (12 x 3 1/2)  
 Bureau Registration—1975  
 Job No. 74188  
 Printed in U.S.A.  
 D.A.R.C.Y., MANHATTAN & MASSIVE, Inc., New York

Amazing soft plastic cushion  
**holds dentures  
 comfortably tight  
 for weeks**

without messy "slickums!"  
 Not a messy paste, powder, cream or wax pad—but an amazing soft plastic adhesive cushion. Snug! Brand Denture Cushions hold loose, wobbly dentures comfortably tight for weeks. Wash Snug there's no need to bother with messy daily "Slickums." Snug lasts for weeks, sticks to your plate not to your gums, so easy to clean or remove. Get Snug Denture Cushions to hold your dentures tight and firm for weeks... in comfort. At all drug counters.

The Manufacturer Co.—U.S. (Snug) Ad No. SN 75-703  
 1/20 Page (12 x 3 1/2)  
 Bureau Registration—1975  
 Job No. 74188  
 Printed in U.S.A.  
 D.A.R.C.Y., MANHATTAN & MASSIVE, Inc., New York

No paste or powder  
**holds dentures  
 comfortably tight  
 for weeks**

like Snug Denture Cushions  
 Not a messy paste, powder, cream or wax pad—but an amazing soft plastic adhesive cushion. Snug! Brand Denture Cushions hold loose, wobbly dentures comfortably tight for weeks. Wash Snug there's no need to bother with messy daily "Slickums." Snug lasts for weeks, sticks to your plate not to your gums, so easy to clean or remove. Get Snug Denture Cushions to hold your dentures tight and firm for weeks... in comfort. At all drug counters.

The Manufacturer Co.—U.S. (Snug) Ad No. SN 75-705  
 1/20 Page (12 x 3 1/2)  
 Bureau Registration—1975  
 Job No. 74188  
 Printed in U.S.A.  
 D.A.R.C.Y., MANHATTAN & MASSIVE, Inc., New York

**NEW FREEDOM FROM DAILY DENTURE "FIXINGS"**  
 Snug Cushions hold dentures comfortably tight for weeks. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long.

**SNUG**  
 (Patented)

The Mentholatum Co., Inc. (Incorporated in U.S.A.)  
 175 N. W. 1st St., Miami, Fla.  
 DIRECT MANUFACTURERS OF SNUG, INC. (Patented)

**NEW FREEDOM FROM DAILY DENTURE "FIXINGS"**  
 Snug Cushions hold dentures comfortably tight for weeks. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long.

**SNUG**  
 (Patented)

The Mentholatum Co., Inc. (Incorporated in U.S.A.)  
 175 N. W. 1st St., Miami, Fla.  
 DIRECT MANUFACTURERS OF SNUG, INC. (Patented)

**HOLDS DENTURES FIRM WITHOUT DAILY "FIXINGS"**  
 Snug Cushions hold dentures comfortably tight for weeks. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long.

**SNUG**  
 (Patented)

The Mentholatum Co., Inc. (Incorporated in U.S.A.)  
 175 N. W. 1st St., Miami, Fla.  
 DIRECT MANUFACTURERS OF SNUG, INC. (Patented)

**HOLDS DENTURES FIRM WITHOUT DAILY "FIXINGS"**  
 Snug Cushions hold dentures comfortably tight for weeks. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long.

**SNUG**  
 (Patented)

The Mentholatum Co., Inc. (Incorporated in U.S.A.)  
 175 N. W. 1st St., Miami, Fla.  
 DIRECT MANUFACTURERS OF SNUG, INC. (Patented)

**IMMINATES DAILY DENTURE "FIXINGS" FOREVER**  
 Snug Cushions hold dentures comfortably tight for weeks. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long.

**SNUG**  
 (Patented)

The Mentholatum Co., Inc. (Incorporated in U.S.A.)  
 175 N. W. 1st St., Miami, Fla.  
 DIRECT MANUFACTURERS OF SNUG, INC. (Patented)

**IMMINATES DAILY DENTURE "FIXINGS" FOREVER**  
 Snug Cushions hold dentures comfortably tight for weeks. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long. No more "fixings" every morning. You can go to bed at night with your dentures in place. They stay in place all day long.

**SNUG**  
 (Patented)

The Mentholatum Co., Inc. (Incorporated in U.S.A.)  
 175 N. W. 1st St., Miami, Fla.  
 DIRECT MANUFACTURERS OF SNUG, INC. (Patented)

## D'Arcy-MacManus &amp; Masius

437 MADISON AVENUE  
NEW YORK, NEW YORK 10017

## Television Continuity

The Mentholatum Co.  
ACCOUNT  
Snug Denture Cushion  
PRODUCT  
"Movie"  
TITLE  
:30  
LENGTH  
MVSN 2153  
SCRIPT NUMBER

As filmed 11/28/77

<u>VIDEO</u>	<u>AUDIO</u>
OPEN ON TWO WOMEN EXITING MOVIE HOUSE ONTO STREET	<u>HELEN:</u> They don't make movies lik they used to.
WOMEN WALK DOWN STREET	<u>SARA:</u> Let's have some of my pecan pie, that never changes.
CUT TO HELEN'S FACE, LOOKING EMBARRASSED.	<u>HELEN:</u> Uh-Uh... It's been a while s I fixed my dentures... they' loose again.
2-SHOT AS SARA TALKS TO HELEN.	<u>SARA:</u> Didn't I tell you about Snug?
ECU OF SNUG PACKAGE. WOMAN'S HAND PULLS CUSHION OUT. <u>SUPER:</u> 'FOR TEMPORARY USE UNTIL YOU SEE YOUR DENTIST.'	<u>SARA:</u> It's different -- you don't ne to apply it every day.
CUT TO HAND HOLDING DENTURE SHAPED LUCITE AS OTHER HAND PRESSES SHAPED CUSHION ONTO LUCITE.	<u>SARA:</u> It's a cushion you just shape.
PALM DOWN HAND PRESSES AGAINST TOP OF LUCITE WHICH CLINGS TO HAND WITHOUT ANY OTHER SUPPORT.	<u>SARA:</u> Snug lasts for weeks. And it hold your dentures firm and comfortable.
DISSOLVE TO SIMILAR SCENE AT A POINT LATER IN TIME.	<u>SARA:</u> Pecan pie? <u>HELEN:</u> Uh -- Uh --

Complaint

D'Arcy-MacManus & Masius  
437 MADISON AVENUE  
NEW YORK, NEW YORK 10017

Television Continuity

The Mentholatum Co.  
ACCOUNT  
Snug Denture Cushio  
PRODUCT  
"Movie"  
TITLE  
:30  
LENGTH  
MVSN 2153  
SCRIPT NUMBER

VIDEO

AUDIO

SCENE CONTINUES

HELEN: Sure --

SARA: Well?

HELEN: I'm on a diet.

ECU SNUG PACKAGE

SUPER: SNUG LASTS WEEKS  
HOLDS DENTURES FIRM



D'Arcy-MacManus & Masius  
Advertising

CLIENT: MENTHOLATUM  
PRODUCT: SNUG  
TITLE & FILM NO: "MOVIE" - MVS2153  
FIRST USE: 3/778

LENGTH: 30 SECONDS



1. HELEN: They don't make  
movie like they used to.  
SARA: Let's have some of  
my Oscar pie, that never  
changes.



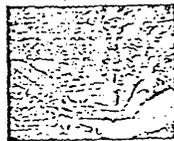
2. HELEN: Uh-Uh...It's  
been a while since I fixed  
my dentures...they're  
loose again.



3. SARA: Didn't I tell you  
about Snug? It's dis-  
torent -



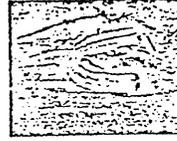
4. you don't need to apply  
Snug every day.



5. It's a cushion you just  
shape.



6. Snug lasts for weeks.



7. And it'll hold your  
dentures firm and com-  
fortable.



8. Pican pie? HELEN:  
Uh - Uh -



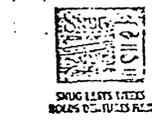
9. SARA: Didn't you switch  
to Snug?



10. HELEN: Sure - SARA:  
Well?



11. HELEN: I'm on a diet.  
SARA: Oh.



12. (SILENT)

## DECISION AND ORDER

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

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

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

1. Respondent Mentholatum Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1360 Niagara St. in the City of Buffalo, State of New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

## I.

*It is ordered,* That respondent, the Mentholatum Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device [hereinafter, "respondent"], in connection with the advertising, offering for sale, sale or distribution of any dental device or dental product, forthwith cease and desist

from disseminating or causing the dissemination of any advertisement by any means in or affecting commerce which makes any representation directly or indirectly that is inconsistent with, negates or contradicts any statement concerning matters of health, safety or efficacy set forth on the labeling of any such device or product or which in any way limits, qualifies or detracts from any such statement appearing on the labeling of any such device or product.

## II.

*It is further ordered,* That respondent, in connection with the advertising, offering for sale, sale or distribution of any dental device or dental product (except denture cushions as provided for in Paragraph 3), shall, in disseminating or causing the dissemination by any means in or affecting commerce of any advertisement which makes any representation directly or indirectly (other than those prohibited in I above) regarding duration of use of any such product, disclose clearly and conspicuously any labeling warning regarding duration of use of such device or product.

It is agreed, for the purposes of this Order, that in the event a label or packaging warning regarding duration of use is no longer utilized for any such product, advertisements for said dental device or product need not bear a disclosure regarding duration of use.

## III.

*It is further ordered,* That respondent, in connection with the advertising, offering for sale, sale or distribution of the product Snug Denture Cushions or any other denture cushion, when making any representation regarding the duration of use of said product (other than those prohibited in I, above), shall disclose clearly and conspicuously that said product is only appropriate for short-term use until a denture wearer is able to see a dentist for the adjustment of his or her loose or ill-fitting dentures. For the purposes of this Order, it is agreed that respondent may use the term "for weeks" in the advertising of denture cushion products so long as the terms "temporary" and "only until a dentist can be seen" are included, and the advertisement does not imply the product should be used on a long-term basis.

It is further agreed, for the purposes of this Order, that in the event that the Snug Denture Cushion product is no longer regarded by the federal Food and Drug Administration as suitable only for

short-term, non-regular use, the respondent may seek from the Commission amendment of this portion of this Order.

#### IV.

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

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

*It is further ordered,* That respondent shall, within sixty (60) days after this Order becomes final, and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form in which it has complied with this Order.

Modifying Order

96 F.T.C.

IN THE MATTER OF  
ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 8908. Decision, March 9, 1976—Modifying Order, Oct. 28, 1980*

This order modifies Paragraphs II(A), (B), (D) and (E) of the original Commission order issued March 9, 1976 (41 FR 19301, 87 F.T.C. 421) against respondents. The modifications permit respondents, for a one-year period, to use alternative means of making prescribed disclosures regarding their sales solicitation activities. This action affords respondents further opportunity to propose provisions that will lessen any undue financial impact on them and to demonstrate to the Commission that these provisions will effectively communicate to prospective customers, the disclosures required by the previous order.

ORDER MODIFYING CEASE AND DESIST ORDER

On March 9, 1976, the Commission issued an Order in this docket against Encyclopaedia Britannica, Inc., a corporation, and Britannica Home Library Services, Inc., a corporation. The Order includes, *inter alia*, provisions (Paragraphs II(A) and II(B)) requiring respondent, Encyclopaedia Britannica, Inc., to disclose in certain advertising and in a specified manner that persons who reply as requested may be contacted by a salesperson for the purpose of selling respondent's products. Furthermore, the Order (Paragraphs II(D) and II(E)) requires that when a sales representative of the respondent visits the home or place of business of potential purchasers of respondent's products, such representatives shall, at the time permission is sought, present a 3 by 5 card which identifies the sales representative and discloses that the purpose of the visit is to sell respondent's products.

On August 2, 1979, the United States Court of Appeals for the Ninth Circuit affirmed and enforced the Commission Order in this docket. On March 17, 1980, the Supreme Court of the United States denied respondents' petition for *certiorari*. Accordingly, pursuant to section 5(g)(3) of the Federal Trade Commission Act, as amended, the Order of the Commission in this docket is now final.

During the time their *certiorari* petition was pending in the Supreme Court, respondents initiated discussion with the staff of the Commission concerning possible modifications of Paragraphs II(A), II(B), II(D) and II(E) of the Commission's Order. On March 18, 1980, Paragraphs II(A), (B), (D), and (E) of the Commission's Order were

stayed until further notice in order to permit the Commission to consider proposed modifications. On March 26, 1980, respondents filed their "Request to Reopen Proceedings and Modify Order." Respondents filed a memorandum in support of this request on May 2, 1980. In their petition and supporting memorandum, respondents asserted that, without such modifications, they would be placed at a competitive disadvantage, resulting in substantial financial harm to their business operations. Respondents also asserted that they have adopted in the last several years new sales procedures, including disclosures in advertising and in business calling cards presented by salespersons at the door of prospective customers, which effectively disclose to prospective customers the direct sales solicitation purpose and nature of such sales activities.

Pursuant to Section 2.51 of its Rules of Practice, the Commission invited public comment on respondents' petition to modify the Order. Having considered respondents petition and supporting memorandum, and the comments received, the Commission has determined that it would be appropriate to provide respondents further opportunity to (1) propose provisions that would lessen any undue financial impact on them and (2) present evidence demonstrating that such provisions will effectively communicate the information required by the original Order. Furthermore, with respect to the advertising disclosures required by Paragraphs II(A) and II(B), the Commission has determined that, without necessity of further evidence, certain modifications of the advertising disclosures can be ordered which will communicate effectively while allowing respondents alternative methods of making the disclosures.

*Therefore, it is ordered,* That Paragraphs II(A), (B), (D) and (E) of the Order issued in this docket on March 9, 1976 shall be modified as follows:

1. Paragraph II(A) shall read:

A. Disseminating or causing to be disseminated any advertisement or promotional material which solicits participation in any contest, drawing or sweepstakes, or solicits any response to any offer of merchandise, service or information, unless an such solicitation clearly and conspicuously discloses that a person who replies a requested may be contacted directly by a salesperson for the purpose of selling respondent's products, using one of the following disclosures:

1. IMPORTANT: This card will let you know of my interest and enable your [location designation, if appropriate] sales representative to

( contact me at home )		(information)
( call or visit me )	with	( details )
(contact me in person)		( facts )

## Modifying Order

96 F.T.C.

on how I may (purchase) [applicable product].  
( buy )

2. IMPORTANT: Returning this card allows me to have your [location designation, if appropriate] sales representative

( contact me at home )		( information )
( call or visit me )	with	( details )
( contact me in person )		( facts )

on how I may (purchase) [applicable product].  
( buy )

3. IMPORTANT: Returning this card will enable your [location designation, if appropriate] sales representative to

( contact me at home )		( information )
( call or visit me )	with	( details )
( contact me in person )		( facts )

on how I may (purchase) [applicable product].  
( buy )

Upon prior approval in writing of the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection, or his designee, respondent may use any other disclosure that clearly and conspicuously discloses that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondent's products. A request for approval shall be in writing and shall be deemed granted if not disapproved within 30 days after receipt by the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection.

2. Paragraph II(B) shall read:

B. Providing any return card, coupon or other device which is used to respond to any advertisement or promotional material covered by Paragraph II(A) above, unless one of the disclosures set forth in such Paragraph, or a disclosure approved by the Assistant Director of the Division of Compliance or his designee as satisfying the requirements of Paragraph II(A), clearly and conspicuously appears in immediate proximity to the space provided for a signature or other identification of the responding party. During the one (1) year period from the date this Order become final, respondent may submit a request to reopen these proceedings pursuant to Section 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that any proposed modifications of Paragraphs II(A) and I(B) will clearly and conspicuously disclose to potential purchasers of respondent's products that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondent's products. The foregoing sentence shall not be construed as a limitation on respondent's submission of additional information regarding the request to reopen, including information relating to the financial impact of Paragraphs II(A) and II(B) on respondent. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any

other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice.

3. Paragraph II(D) shall be amended by adding the following proviso at the end thereof:

*Provided, however,* that for one (1) year from the date this Order becomes final, respondent may, in lieu of the card required by this Paragraph of the Order, substitute a business card of at least 2 inches by 3-1/2 inches containing only the following information:

- (1) the name of the corporation
- (2) the name of the salesperson
- (3) the term "sales representative"
- (4) An address and telephone number at which the corporation or salesperson may be contacted
- (5) the product or the corporation logo or identifying mark.

During this one (1) year period, respondent shall comply in all other respects with the requirements of Paragraph II(D) above. Prior to the expiration of the aforesaid time period, respondent may submit a request to reopen these proceedings pursuant to Section 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that the business card required in Paragraph II(D), as modified above, is effective in communicating to potential purchasers, prior to the entry into their homes or places of business by any of respondent's sales representatives, that the purpose of the sales representative's call is to solicit the sale of respondent's products. The foregoing sentence shall not be construed as a limitation on respondent's submission of additional information regarding the request to reopen, including information on the financial impact of Paragraph II(D) on respondent. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. Respondent may continue to use the business card, as described by this *proviso*, during the time that a request to reopen these proceedings pursuant to this Paragraph is pending, and, if such proceedings are reopened, until the Commission determination of the matter has become final. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice.

4. Paragraph II(E) shall be amended by striking the words "to direct each such person to read the information contained on such card." The amended Paragraph shall read:

E. Failing to give the card, required by Paragraph II(D) above, to each person and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation.

*It is further ordered,* That the foregoing modifications shall become effective upon service of this Order.

----- COMMISSION DECISIONS -----  
Modifying Order

96 F.T.C.

*It is further ordered,* That the stay issued on March 18, 1980 shall be vacated and Paragraphs II(A), (B), (D) and (E), as modified by this Order, shall have full force and effect upon service of this Order. Commissioner Pitofsky did not participate.

IN THE MATTER OF  
UNIVERSAL BODYBUILDING, INC., ET AL.

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

*Docket C-3048. Complaint, Nov. 5, 1980—Decision, Nov. 5, 1980*

This consent order requires, among other things, a Redford, Mich. seller of various bodybuilding and self-improvement courses and products to cease from using adult models and testimonials in advertisements directed to non-adults; and advertising or promoting the sale of bodybuilding products or courses, unless it has tests or studies available which indicate that unsupervised use of its products will not be harmful to non-adults. The firm is further prohibited from making any unfair, deceptive or unsubstantiated product claim in advertising or other promotional material; and required to maintain specified records for a particular period.

*Appearances*

For the Commission: *Deandra Kraus.*

For the respondent: *Richard B. Poling, Jr., Moore, Sills, Poling, Wooster & Sinn, Birmingham, Mich.*

COMPLAINT

The Federal Trade Commission has reason to believe that Universal Bodybuilding, Inc., a corporation, and Morris Mitchell, individually and as an officer of Universal Bodybuilding, Inc., have violated the provisions of the Federal Trade Commission Act. It appears to the Commission that a proceeding by it would be in the public interest. The Commission hereby issues its complaint as follows:

PARAGRAPH 1. Respondent Universal Bodybuilding, Inc. is a corporation with its principal office and place of business located at 26903 West Eight Mile Road, Redford, Michigan.

Respondent Morris Mitchell is president of Universal Bodybuilding, Inc. He formulates, directs and controls the policies, acts and practices of Universal Bodybuilding, Inc. His address is the same as that of Universal Bodybuilding, Inc.

All allegations made in the present tense include the past tense.

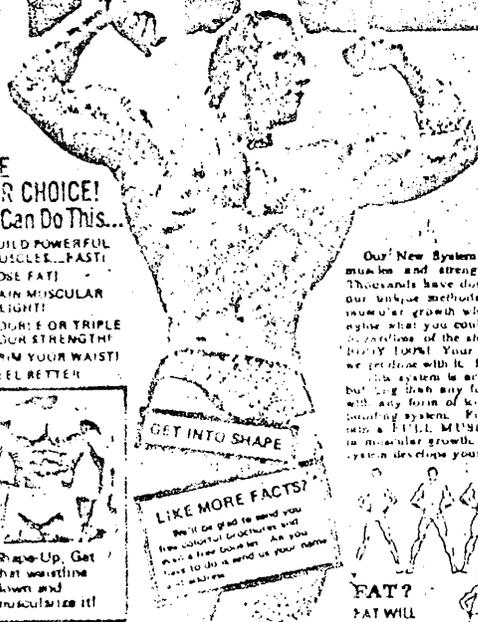
PAR. 2. In the conduct of their business, respondents sell bodybuilding, muscle-building and other self-improvement courses, devices, and products (hereafter products) directly to the purchasing public, including young people under 17 years of age (non-adults),

through the mail in various States of the United States and in the District of Columbia.

PAR. 3. To promote the sale of their products, respondents prepare, or cause to be prepared, advertisements which they publish or cause to be published in various publications, including publications directed to and read primarily by non-adults, which are distributed throughout the United States.

PAR. 4. Typical but not all inclusive of such advertisements are the following:

# FREE



**TAKE YOUR CHOICE! You Can Do This...**

- BUILD POWERFUL MUSCLES...FAST!
- LOSE FAT!
- GAIN MUSCULAR WEIGHT!
- DOUBLE OR TRIPLE YOUR STRENGTH!
- TIGHTEN YOUR WAIST!
- FEEL BETTER!



**GET INTO SHAPE**

**LIKE MORE FACTS!**

We'll be glad to send you free colorful brochures and mail a free booklet. Ask you name to fill in and we'll mail you a brochure.

## Booklet

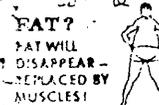
**SEE YOUR MUSCLES GROW TODAY!**

**YOU'LL PUT ON INCHES OF POWERFUL MUSCLES ON YOUR BODY!**

Our New System will develop muscles so fantastic that your muscles and strength will seem to be almost Super-Human! Thousands have doubled or tripled their strength while following our unique methods. It is actually possible to have everyday muscular growth while following our body building system! Imagine what you could accomplish while following our methods? **DOUBLY TONED!** Your own friends won't recognize your body when we produce with it. **FANTASTIC. BUT TRUE!** This system is actually 200% more effective in muscle building than any form of健美. Don't confuse this method with any form of健美 — this is a "full-contractional" bodybuilding system. Full Contractional Methods enable you to obtain a **FULL MUSCLE PUMP** — which is absolutely necessary in muscular growth. Our methods have nothing to chance — our system develops your body **TOTALLY!**



**SILLY? MUSCLES WILL APPEAR... ALMOST LIKE MAGIC!**



**YOUR NEW MUSCLES WILL FEEL LIKE DYNAMITE!**

Improve your health and condition and your outlook on life as you become more muscular. 50% of men of your age height are overweight and we'll help you build a muscular body. Thousands of men have been doing the same with fantastic results — why not you? Whenever you look like today, we can improve on it. We guarantee it!

- ARM** — Develop big powerful arms. Build and gain more muscle mass. Increase your strength and power.
- TRICEPS** — Develop your triceps and complete the muscular look. Increase your strength and power.
- BACK** — Develop your upper back and get a strong, solid, muscular back. Increase your strength and power.
- SHOULDER** — Build and develop your shoulders with bulging muscles. Increase your strength and power.
- FACE** — Put some muscle on your face. Increase your strength and power.
- STOMACH** — Tighten and harden the way your stomach looks. Increase your strength and power.
- WASTLINE** — Tighten and harden the way your waist looks. Increase your strength and power.

Universal, Dept. **MAIL**  
 Box 2054  
 Detroit, Mich. 48240

You bet I want MUSCLES — rush me your FREE Booklet and all your Colorful Brochures!! I am sending you 2/c to help cover postage and handling costs. (please PRINT clearly)

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**MAIL THIS COUPON TODAY**

# Super

## BODYBUILDING COURSE -

### INTRODUCING

THE BODYBUILDING SYSTEM THAT GUARANTEES - YOU'LL PUT ON INCHES OF POWERFUL MUSCLES ON YOUR BODY!

At last, NEW bodybuilding secrets are now available for your use. Finally, after years of experimenting we have come up with the fastest muscle building system in the world. Our course really works - thousands have taken our course and have obtained fantastic results. Right in the privacy of your own bedroom, you can completely transform your body.

### HOW CAN I GET THESE RESULTS SO FAST?

You can have POWERFUL MUSCLES FAST... not by fits and years of hard work... but by simply following our fascinating system... a system that works so fast you can see results from day to day! That's the kind of course you want? We absolutely guarantee results.

### HERE ARE JUST A FEW OF THE LETTERS WE HAVE RECEIVED

"I'm making fantastic following your new system of muscle building. I never thought it could be so easy to build muscles."  
J. Johnson

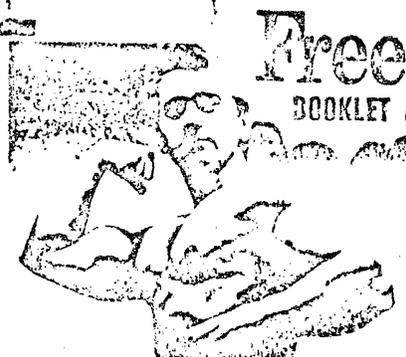
"In just 3 weeks I have gained 15" on my arms and 4" on my chest. I have also lost 4" off my waist. Your course is just great."  
D. Roberts

"I'm a skinny weakling. I weighed only 130 pounds in 1945. I am now amazed at how to be dynamic at the age of 45."  
B. Adams

"I'm transforming all the fat off my body and changing it into rock hard muscle. It's amazing. I have lost 8" off my waist. I can actually see my muscles growing from day to day."  
P. Williams

"I have gained 20 pounds in just 30 days and I have gained over 2 inches on my chest. I feel that my pump has doubled. In sports I am a winner in everything I do."  
G. Daniels

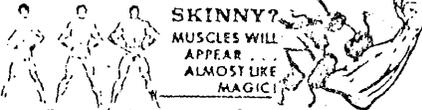
"I have gained 5" on my arms and 12" on my chest while losing 3" off my waist. I have turned my power 240 degrees. Thanks for what you have done for me."  
M. Robinson



MORRIE MITCHELL GAINED 65 POUNDS OF MUSCLE WHILE FOLLOWING OUR "REVOLUTIONARY NEW METHODS" ON BODYBUILDING.

### TAKE YOUR CHOICE! You Can Do This...

★ DOUBLE OR TRIPLE YOUR STRENGTH in record time! It wouldn't take long before you can perform feats of strength.



Universal Bodybuilding  
Box 6634 Dept CHA  
Detroit, Mich. 48240

Send the "works" to me free! Rush me all that free muscle building information, so that I can see inches of powerful muscles - all in the privacy of my home. I am sending 25¢ to help cover postage and handling costs. I am under no obligation. (Please print)

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**MAIL THIS COUPON TODAY**

PAR. 5. By and through the preceding advertisements and other advertisements, respondents represent, directly or by implication, that a typical consumer who is likely to respond to respondents' advertisements will attain rapid improvement in his physical appearance, add muscles, lose fat and gain respect from his peers.

PAR. 6. By and through the preceding advertisements and other similar representations, respondents represent, directly or by implication, that the Universal Bodybuilding System:

1. makes muscles appear quickly and easily, with little effort;
2. is 200% to 300% more effective in muscle-building than any form of isometrics; and
3. is the fastest muscle-building system in the world.

This list is representative, but not all inclusive, of the representations made by respondents.

PAR. 7. By and through the preceding advertisements and other similar advertisements, respondents represent, directly or by implication, that the endorsements presented in the advertisements represent the typical and expected results of use of respondents' products in the manner depicted in the advertisement by a typical consumer who is likely to respond to respondents' advertisements.

PAR. 8. By and through the preceding advertisements and other advertisements, respondents represent, directly or by implication, that the physical stature of the models featured in the advertisements is attainable through use of respondents' products in the manner depicted in the advertisements by a typical consumer who is likely to respond to respondents' advertisements.

PAR. 9. By and through the preceding advertisements and other advertisements, respondents represent, directly or by implication, that they have, and rely on, competent scientific tests or studies sufficient to provide a reasonable basis to believe that the above representations are true.

PAR. 10. By and through the preceding advertisements and other advertisements directed to and read primarily by non-adults, respondents represent that use of respondents' products without appropriate supervision will not be harmful to non-adult consumers.

PAR. 11. In truth and in fact and in contradiction to the representations of respondents:

- A. Use of respondents' products will not allow a typical consumer who is likely to respond to respondents' advertisements to rapidly attain a change in physical appearance, add muscles, lose fat or command respect from everyone he meets.

In addition:

1. the Universal Bodybuilding System does not make muscles appear quickly and easily, with little effort;
2. the Universal Bodybuilding System is not 200 to 300 percent more effective in muscle-building than any form of isometrics; and
3. the Universal Bodybuilding System is not the fastest muscle-building system in the world.

B. The endorsements presented in respondents' advertisements do not represent the typical and expected results of use of respondents' products in the manner depicted in the advertisements by a typical consumer who is likely to respond to respondents' advertisements.

C. The physical stature of the models featured in these advertisements is not attainable through use of respondents' products in the manner depicted in the advertisements by a typical consumer who is likely to respond to respondents' advertisements.

D. Respondents, at the time such representations were made, did not possess and rely on competent substantiation sufficient to provide a reasonable basis to believe that the representations were true.

E. Respondents, at the time the representation in Paragraph Ten was made, did not have, and rely on, competent scientific tests or studies sufficient to provide a reasonable basis to believe that use of respondents' products without appropriate supervision will not be harmful to non-adult consumers.

Therefore, the advertisements referred to above are unfair and deceptive.

PAR. 12. To promote the sale of their products, respondents disseminate advertisements which are directed to non-adults and which are read by an audience which is primarily composed of non-adults. In these advertisements, respondents make use of pictures or drawings of professional adult bodybuilding or weight-lifting models to promote their products. The physical stature of the models depicted in these advertisements is unattainable by the non-adults who read them. In these advertisements, respondents also make use of testimonials of adults who have used respondents' products. The results achieved by these adults cannot be achieved by the non-adults who read these advertisements.

PAR. 13. The use by respondents of the pictures or drawings described in Paragraph Twelve has the tendency and capacity to

mislead non-adults as to the results they might achieve through use of respondents' products.

PAR. 14. The use by respondents of testimonials which relate the experience of adults who have used respondents' products as related in Paragraph Twelve has the tendency and capacity to mislead non-adults to believe that they will experience similar results.

Therefore, the advertisements referred to in Paragraph Twelve are unfair and deceptive.

PAR. 15. The use by respondents of these unfair and deceptive advertisements has the tendency and capacity to mislead consumers, especially non-adults, into erroneous and mistaken beliefs regarding the results of use of respondents' products and to purchase substantial quantities of respondents' products by reason of these erroneous and mistaken beliefs.

PAR. 16. The acts and practices of respondents, as alleged in the preceding paragraphs, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

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

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

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

conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Universal Bodybuilding, Inc. is a corporation with its principal office and place of business located at 26903 West Eight Mile Road, Redford, Michigan.

Respondent Morris Mitchell is president of Universal Bodybuilding, Inc. He formulates, directs and controls the policies, acts and practices of Universal Bodybuilding, Inc. His address is the same as that of Universal Bodybuilding, Inc.

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

#### ORDER

This order applies to respondent Universal Bodybuilding, Inc., a corporation, its successors and assigns and its officers, agents, representatives and employees, in connection with offering for sale, sale or distribution of any bodybuilding, muscle-building or other self-improvement products, devices or courses directly or through any corporation, subsidiary, division, or other device in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended. This order applies to respondent Morris Mitchell in connection with advertising, offering for sale, sale or distribution of any bodybuilding, muscle-building or other self-improvement products, devices or courses in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended. This order shall not apply to Morris Mitchell insofar as he is involved only in the bona fide sale of advertising services to businesses which are not involved in the sale or offering for sale of any bodybuilding, muscle-building, or other self-improvement products, devices or courses and in which he or members of his immediate family have no financial interest.

For purposes of this order "non-adults" shall mean persons under 17 years of age. Advertisements directed to non-adults shall mean all advertisements and promotional material:

1. whose dominant appeal is to non-adults;
2. mailed directly to a person who respondent has reason to believe is a non-adult; or
3. disseminated in publications whose audience for the prior 12 months was composed of a majority of non-adults.

783

## Decision and Order

Such publications shall include all comic books, *Mad Magazine*, *Boy's Life*, *Children's Digest* and *Jack and Jill*. This list is intended to be representative of publications covered by this order but not exclusive.

## I.

*It is ordered*, That in all advertisements directed to non-adult respondents cease and desist from:

A. Advertising or in any way promoting the sale of bodybuilding or muscle-building products, devices or courses (hereafter referred to as products) until respondents have available and rely on competent scientific or medical tests or studies adequate to show that use of the products without appropriate supervision will not be harmful to non-adult consumers.

B. Using pictures or drawings of adults or professional models to promote the sale of bodybuilding or muscle-building products.

C. Making any representation, directly or by implication, unless, at the time the representation is made, respondents have, and rely on, substantiation sufficient to provide a reasonable basis to believe that the representation is true for the typical non-adult consumer of respondent's products. In interpreting this provision, respondents shall not represent that a consumer can achieve any result unless and until respondents can substantiate by competent tests or studies that the result can be attained by a typical non-adult who uses the product in the manner depicted in the advertisement. The original data collected for any such studies performed at the request of or with the financial assistance of respondents and a detailed description of how the test or study was performed must be available for inspection by the Federal Trade Commission for at least two years following the final use of the representation.

D. Using any testimonial which does not represent the typical experience of non-adult consumers of respondents' products.

E. Making any representation, directly or indirectly, which exaggerates or overstates the results which may reasonably be expected to result from use of any product by a non-adult.

## II.

*It is further ordered*, That in all advertisements respondents cease and desist from:

A. Representing in any manner, directly or by implication,

his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

## VI.

*It is further ordered,* That the respondents herein shall, within sixty days after service of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

## Complaint

## IN THE MATTER OF

## GENSTAR LIMITED

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

*Docket C-3049. Complaint, Nov. 10, 1980—Decision, Nov. 10, 1980*

This consent order requires, among other things, a Canadian corporation engaged in various business enterprises, including the manufacture and sale of portland cement and gypsum wallboard, to cease, for a prescribed period, from entering into or carrying out supply agreements with U.S. competitors that provide for the exchange of cost and pricing information and permit the firm to share in profits realized from the resale of its products in the United States. The firm is also prohibited, for a specified time, from selling or delivering to any "Cement Facility" for further processing or resale, products produced at company-owned cement manufacturing plants located outside the United States. Further, for each calendar year, beginning January 1, 1981 and ending December 31, 1984, respondent is required to make available for sale to manufacturers having cement facilities located in the "Northwest Cement Market," all cement or clinker produced at its plant at Tilbury Island, British Columbia, that is not sold to Canadian customers. Additionally, the firm is prohibited from acquiring, without prior Commission approval, any portland cement or gypsum wallboard manufacturing plant that is located within geographic areas set forth in the order.

*Appearances*

For the Commission: *Robert W. Mannix* and *Alfred J. Ferrogari*.

For the respondent: *Lucian C. Jones, Shearman & Sterling*, New York City.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, as amended, and by virtue of the authority vested in it, the Federal Trade Commission, having reason to believe that Genstar Limited, a corporation subject to the jurisdiction of the Commission, has violated said Acts, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges as follows:

Complaint

96 F.T.C.

## I.

## DEFINITIONS

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

(a) *Portland cement* includes Types I through V of portland cement as specified by the American Society for Testing Materials.

(b) *Clinker* means a substance ranging in particle size from fine sand grains to walnut size which is formed by heating a properly proportioned mixture of raw materials containing calcium carbonate, silica, alumina and iron oxide in a kiln to a temperature at which fusion occurs. When ground and mixed with gypsum, clinker becomes portland cement.

(c) *Gypsum wallboard* includes gypsum lath, veneer base, gypsum sheathing, regular gypsum wallboard, type X gypsum wallboard, predecorated wallboard and other specialty gypsum wallboard items.

(d) The term *Northwest Cement Market* consists of Northern California, Western Oregon and Western Washington.

(e) The term *Northern California* refers to that part of California identified by the Bureau of Mines as Northern California (points north and west of the northern borders of San Luis Obispo and Kern Counties and the western borders of Inyo and Mono Counties).

(f) The term *Western Oregon* refers to all counties west of a dividing line following the eastern boundaries of Klamath, Lane, Linn, Marion, Clackamas and Hood River Counties and composed of the counties of Klamath, Lane, Linn, Marion, Clackamas, Hood River, Multnomah, Douglas, Jackson, Josephine, Curry, Coos, Benton, Lincoln, Yamhill, Tillamook, Washington, Clatsop, Polk and Columbia.

(g) The term *Western Washington* refers to all counties west of a dividing line following the eastern boundaries of Klickitat, Skamania, Lewis, Pierce, King, Snohomish, Skagit and Whatcom Counties and composed of the counties of Klickitat, Skamania, Clark, Cowlitz, Lewis, Pierce, King, Snohomish, Skagit, Whatcom, San Juan, Island, Kitsap, Mason, Thurston, Clallam, Jefferson, Grays Harbor, Pacific and Wahkiakum.

(h) The term *4-State Area* consists of Washington, Oregon, California and Nevada.

## Complaint

## II.

## GENSTAR LIMITED

2. Respondent Genstar Limited (hereinafter Genstar) is a Canadian corporation with principal offices at Suite 4105, One Place Ville Marie, Montreal, Quebec, Canada.

3. Genstar, through its divisions and subsidiaries, is engaged in the manufacture and sale of cement, including portland cement and gypsum wallboard. Genstar is also engaged in a variety of other business operations including substantial business operations in or affecting commerce of the United States.

## III.

## THE FLINTKOTE COMPANY

4. The Flintkote Company (hereinafter Flintkote) is a publicly held corporation, organized and existing under the laws of the State of Massachusetts with its principal office located at 1351 Washington Boulevard, Stamford, Connecticut.

5. Flintkote is engaged in the manufacture and sale of materials and products for the building and construction industries including, but not limited to, portland cement and gypsum wallboard.

## IV.

## JURISDICTION

6. At all times relevant herein, Genstar, through its divisions and subsidiaries, has been and is now engaged in interstate negotiations and transactions and has sold and shipped its products in interstate commerce. Genstar has engaged in "commerce" within the meaning of the Clayton Act and is a corporation whose business is in or affects commerce as "commerce" is defined in the Federal Trade Commission Act.

7. At all times relevant herein, Flintkote, through its divisions and subsidiaries, has been and is now engaged in interstate negotiations and transactions and has sold and shipped its product in interstate commerce. Flintkote has engaged in "commerce" within the meaning of the Clayton Act and is a corporation whose business is in or affects commerce as "commerce" is defined in the Federal Trade Commission Act.

Complaint

96 F.T.C.

## V.

## ACQUISITION

8. Between approximately June 1978 and September 1978, Genstar, through its indirectly wholly-owned subsidiary Dorster, Inc., purchased 1,450,000 shares of Flintkote Common Stock, \$5.00 par value, representing approximately 21.5% of the outstanding voting shares of Flintkote (based upon 6,719,107 shares of Common Stock authorized and issued on June 30, 1978). All of the purchases of such shares were effected in open-market and negotiated transactions on the New York Stock Exchange with a substantial number of holders. On October 18, 1979, Genstar proposed to the board of directors of Flintkote that Genstar make a cash tender offer for all of the remaining outstanding shares of Flintkote.

9. The cost of the acquisition of the shares purchased on the open market was approximately \$51,267,010.

10. Genstar's acquisition of approximately 21.5% of Flintkote's Common Stock gives it the power to: (a) influence and control Flintkote's business affairs; (b) influence the management of Flintkote in favor of a merger between the two companies; and/or (c) to provide a base from which to launch a tender offer.

## VI.

## TRADE AND COMMERCE

## A. Portland Cement

11. A relevant line of commerce is the manufacture and sale of portland cement.

12. A relevant section of the country with respect to portland cement is the "Northwest Cement Market" as defined herein.

13. The manufacture and sale of portland cement in the Northwest Cement Market is concentrated. For the year 1978, total sales of portland cement, as defined herein, in the relevant market amounted to approximately 5.1 million tons. The four largest manufacturers had sales of approximately 3.5 million tons, or 69.6% of all sales; the eight largest manufacturers had sales of approximately 4.8 million tons, or 94.7% of all sales of portland cement.

14. Entry into the manufacture and sale of portland cement is difficult. A successful entrant must possess substantial financial resources, considerable technical expertise and a long-term supply of the necessary basic raw materials. An additional barrier to entry exists in the fact that existing environmental protection regulations

make it extremely difficult to obtain the necessary permits for new plant and terminal construction and operation as well as basic raw materials mining operations.

15. For the year 1978, Flintkote ranked third in sales of portland cement in the Northwest Cement Market with approximately 18.3% of all sales.

16. In 1978, Kaiser Cement and Gypsum Corporation (Kaiser), ranked first in sales of portland cement in the Northwest Cement Market and it accounted for approximately 24.4% of all sales.

17. In 1978, Lone Star Industries, Inc. (Lone Star) ranked second in sales of portland cement in the Northwest Cement Market with approximately 18.9% of all sales.

18. Flintkote is now, and has been, a significant competitor of Kaiser and Lone Star in the sale of portland cement in the Northwest Cement Market.

19. In late 1979 or early 1980, depending on when Genstar's newly constructed cement manufacturing facility at Tilbury Island, British Columbia achieves specified minimum production levels, executed long-term contracts for the sale of cement by Genstar to Kaiser and for the sale of clinker by Genstar to Lone Star will become effective.

20. The contract between Genstar and Kaiser calls for Kaiser to purchase 200,000 tons per year (TPY) of cement, substantially composed of portland cement, for ten years with an option exercisable by Kaiser to reduce volume by up to 40,000 TPY, in any of the last four years.

21. The contract with Kaiser, among other things, provides Genstar with a continuing interest in the profitability at which cement purchased from it by Kaiser is resold by Kaiser in the Northwest Cement Market, because it uses a pricing formula which includes a profit sharing feature in addition to a minimum guaranteed return to Genstar. Other provisions of the contract include exchanges of cost and price information, advance estimation as to the price at which Kaiser will resell cement purchased from Genstar and a guaranty to Kaiser of the most favored price for cement or clinker purchased by any customer of Genstar for resale in the states of Washington and Oregon.

22. The contract between Genstar and Lone Star calls for Lone Star to purchase clinker in amounts of 250,000 TYP in the first two years and 275,000 TPY in the next three years. The Lone Star contract is renewable at Lone Star's option for a second five-year term and provides for minimum purchases of clinker at the rate of

200,000 TPY for the first four years of the renewal period and 175,000 tons during the last year of the renewal period.

23. The contract with Lone Star provides, among other things, that Genstar's price to Lone Star will be determined in accordance with the formula for determining Genstar's price to Kaiser (less \$1.50 per ton clinker allowance) and includes a minimum guaranteed return to Genstar equivalent to that provided by Kaiser. The Lone Star agreement also provides for inspection of the books and records of each party relating to any provision of the agreement, access to be given through independent auditors, with limited direct access in defined circumstances. Further, the contract defines events of hardship which, should any occur, the parties are in good faith obliged to attempt to resolve them, "even to the extent of sharing the economic burden occasioned by the hardship". The enumerated events of hardship include among other things, the failure of the contract price to afford Lone Star a minimum margin of U.S. \$4.50 per ton on cement purchased from Genstar and resold in the Northwest Cement Market, the experience of unusual, severe and unforeseen difficulties in the manufacture of clinker or cement by Genstar or of cement by Lone Star; the occurrence of adverse market developments in the area traditionally serviced by Lone Star's Seattle plant, which causes Lone Star to cease the manufacture of clinker at its Seattle plant for an uninterrupted period of thirty days or more (in which case Lone Star shall be entitled to a ratable reduction in the contract tonnage it is obliged to take from Genstar on condition that it does not avail itself of another source of supply). Lone Star is also guaranteed the most favored price for cement or clinker purchased by any customer of Genstar for resale in the States of Washington and Oregon.

24. The contracts between Genstar and Kaiser and Genstar and Lone Star, either individually or as they operate in conjunction with each other, would constitute contracts, combinations or conspiracies in restraint of trade, if Genstar were a direct competitor in the Northwest Cement Market.

#### B. Gypsum Wallboard

25. A second relevant line of commerce is the manufacture and sale of gypsum wallboard.

26. A relevant section of the country with respect to gypsum wallboard is the "4-State Area" as defined herein.

27. The manufacture and sale of gypsum wallboard in the 4-State Area is concentrated. For the year 1978, total sales of gypsum wallboard, as defined herein, in the 4-State Area amounted to

approximately 2,959,290 MSF (MSF = 1000 square feet). The four largest manufacturers had sales of approximately 2,065,036 MSF, or 69.7% of all sales; the eight largest manufacturers had sales of approximately 2,891,012 MSF, or 97.7% of all sales of gypsum wallboard.

28. Entry into the manufacture and sale of gypsum wallboard is difficult. A successful entrant must possess substantial financial resources, considerable technical expertise and a long-term supply of the necessary basic raw materials. An additional barrier to entry exists in the fact that existing environmental protection regulations make it extremely difficult to obtain the necessary permits for new plant construction and operation as well as basic raw materials mining operations.

29. For the year 1978, Genstar ranked ninth in sales of gypsum wallboard with approximately 2.1% of all sales. During the same year, Flintkote ranked fourth in sales of gypsum wallboard with 14.6% of all sales. A combined Genstar-Flintkote would have ranked second with 16.7% of all gypsum wallboard sales in 1978.

## VII.

### EFFECTS OF THE ACQUISITION

30. The effect of Genstar's acquisition of Flintkote, a direct competitor of Kaiser and Lone Star, may be to create a combination in restraint of trade, which may substantially lessen competition or tend to create a monopoly in the Northwest Cement Market in the following ways:

(a) Actual price and other competition among Flintkote, Kaiser and Lone Star in the manufacture and sale of portland cement may be substantially reduced;

(b) Cooperation among Flintkote, Kaiser and Lone Star with respect to the production, distribution, pricing and/or sale of portland cement may be increased to the detriment of competition generally and/or have the effect of fixing, stabilizing or maintaining prices and/or have the effect of allocating markets or customers or restricting available supplies of portland cement in the Northwest Cement Market or sections thereof.

(c) Actual competition among competitors generally in the manufacture and sale of portland cement may be lessened.

31. The effect of Genstar's acquisition of Flintkote may be substantially to lessen competition or to tend to create a monopoly in

the manufacture and sale of gypsum wallboard in the 4-State Area in the following ways:

(a) By eliminating actual and potential competition between Genstar and Flintkote in the manufacture and sale of gypsum wallboard;

(b) Actual and potential competition among competitors generally in the manufacture and sale of gypsum wallboard may be lessened;

(c) The previously existing level of concentration in the manufacture and sale of gypsum wallboard in the 4-State Area will be increased and the possibilities of eventual deconcentration may be diminished.

### VIII.

#### VIOLATION

32. Genstar's acquisition of 21.5% of the Common Stock of Flintkote constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

#### DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should be issued stating its charges in that respect, and having thereupon accepted

the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules and the recommendations of its staff, and respondent having consented by letter from its counsel, dated September 29, 1980, to a modification of the agreement containing consent order dated November 27, 1979, and the Commission having considered and accepted said modification, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Genstar Limited is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at One Place Ville Marie, Montreal, Quebec, Canada.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

For purposes of this order, each of the following terms shall have the meaning ascribed thereto below:

*A cement-equivalent short ton* means: (i) in the case of finished cement, one short ton (2,000 pounds) and (ii) in the case of clinker, the product obtained by multiplying one short ton times 1.05.

*Cement Facility* means a cement manufacturing plant or a cement terminal, as the case may be, located in the States of Washington, Oregon, California or Nevada, and owned at the time by Flintkote or Genstar.

*Cement Market Area* means (i) the area included within the States of Washington, Oregon, California and Nevada or (ii) the area in the United States within a 300-mile radius of the cement manufacturing plant presently owned by Flintkote and located at Kosmosdale in Kentucky or (iii) the area in the United States within a 300-mile radius of the cement manufacturing plant presently owned by Flintkote and located at Glens Falls in New York, as the case may be, but in each case only for so long as there is located in that area a Product manufacturing plant owned by Genstar.

*Dedicated Product* for a particular calendar year means that quantity of Product manufactured at the Tilbury Plant by which (i) the total quantity of Product actually produced at the Tilbury Plant

during that year exceeds (ii) the quantity of Product so produced during that year and sold to buyers located in Canada except that the total quantity of Product actually produced at the Tilbury Plant in any year for purposes of this definition shall in no event exceed 982,000 cement-equivalent short tons.

*Flintkote* means The Flintkote Company, a Massachusetts corporation, its subsidiaries and affiliates.

*Genstar* means Genstar Limited and those persons, partnerships, subsidiary or related corporations or other legal entities acting on its behalf, their successors and assigns, including but not limited to Dorster, Inc.

*Gypsum Market Area* means (i) the area included within the States of Washington, Oregon, California and Nevada or (ii) the area in the United States within a 300-mile radius of the gypsum wallboard manufacturing plant presently owned by Flintkote and located at Florence in Colorado or (iii) the area in the United States within a 300-mile radius of the gypsum wallboard manufacturing plant presently owned by Flintkote and located at Sweetwater in Texas or (iv) the area in the United States within a 300-mile radius of the gypsum wallboard manufacturing plant presently owned by Flintkote and located at Savannah in Georgia or (v) the area in the United States within a 300-mile radius of the gypsum wallboard manufacturing plant presently owned by Flintkote and located at Camden in New Jersey, as the case may be, but in each case only for so long as there is located in that area a gypsum wallboard manufacturing plant owned by Genstar.

*Independent Buyer* means a company other than Flintkote or Genstar which owns a cement manufacturing plant or a cement terminal located in Washington, Oregon or California.

*Product* means finished portland cement or clinker, as the case may be.

*Tilbury Plant* means the cement manufacturing plant located at Tilbury Island, British Columbia, for so long as the same is owned by Genstar.

*Independent Manufacturer* means a company which is engaged in the manufacture and sale of Product in competition in the United States with Flintkote or Genstar.

## I.

*It is ordered.* That respondent Genstar, a Canadian corporation, through its officers, directors, agents, representatives, employees, successors and assigns, directly or through any corporation, subsid-

iary, division or other device, in connection with the manufacture and sale of Product shall forthwith until January 31, 2000, cease and desist from establishing, entering into, continuing, carrying out, enforcing or cooperating or acquiescing in any contract, agreement, combination, understanding, arrangement or common course of action, whether express or implied, with any Independent Manufacturer doing business in the United States which has the effect of:

1. Respondent Genstar sharing in the profit realized by any Independent Manufacturer from the resale in the United States of Product purchased from Genstar.

2. Providing for the price of Product sold by respondent Genstar to any Independent Manufacturer to vary in relation to the selling price or margin or net realization of the Independent Manufacturer on its resale in the United States of said Product.

3. Respondent Genstar furnishing to, or receiving from any Independent Manufacturer to which respondent Genstar has sold or contracted to sell Product any information pertaining to:

(a) the cost of production of Product or sale of Product or any component thereof for either party;

(b) the sale price or the price realized by the Independent Manufacturer from the resale in the United States of Product purchased from Genstar.

## II.

*It is further ordered,* That during the period commencing on the date this order becomes final and ending on January 31, 1990, respondent Genstar shall not, without the prior approval of the Federal Trade Commission, directly or indirectly sell or otherwise transfer or deliver to any Cement Facility for further processing or for resale any Product made by Genstar at any Product manufacturing plant located outside the United States and owned at the time by Genstar.

## III.

*It is further ordered,* That for each calendar year during the period commencing on January 1, 1981 and ending on December 31, 1984, and for so much of the year 1980 as this order may be in effect, Genstar shall make available for sale to one or more Independent Buyers the Dedicated Product for that calendar year for delivery F.O.B. Genstar's Tilbury Plant during that year at a reasonable

market price (as determined during the relevant Offering Period described below) in accordance with the following procedures:

A. Except for the year 1980, Genstar shall, during or before the four (4) months immediately preceding such calendar year (which four (4) months shall be called the "Offering Period" for that calendar year), solicit orders at a reasonable market price from one or more Independent Buyers for delivery during that calendar year of all of the projected Dedicated Product for that year.

B. Except for the year 1980, to the extent that Genstar shall not, by November 1 during the Offering Period, have agreed to sell all of the projected Dedicated Product for that calendar year to Independent Buyers, Genstar shall within ten (10) business days thereafter notify each Independent Buyer in writing that Genstar is offering to sell, subject to prior agreements to sell to others, all or any portion of the then uncommitted Dedicated Product for that year for delivery during that year at a reasonable market price.

C. An Independent Buyer wishing to purchase any Dedicated Product offered pursuant to B. above shall submit to Genstar either a written acceptance of Genstar's offer or a written offer expressing the Independent Buyer's willingness to purchase during that year a specified quantity of such Dedicated Product at a specified price. Any such acceptance or offer must be submitted by December 1 during the Offering Period. Genstar shall enter into final agreements seriatim to sell to one or more of those Independent Buyers at a reasonable market price all Dedicated Product so offered for which Genstar received either such acceptances or such offers to buy at a reasonable market price. Genstar shall not in any event be obligated to enter into any agreement with any Independent Buyer to sell more Dedicated Product in a particular year than the portion thereof which Genstar has not committed to sell to others at the time at which the agreement to sell under this provision C. is entered into with that Independent Buyer.

D. Genstar shall be in complete compliance with the provisions of this Part III for 1980 if Genstar in fact sells to one or more Independent Buyers all of the Dedicated Product produced during that period of the year when this order may be in effect.

#### IV.

*It is further ordered,* That, for so long as the contract or contracts described below remain in force and effect, the provisions of Part III of this order shall be of no force or effect whatsoever if Genstar and

one or more Independent Buyers execute supply contracts pursuant to which Genstar shall become obligated to deliver F.O.B. the Tilbury Plant Product manufactured at the Tilbury Plant to such buyer or buyers, as the case may be, in amounts not less than 200,000 cement-equivalent short tons for 1980 and 300,000 cement-equivalent short tons for each of 1981, 1982, 1983 and 1984 provided that no such supply contract contains any terms (i) which provide for one party to furnish to the other data regarding either party's costs of production or sale, or profits on sales, of Product or (ii) which provide for the price of Product sold by Genstar to such buyer to vary in relation to the selling price or margin or net realization of the buyer with respect to resales of that Product or (iii) entitle Genstar to comply with the terms of such contract by supplying Product from any Cement Facility. Such a supply contract shall satisfy the requirements of this Part IV notwithstanding the fact that Genstar's obligation to supply under the contract may be subject to (i) force majeure, (ii) rights to reduce the quantity to be purchased which are exercisable by the Independent Buyer, and (iii) rights of Genstar to prorate Product among its customers if cement and clinker manufactured by it are short of the quantities required to supply its customers' requirements.

## V.

*It is further ordered,* That respondent Genstar maintain adequate records, to be furnished upon request of the staff of the Federal Trade Commission, which evidence compliance with the provisions of this order, including, but not limited to records showing: the total quantity of product produced at the Tilbury Plant in the calendar year 1979 and each subsequent year for five (5) years up to and including the year 1984; the total quantity of Product so produced during each such year that was sold to buyers in Canada including the names and addresses of said buyers; copies of notices mailed to Independent Buyers in the United States soliciting orders for the Dedicated Product; copies of acceptances and sales agreements with said Independent Buyers and the names, addresses and the amount of Product purchased by each Independent Buyer in the United States.

## VI.

*It is further ordered,* That Genstar's obligations under this order shall terminate if the following two conditions are met: (i) Genstar shall not prior to October 31, 1980 purchase any additional voting

securities issued by Flintkote and (ii) Genstar shall have divested prior to October 31, 1980 all interests it presently holds, directly or indirectly, in voting securities issued by Flintkote.

#### VII.

*It is further ordered,* That prior to January 31, 1985 Genstar shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of:

A. any equity securities in excess of three (3) percent of the outstanding shares of such securities issued by any company, corporation or partnership which is engaged in either (i) the manufacture of Product in any Cement Market Area or (ii) the manufacture of gypsum wallboard in any Gypsum Market Area; or

B. any Product manufacturing plant or distribution terminal located in any Cement Market Area other than a Product distribution terminal which has not been used as such for at least three (3) months immediately preceding such acquisition; or

C. any gypsum wallboard manufacturing plant located in any Gypsum Market Area.

#### VIII.

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

#### IX.

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

Commissioner Pitofsky did not participate.

## Complaint

IN THE MATTER OF  
AMERICAN ART CLAY CO., INC.

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

*Docket C-3050. Complaint, Nov. 12, 1980—Decision, Nov. 12, 1980*

This consent order requires, among other things, an Indianapolis, Ind. manufacturer of art materials to cease fixing the prices of its products. The firm is required to establish an interest-bearing escrow account for the purpose of making restitution to consumers for purchases of certain school art materials. Further, the firm is required to distribute consumer redress funds to any state institutions which purchased said products; the FTC, with the cooperation of the State Attorneys General, will distribute the respective funds in lump-sum amounts to each of the states which satisfy the application requirements for receiving the money.

*Appearances*

For the Commission: *Suzan L. Belman.*

For the respondent: *Joseph W. Burns, Lovejoy, Wasson, Lundgren & Ashton, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the Federal Trade Commission Act, and that a proceeding by it in respect thereof would be in the public interest, issues this complaint.

Respondents

1. Respondent American Art Clay Co., Inc. is an Indiana corporation, with its principal office located at 4717 West 16th St., Indianapolis, Indiana.
2. At all times relevant to this complaint, respondent has been engaged in the manufacture, offering for sale, sale, and distribution of chalks, crayons, watercolors, or tempera paints.

Commerce

3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices alleged in the complaint, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, *as amended*.

Complaint

96 F.T.C.

## Competition

4. In the course and conduct of its business, and at all times mentioned herein, respondent has been in competition with other corporations, firms, or individuals engaged in the manufacture, offering for sale, sale, and distribution of chalks, crayons, watercolors, or tempera paints, except to the extent that competition has been restrained by the acts and practices alleged in this complaint.

## Nature of the Offense

5. In the course and conduct of its business, respondent has engaged, or is engaging, in the following acts or practices, among others:

(a) For some years from at least as early as 1972, respondent and competitors engaged in the manufacture and sale of chalks, crayons, watercolors, or tempera paints, met, discussed and exchanged, prior to the publication of price lists for the forthcoming year, certain prices for those products, which were to be contained in such price lists.

(b) Through the meetings, discussions, and exchanges alleged in paragraph 5(a), respondent and competitors engaged in the manufacture and sale of chalks, crayons, watercolors, or tempera paints reached understandings or agreements concerning certain prices for those products to be contained in the published price lists for the forthcoming year.

(c) For some years from at least as early as 1972, respondent and competitors engaged in the manufacture and sale of chalks, crayons, watercolors, or tempera paints published and had in effect price lists which reflected a uniformity of retail prices for certain, if not all, chalks, crayons, watercolors, or tempera paints. The price lists usually were in effect for one year, and were used to establish uniform prices for sales to distributors and other customers.

(d) The price lists alleged in paragraph 5(c) reflected the understandings or agreements alleged in paragraph 5(b).

6. By means of certain, if not all, the acts and practices alleged in paragraph 5, among others, respondent, in combination, agreement, understanding, or conspiracy with others, has fixed or is fixing the prices at which certain, if not all, chalks, crayons, watercolors, or tempera paints were or are sold.

Thus, respondent has engaged, or is engaging, in unfair acts or

practices in violation of Section 5(a)(1) of the Federal Trade Commission Act.

#### Effects

7. The capacity, tendency or effect of the above conduct of respondent was to:

(a) Fix, control, establish, stabilize, or maintain the prices at which various of respondent's chalks, crayons, watercolors, or tempera paints are sold or resold.

(b) Lessen, eliminate, frustrate or hinder actual or potential competition in the sale and distribution of various of respondent's chalks, crayons, watercolors, or tempera paints.

(c) Artificially inflate the price paid by consumers for various of respondent's chalks, crayons, watercolors, or tempera paints.

(d) Deprive consumers of prices determined by free and open competition and of the other benefits of competition.

8. The acts and practices of respondent alleged here constitute unfair acts or practices in violation of Section 5(a)(1) of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

The respondent, and its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order dated April 17, 1980 and modified as of September 12, 1980, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its

charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Art Clay Co., Inc. is an Indiana corporation, with its principal office located at 4717 West 16th St. in the City of Indianapolis, State of Indiana.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

As used in this order:

(a) *Person* means any individual, partnership, firm, corporation, association, or other business or other legal entity.

→ (b) *State* means a state, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory of the United States.

(c) *State Institution* means any state agency, instrumentality, or institution or any political subdivision thereof, including, but not limited to, any county, city, town, municipality, or school district which purchases school art materials.

(d) *Art materials* means any of the following products: adhesives (including art and craft glue and white paste), art kits (including combinations of crayons, watercolors, brushes, glue or chalk), brushes, chinks (including art, chalkboard and industrial chalk), craft kits (including fabric crayons and fabric crayon kits), crayons (including drawing, checking, and marking crayons), modeling clays, oil pastels, paints (including finger paint, finger paint powder, tempera, poster paint, watercolors, and transparent, powder, and textile paints), paper (including finger paint paper and stencil paper), water color markers, stencil brushes, chalkboard cleaner, stencil knives, pencils (including drawing and charcoal pencils), modeling material, excello squares, ink (including printing ink), linoleum blocks, linoleum, acrylics, and media mixer.

(e) *Respondent* means American Art Clay Co., Inc., an Indiana

corporation, its subsidiaries and divisions, with its principal office located at 4717 West 16th St., Indianapolis, Indiana.

## I

*It is ordered.* That respondent, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacture, offering for sale, sale or distribution of art materials in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

(1) Entering into, maintaining, or enforcing any agreement, combination, understanding or plan with any competitor to fix, determine, establish, or maintain the prices, discounts or other terms or conditions for the sale of art materials.

(2) Submitting any bid to any customer or prospective customer for the sale of any art materials when any price, term or condition of sale or any element contained in such bid was discussed with, disclosed to, or received from, directly or indirectly, any competitor, actual or potential.

(3) Circulating or sending to, or exchanging with, any other person who manufactures, distributes, markets or sells art materials, any price list, price quotation or pricing factor applicable to art materials—except for price lists, price quotations, or pricing factors provided to or received from any person in the course of, and solely related to, negotiating for, entering into, or carrying out bona fide sales or potential sales by respondent directly to such person—in advance of the printing, publication, effectuation, circulation or communication of such price lists, price quotations, or pricing factors to customers generally.

(4) Collecting from, circulating to or exchanging with, or reporting or recommending to any competitor who manufactures, distributes, markets or sells art materials, any cost factor or average cost of manufacture or sale of art materials, or any formulas for computing such cost.

(5) Communicating or exchanging with any other person who manufactures, distributes, markets, or sells art materials, any actual or proposed price, price change, discount, or other term or condition of sale at or upon which art materials are to be, or have been, sold—except for such information provided to or received from any person in the course of, and solely related to, negotiating for, entering into, or carrying out bona fide sales or potential sales by respondent

directly to such person—prior to the communication of such information to customers generally.

(6) Disclosing to, or communicating to, any other person who manufactures, distributes, markets, or sells art materials:

(a) respondent's intention to submit, or not to submit, a bid to any purchaser,

(b) the fact that a bid has or has not been submitted prior to the communication of such information to the general public, or

(c) the content of any bid prior to the communication of such information to the general public;

except that, in declining to furnish a price quotation to a distributor to be used in connection with a particular bid, respondent may disclose that the reason for such refusal is respondent's intention to bid directly.

## II

*It is further ordered.* That respondent shall, for a period of five (5) years from the date of entry of this order, furnish simultaneously with each bid or quotation required to be sealed which is submitted by it for the sale of art materials to any purchaser, a written certification by an officer of respondent, that such bid was not in any way the result, directly or indirectly, of any agreement, understanding, or communication with any other producer, seller or distributor.

## III

*It is further ordered.* That, for a period of five (5) years from the date of entry of this order, respondent shall preserve all written price computations and other written calculations actually performed by respondent in the preparation and submission of any bid required to be sealed which is submitted to any actual or potential purchaser of art materials. Respondent shall retain such written computations and calculations for a period of at least five (5) years from the date each bid which is based on such computations or calculations is submitted to any purchaser.

## IV

*It is further ordered.* That:

(1) Prior to the fifth day after the date this order is served on respondent, the respondent shall establish an Escrow Account at the

Continental Bank, 30 North LaSalle St., Chicago, Illinois, and shall designate Continental Bank as the Escrow Agent to receive monies, information and documents, to disburse monies and to carry out such other functions as may be provided for pursuant to the terms of this order, and the written directions of the Federal Trade Commission or its designee. The duties of the Escrow Agent shall be as outlined in the Escrow Instructions here attached as Appendix A and incorporated herein. Further, the parties shall be bound to the terms of said Escrow Instructions whether or not they are signatories thereto.

(2) Respondent shall deposit twenty-five thousand dollars (\$25,000) in the Escrow Account in the following manner. A first deposit of ten thousand dollars (\$10,000) shall be made prior to the fifth day after the order is served on respondent, a second deposit of seven thousand, five hundred dollars (\$7,500) shall be made on or before the first annual anniversary of the date of the first deposit, and the third and final deposit of the remaining seven thousand, five hundred dollars (\$7,500) shall be made on or before the second annual anniversary of the date of the first deposit.

(3) All interest earned on the funds deposited in the Escrow Account shall be added to the Escrow Account and disbursed by the Escrow Agent pursuant to the terms of this order, the Escrow Instructions, and the written directions of the Federal Trade Commission or its designee.

(4) Respondent shall not issue any instructions or directions respecting the Escrow Account to the Federal Trade Commission or its designee, or to the Escrow Agent with respect to the performance of their duties. These duties shall be pursuant to this order and to the Escrow Instructions, and shall include, but not be limited to, the investment of the property held by the Escrow Agent, the disbursement of the property held by the Escrow Agent, and compliance with any written directions of the Federal Trade Commission or its designee. Respondent shall not exercise any control over the property in the Escrow Account.

V

*It is further ordered, That:*

(1) Respondent shall submit to the Federal Trade Commission, within thirty (30) days after the date this order is served on respondent, a notarized affidavit executed by a duly authorized officer of respondent listing, to the best of its knowledge, the names of all the states within which any state institutions made purchases

of respondent's chalk, crayons, watercolors, or tempera paints during any of the years 1972 through 1979, inclusive.

(2) As it has been determined by the Federal Trade Commission that the most readily identifiable and most significantly affected market consists of the school art materials purchasers, the sole purpose of the Escrow Account established pursuant to Section IV of this order is to disburse the consumer redress funds to any state institutions that purchase chalks, crayons, watercolors, or tempera paints for schools and are located in a state listed pursuant to Section V(1) of this order. Provisions contained herein or to be adopted in the future for the distribution of the funds are and shall be designed to accomplish such purpose in a manner most feasible, efficient and not inconsistent with the other provisions of this order.

(3) The Federal Trade Commission or its designee shall determine the appropriate recipients of funds in the Escrow Account, the sum paid to each recipient, and the most appropriate method to distribute the funds, taking into consideration the amount of funds available, the administrative feasibility and costs of disbursement, and the purpose of the Escrow Account, and shall instruct the Escrow Agent to distribute the funds in accordance with its determination.

(4) Funds to be distributed pursuant to paragraphs (1) through (3) of Section V of this order shall be paid out of the Escrow Account within three (3) years after the date of service of this order. All funds remaining in the Escrow Account after three (3) years from the date of service of this order shall be returned to respondent.

## VI

*It is further ordered,* That respondent:

(1) Serve within sixty (60) days after the entry of this order a copy of this order upon each of its officers and directors, and upon each of its employees and agents who have any responsibility for establishing prices, discounts or other terms or conditions for the sale of art materials.

(2) File with the Federal Trade Commission three (3) separate written reports setting forth in detail the manner and form in which they have complied with this order; the first report to be filed within sixty (60) days after service upon them of this order, the second report to be filed within thirty (30) days after the first annual anniversary of the date of the first deposit, and the third report to be filed within thirty (30) days after the second annual anniversary of the date of the first deposit.

(3) Notify the Commission at least thirty (30) days prior to any

809

## Decision and Order

proposed change in the respondent which may affect compliance obligations arising out of this order.

## APPENDIX A

To: Continental Illinois National Bank  
and Trust Company of Chicago  
Trust and Investment Services  
Corporate Trust Division, Escrow Section  
30 North LaSalle Street—10th Floor  
Chicago, Illinois 60693

The following property will be deposited with you by the undersigned within the designated times:

An initial deposit of ten thousand dollars (\$10,000) will be made at the time this account is established. Two additional deposits, each of seven thousand, five hundred dollars (\$7,500), will be deposited in accordance with the instructions designated in paragraph 2 of section IV of the Agreement Containing Consent Order to Cease and Desist entered into between American Art Clay Company, Inc. and staff of the Cleveland Regional Office of the Federal Trade Commission, dated \_\_\_\_\_, 1980.

As Escrowee, you are hereby directed to hold, deal with and dispose of the aforesaid property and any other property at any time held by you hereunder in the following manner subject, however, to the terms and conditions hereinafter set forth:

A. In the event you are notified in writing by the Federal Trade Commission (hereinafter called the "FTC") or its designee that it has accepted the Agreement Containing Consent Order to Cease and Desist entered into between American Art Clay Company, Inc. (hereinafter called the "Company") and the staff of the Cleveland Regional Office of the Federal Trade Commission, dated April 17, 1980, and that the FTC has issued a Decision and Order in the Matter of American Art Clay Company, Inc., a corporation, you will hold the property and any other property at any time held by you hereunder (hereinafter called the "Property") until directed in writing by the FTC or its designee to distribute the Property, in which event the Property shall be distributed in accordance with its instructions.

In addition to deducting such fees, costs and expenses as incurred by you under paragraphs 7 and 8 hereof, you also will pay from the Property, as directed in writing by the FTC or its designee, such sums as you are authorized by the FTC or its designee to pay for the administration of the distribution scheme established by the FTC or its designee pursuant to the Agreement Containing Consent Order to Cease and Desist and the Decision and Order.

In addition, you shall execute such contracts regarding administration and distribution of the Escrow Account as the FTC or its designee directs. Subject to this paragraph, this Escrow will terminate upon the disbursement of all the Property pursuant to the written direction of the FTC or its designee.

B. In the event the FTC or its designee notifies you that it has determined not to accept the Agreement Containing Consent Order to Cease and Desist and to issue a Decision and Order as provided in Paragraph A, this Escrow will terminate and the Property will be returned by you to the Company not later than ten days after receipt of written notice from the FTC or its designee that the Agreement was not accepted.

C. Upon receipt of the Property you will invest the proceeds in either certificates of deposit other than certificates of deposit of Escrowee, or obligations of the United States Government or its agencies, either of which will have maturity not exceeding six (6) months from date of purchase. You will invest the Property with the aim of securing principal, while maximizing interest income. In the exercise of your sound discretion, if you determine it necessary to sell any or all of the Property prior to maturity and invest the proceeds in either other certificates of deposit or obligations of the United States Government or its agencies, you may do so.

D. Upon maturity of any of the Property you will invest the proceeds in either additional certificates of deposit other than certificates of deposit of Escrowee, or obligations of the United States Government or its agencies, either of which will have maturity not exceeding six (6) months from date of purchase. You will invest the proceeds with the aim of securing principal, while maximizing interest income. In the exercise of your sound discretion, if you determine it necessary to sell any or all of the Property prior to maturity and invest the proceeds in either other certificates of deposit or obligations of the United States Government or its agencies, you may do so.

E. You will send the FTC or its designee, monthly cash and asset statements of this Escrow Account.

F. These Escrow Instructions may be amended any time by a document duly executed by the FTC or its designee entitled "Amendment to Escrow Instructions" to which you acknowledge receipt.

G. If the FTC decides to use a designee, you will not act pursuant to such designee's orders, until you receive a certified copy of the order of the FTC naming such designee.

#### *Terms and Conditions*

1. Your duties and responsibilities shall be limited to those expressly set forth in these Escrow Instructions, and you shall not be subject to, nor obliged to recognize, any other agreement between, or direction or instruction of, any or all of the parties hereto even though reference thereto may be made herein; *provided, however,* with your written consent, these Escrow Instructions may be amended at any time or times by an instrument in writing signed by the FTC or its designee.

2. You are authorized, in your sole discretion, to disregard any and all notices or instructions given by any of the undersigned or by any other person, firm or corporation, except only such notices or instructions as are hereinabove provided for and orders or process of any court entered or issued with or without jurisdiction. If any Property subject hereto is at any time attached, garnished, or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such Property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such Property or any part thereof, then and in any of such events you are authorized, in

your sole discretion, to rely upon and comply with any such order, writ, judgment or decree which you are advised by legal counsel of your own choosing is binding upon you; and if you comply with any such order, writ, judgment or decree you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3. You shall not be personally liable for any act taken or omitted hereunder if taken or omitted by you in good faith and in the exercise of your own best judgment. You shall also be fully protected in relying upon any written notice, demand, certificate or document which you in good faith believe to be genuine.

4. Unless otherwise specifically indicated herein you shall proceed as soon as practicable to collect any checks or other collection items at any time deposited hereunder. All such collection shall be subject to the usual collection agreement regarding items received by your commercial banking department for deposit or collection. You shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any check, note or security deposited hereunder. You shall have no liability to pay interest on any money deposited or received hereunder.

5. You shall not be responsible for the sufficiency or accuracy of the form, execution, validity or genuineness of documents or securities now or hereafter deposited hereunder, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein, nor shall you be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or these Escrow Instructions.

6. Any notices which you are required or desire to give hereunder to the FTC or its designee shall be in writing and may be given by mailing the same to the address provided by the FTC or its designee by United States mail, postage prepaid. For all purposes hereof any notice so mailed shall be as effectual as though served upon the FTC or its designee to whom it was mailed at the time it is deposited in the United States mail by you whether or not the FTC or its designee thereafter actually receives such notice. Notices to you shall be in writing and shall not be deemed to be given until actually received by your trust department employee or officer who administers this Escrow. Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

7. If you believe it to be reasonably necessary to consult with counsel concerning any of your duties in connection with this Escrow, or in case you become involved in litigation on account of being Escrowee hereunder or on account of having received Property subject hereto, then in either case, your costs, expenses, and reasonable attorney's fees shall be paid by you from the Property with the approval of the FTC or its designee.

8. You shall be paid a reasonable fee for your services and reimbursed for your costs and expenses hereunder by you from the Property in accordance with the fee schedule attached hereto as Appendices 1 and 2 and incorporated herein.

9. If your fees, costs, expenses, or reasonable attorney's fees provided for herein, are not promptly paid, you shall have the right to sell the Property held hereunder and reimburse yourself therefor from the proceeds of such sale or from the cash held hereunder.

10. It is understood that you reserve the right to resign as Escrowee at any time by giving written notice of your resignation, specifying the effective date thereof, to the FTC or its designee. Within 30 days after receiving the aforesaid notice, the FTC or its designee agrees to appoint a successor Escrowee to which you may distribute the Property then held hereunder, less your fees, costs and expenses. If a successor Escrowee has not been appointed and has not accepted such appointment by the end of the 30-day period, you may apply to a court of competent jurisdiction for the appointment of a successor Escrowee, and the costs, expenses and reasonable attorneys' fees which you incur in connection with such a proceeding shall be paid from the Property.

11. The Escrowee will have no liability if, in order to make the distribution, there is any loss of interest resulting from the liquidation of investments prior to their maturity.

12. The Escrowee shall have no responsibility for any taxes arising with regard to the Escrow Account. Such tax obligation, if any, shall be the responsibility of the recipients of the Property.

13. This Escrow Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Illinois.

14. The undersigned Escrowee hereby acknowledges receipt of the Property described in the above Escrow Agreement and agrees to hold, deal with and dispose of said Property and other Property at any time held by it hereunder in accordance with the foregoing Escrow Agreement.

15. Executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at Chicago, Illinois.

Parties to Escrow

Addresses

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

ATTEST:

Continental Illinois National Bank and Trust  
Company of Chicago, Escrowee

\_\_\_\_\_  
Trust Officer

By: \_\_\_\_\_  
Vice President

Executed in \_\_\_\_\_ Copies

**APPENDIX 1**

**SCHEDULE OF FEES FOR SERVICES AS ESCROW AGENT**

**A. ADMINISTRATION FEES**

The following rates are applicable for ordinary services in handling an escrow subject to a minimum acceptance fee of \$250 and minimum annual charge of \$250. The Acceptance Fee will be based on the initial value of the deposits at the opening of the account.

**ACCEPTANCE FEE**

\$250 minimum on assets up to \$50,000  
 \$1.25 per \$1,000 on next \$300,000 valuation  
 \$ .50 per \$1,000 on next \$350,000 valuation  
 \$ .20 per \$1,000 on next \$1,000,000 valuation  
 \$ .10 per \$1,000 on excess above \$1,700,000 valuation

**ANNUAL ADMINISTRATIVE FEE**

\$250 minimum on assets up to \$50,000  
 \$1.25 per \$1,000 on next \$300,000 valuation  
 \$ .50 per \$1,000 on next \$350,000 valuation  
 \$ .20 per \$1,000 on next \$1,000,000 valuation  
 \$ .10 per \$1,000 on excess above \$1,700,000 valuation

The Annual Administrative Fee will be based on the value of the assets in the account at the beginning of the fee period plus any deposits made through the fee billing period.

When our only current duties consist of holding life or casualty insurance policies, the minimum annual fee will be reduced to \$150 until the occurrence of a casualty, at which time the regular schedule will apply to the insurance proceeds.

\* \* \* \* \*

**APPENDIX 2**

**B. OPERATING SERVICE FEES**

When the escrow account requires the maintenance of participants' or claimants' records, the issuance of payments, and the preparation of tax forms, the following schedule applies:

- 1.) \$2.50 per account per year (includes up to two distributions),
- 2.) \$0.50 per check issued over two distributions.

When the escrow requires the investment of funds, a \$50 charge will be made for each

Decision and Order

96 F.T.C.

purchase or sale transaction. A \$35 charge will be made for any free deposit or delivery of assets (securities, deeds, insurance policies, etc.).

#### C. TERMINATION

There are no separate termination charges. Fees for the final billing period will be prorated to the date of termination; subject to a minimum of six months from the date of inception.

#### D. MISCELLANEOUS

The fees quoted in this schedule apply to services ordinarily rendered in administering an escrow account, and are subject to a reasonable adjustment if we are called upon to undertake unusual duties, responsibilities, procedures, or if the cost of doing business increases. The cost of all stationery and supplies, telephone, postage, printing, or other out-of-pocket expenses will be added to our regular service charges. In determining our general schedule of fees, we have taken into consideration the various incidental benefits occurring to us from the operation of accounts. These include temporary availability to the Trust Department of funds resulting from the retention of dividends or interest in accounts pending disbursement, the execution of securities transactions for accounts, and funds from other sources.

\* \* \* \* \*

IN THE MATTER OF  
WEST COAST CREDIT CORPORATION, d/b/a FIDELITY  
FINANCE CO., INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-2600. Order, Nov. 19, 1974—Modifying Order, Nov. 26, 1980*

This order reopens the proceeding and modifies the cease and desist order issued on August 20, 1975, 40 FR 12258, 84 F.T.C. 1328, by deleting the third *It is further ordered* paragraph of the original order. This paragraph required that when the firm instituted suits in any superior court in Washington State, they attach to any summons served upon consumers a notice giving defendants an adequate explanation of what the summons meant and directions for avoiding default. Since the revised Washington Superior Court summons form now affords an adequate explanation, there no longer appears to be a need for this requirement.

ORDER REOPENING THE PROCEEDING AND MODIFYING DECISION  
AND ORDER

On November 19, 1974, the Federal Trade Commission issued a Decision and Order against West Coast Credit Corporation. West Coast Credit has since been acquired by Citicorp Washington Financial Center, Inc. ("Citicorp Washington"). It does business in Washington as both Citicorp Washington and Fidelity Finance. As successor to West Coast Credit, Citicorp Washington is bound by the terms of the order.

The order requires West Coast Credit to refrain from certain debt collection practices; among other things, the order requires West Coast Credit, whenever they cause consumers to be served with Washington Superior Court summons and complaints, to attach a clear explanation of what the summons means and how to avoid a default judgment.

The revised Washington Superior Court Rules summons form now appears to afford an adequate explanation to consumers, and obviates the need for the summons explanation forms required by the Commission. Due to this changed condition of fact, it appears to the Commission that it is in the public interest to reopen this proceeding and alter its order to delete the portion of the order requiring a summons explanation form.

On September 24, 1980 the Commission issued an order to show cause why the Commission should not reopen the proceedings and delete the third *It is further ordered* paragraph of the original order.

Modifying Order

96 F.T.C.

Respondent did not reply to the Show Cause Order and no comments were filed.

*It is ordered*, That the proceeding be reopened.

*It is further ordered*, That the decision and order issued on November 19, 1974 is modified by deleting the third *It is further ordered* paragraph of the order.

## IN THE MATTER OF

## COMMERCIAL SERVICES COMPANY, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-2717. Order, Aug. 20, 1975—Modifying Order, Nov. 26, 1980*

This order reopens the proceeding and modifies the cease and desist order issued by the Commission on August 20, 1975, 40 FR 44312, 86 F.T.C. 467, by deleting the third *It is further ordered* paragraph of the original order which requires that when the firm institutes suits in any superior court in Washington State, they attach to any summons served upon consumers a notice giving defendants an adequate explanation of what the summons means and directions for avoiding default. This portion of the order appears to be unnecessary since the revised Washington Superior Court summons form now affords consumers an adequate explanation.

ORDER REOPENING THE PROCEEDING AND MODIFYING DECISION  
AND ORDER

On August 20, 1975, the Federal Trade Commission issued a Decision and Order against Commercial Services Company, Inc. and other related parties. The order requires respondents to refrain from certain debt collection practices; among other things, the order requires Commercial Services, whenever they cause consumers to be served with Washington Superior Court summons and complaints, to attach a clear explanation of what the summons means and how to avoid a default judgment.

The revised Washington Superior Court Rules summons form now appears to afford an adequate explanation to consumers, and obviates the need for the summons explanation forms required by the Commission. Due to this changed condition of fact, it appears to the Commission that it is in the public interest to reopen this proceeding and alter its order, to delete the portion of the order requiring a summons explanation form.

On September 24, 1980 the Commission issued an order to show cause why the Commission should not reopen the proceedings and delete the third *It is further ordered* paragraph of the original order. Respondents did not reply to the Show Cause Order and no comments were filed.

*It is ordered*, That the proceeding be reopened.

*It is further ordered*, That the decision and order issued on August 20, 1975 is modified by deleting the third *It is further order* paragraph of the order.

Complaint

96 F.T.C.

IN THE MATTER OF  
FARNAM COMPANIES, INC., ET AL.

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

*Docket C-3052. Complaint, Dec. 11, 1980—Decision, Dec. 11, 1980*

This consent order requires, among other things, a Phoenix, Ariz. firm and its corporate officer, engaged in the manufacture, advertising, sale and distribution of pesticide products, to cease representing, through print and broadcast advertising or otherwise, that their pesticide products are absolutely or unqualifiedly safe, non-toxic or free of hazard to humans, pets, wildlife or the environment; or making any representation that is inconsistent or which detracts from the effectiveness of required warnings or directions for use set forth on pesticide product labels. The firm is further prohibited, for a period of three years, from disseminating advertising or promotional material which fails to include a warning statement as designated in the order.

*Appearances*

For the Commission: *Allen R. Franck.*

For the respondent: *Steven Feola, Smith & Feola, Phoenix, Ariz.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Farnam Companies, Inc., a corporation, and Russell W. McCalley, individually and as an officer of said corporation, [hereinafter sometimes referred to as respondents] have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect hereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Farnam Companies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business located at 2230 East Magnolia St., Phoenix, Arizona.

Respondent Russell W. McCalley is an officer of the corporation. He directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporate respondent.

PAR. 2. Respondents have been, and are now, engaged in the selling for sale, sale and distribution of various pesticide products,

including a snail and slug pesticide designated as "Snail Jail," to distributors, jobbers and retailers for resale to the public, and to the public at retail. For the purpose of this complaint and the order attached, the term "pesticide product" refers to any substance or mixture of substances, including molluscacides, intended for preventing, destroying, repelling or mitigating "plant pests" as defined at 7 U.S.C. 150aa(c).

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time in the past have caused, said snail and slug pesticide to be shipped from their warehousing facilities in Omaha, Nebraska to purchasers located in various other States throughout the United States, and maintain, and at all times mentioned herein did maintain, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Snail Jail pesticide is registered with the Environmental Protection Agency as required under the Federal Pesticide, Fungicide and Rodenticide Act, 7 U.S.C. 136, et seq., and as required by that Act, the following warning label appears on the package in which the product is sold:

WARNING: Use only as directed. Read entire label before using. This pesticide may be fatal to children and dogs or other pets if eaten. Keep children and pets out of treated area. May be fatal if swallowed. Do not take internally. Harmful dust. Avoid breathing dust and vapor. Avoid contact with skin, eyes, and clothing. Do not contaminate or store near feed or food stuffs. Wash after handling. Baits should be spread in such a way that children, pets or farm animals cannot reach them. Birds feeding in treated areas may be killed. Do not store in direct sunlight. Do not reuse empty container. Wrap container and put in trash collection.

PAR. 5. In the course and conduct of their business, respondents have disseminated or caused to be disseminated advertisements concerning pesticide products, including "Snail Jail," by means of printed advertisements in magazines and newspapers distributed through the mail and by means of advertisements transmitted by television stations located in various States of the United States, which had the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of pesticide products, including "Snail Jail."

PAR. 6. Among the advertisements so disseminated or caused to be disseminated by respondents are those contained in Exhibits A through G, attached hereto and by this reference made a part hereof.

PAR. 7. The aforesaid advertisements represent directly or by implication that:

1. Snail Jail protects users, pets and children, is completely safe for children and is non-toxic.
2. Snail Jail's toxic ingredients [metaaldehyde and carbaryl] are locked inside a plastic container and can not come in contact with skin no matter how much it is handled.
3. The Environmental Protection Agency has approved Snail Jail as safe for users, children, pets and the general environment.

PAR. 8. In truth and in fact:

1. Snail Jail is potentially harmful to users, pets and children who swallow or have contact with the toxic ingredients in the product.
2. Snail Jail's toxic ingredients can come into contact with skin through handling of the Snail Jail container.
3. The Environmental Protection Agency has not approved Snail Jail as safe for users, pets, children, or the general environment.

Therefore, the aforesaid advertisements were, and are, deceptive or unfair.

PAR. 9. By making statements and representations, alone or in cooperation with others, orally or in writing, which appear in advertisements in print or broadcast media, in promotional material and by other means, about Snail Jail in a manner which is inconsistent with or disregards warnings, cautions, limitations and instructions for use found in labeling, respondent negates the import and purposes of, and detracts from the effectiveness of such warnings, cautions, limitations or instructions.

Therefore, the advertisements and other promotional materials, which contain the statements and representations referred to in Paragraph Nine above are unfair or deceptive.

PAR. 10. In the further course and conduct of its business as aforesaid, respondents have made statements and representations, alone or in cooperation with others, orally or in writing, which appear in advertisements in print and broadcast media, in promotional material or by other means, about Snail Jail without disclosing that such products are hazardous. Knowledge of the hazards associated with the use of such products would enable and encourage consumers to exercise the proper degree of care in using them.

Thus, respondents have failed to disclose material facts which, if known to consumers, would be likely to affect their consideration of whether or not to purchase, and how to properly use, such products. Therefore, advertisements, promotional materials, acts and prac-

tices, which fail to disclose the aforesaid material facts, are unfair or deceptive.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been and now are, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 12. The use by respondents of the aforesaid unfair or deceptive statements, representations, acts and practices directly or by implication, has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of respondents' pesticide products.

PAR. 13. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

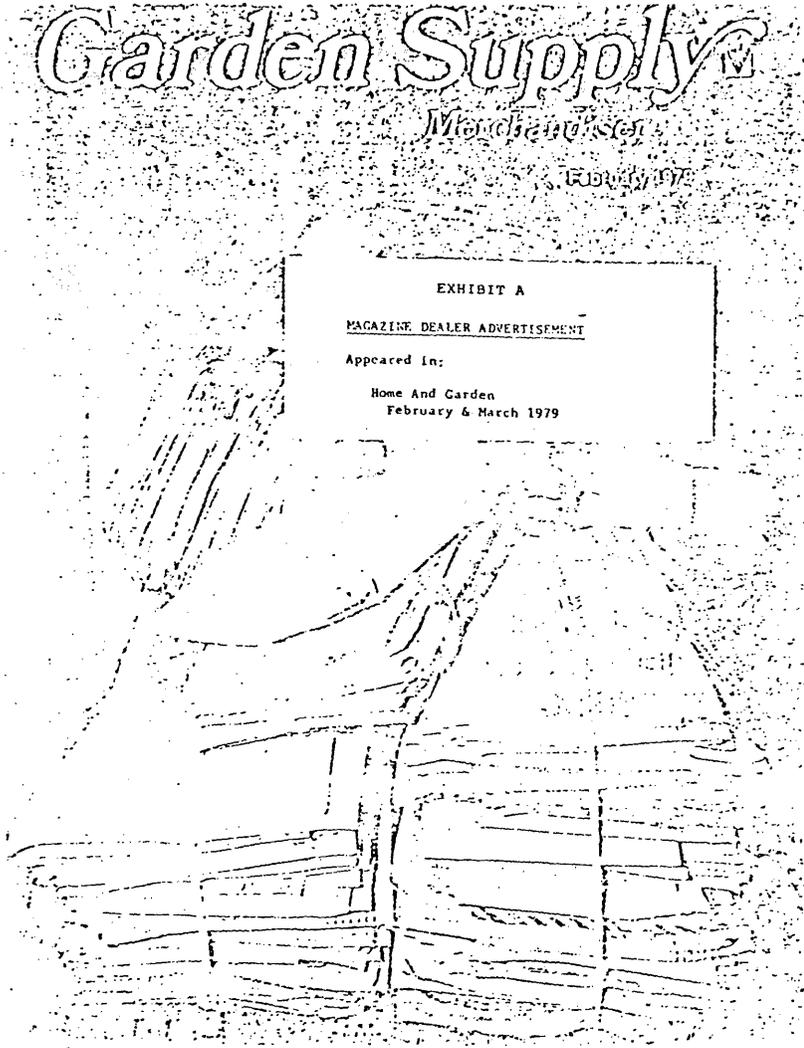


EXHIBIT A

MAGAZINE DEALER ADVERTISEMENT

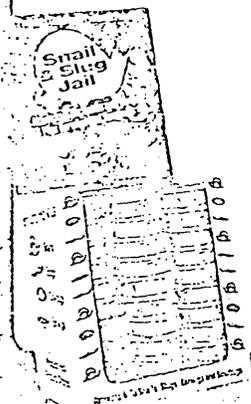
Appeared in:

Home And Garden  
February & March 1979

# New! Snail Attracts/Kills Snails and Slugs

Never again will your customers have to

Now there's Snail & Slug Jail! It contains a secret formula — "attractant." Snails, slugs, even ants, earwigs and sowbugs are lured by this attractant. Once inside they run into metaldehyde and carbaryl... they never come out. Both ingredients are locked inside the Snail & Slug Jail... protects children and pets. The Snail Jail can be used over and over because everything inside is protected from the weather. Snail & Slug Jail, the new product that answers your consumers' problems. Be ready — order today!



INTRODUCTORY SPECIAL

~~Old Price \$2.69~~ **\$1.61**

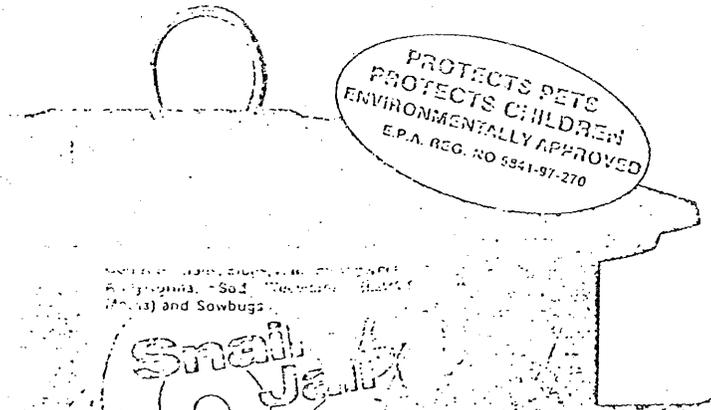
YOU SAVE  
100%  
ON EVERY  
ORDER

OFFER ENDS APRIL 10, 1975

# & Slug Jant

## Plus Earwigs and Sowbugs

spread poison on their lawns or gardens.



1-800-528-6050 (EXCL. 852)

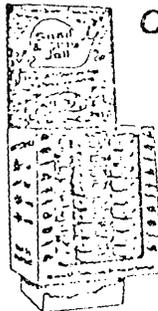
FARNAM FARNAM CO. INC. P.O. BOX 2000, PORTLAND, OREGON 97208

Attract and Kill Snails,  
Slugs, Pill Bugs, Earwigs  
With Amazing New

**Snail  
Jail**



- Approved lure attracts and destroys garden pests without spreading harmful poison meal or pellets
- Does not harm pets, children, and garden wildlife
- Environmentally approved — EPA #5841-97-210
- Effective over a 500 square foot area
- Bait and chemicals locked inside — only snails, slugs, and bugs can reach
- Convenient disposable container
- Can't come in contact with skin no matter how much it's handled
- Washes away in the rain, or blow away in the wind
- Reusable, lasts for weeks!



**ONE LOW PRICE**

BUYS MONTHS OF  
PROTECTION FOR YOUR  
YARD, VEGETABLE GARDEN,  
& FLOWER GARDEN —  
THROUGH ALL TYPES  
OF WEATHER!

**LOOK FOR THIS  
DISPLAY AT YOUR  
NEAREST FARNAM  
DEALER TODAY!**

Snail Jail is available at the following  
stores in the Dallas area:

- Turner Hardware
- Handy Dan's (all stores)
- Chuck's Nursery
- Blalock Gardens
- Gibson's (selected stores)
- Skagg's (all stores)
- Bruce Miller's Nursery
- C & S Hardware Stores (all stores)
- Stroud's Garden Center
- Mr. G's Garden Center

EXHIBIT B

NEWSPAPER AD

Appeared in:

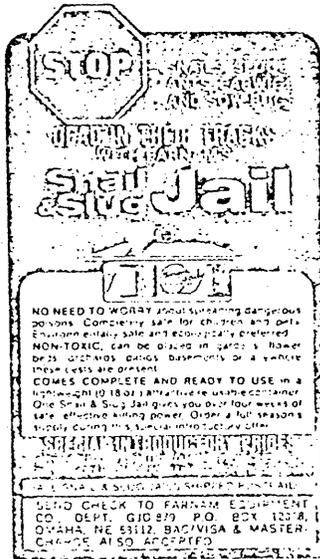
Times Picayune  
New Orleans, La.  
7/13, 7/14, 7/15/79

Dallas Morning News  
Dallas, Texas  
7/13/79

Complaint

96 F.T.C.

EXHIBIT C

MAGAZINE ADVERTISEMENT

Appeared in:

Elks Magazine, April 1979  
 Family Food Garden, April 1979  
 Moose, April 1979  
 National Gardener, July 1979, August 1979  
 Organic Gardening, April 1979  
 Sunset Magazine, May 1979  
 VFW, April 1979

EXHIBIT D

**STOP** THESE PESTS  
FROM DESTROYING YOUR  
GARDEN AND LAWN

**DEAD TO THESE PESTS  
WITH FARNAM'S  
Snail & Slug Jail**

**TEST**

NO NEED TO WORRY about spreading dangerous poisons. Completely safe for children and pets. Environmentally safe and ecologically preferred. **NON-TOXIC**, can be placed in gardens, flower beds, orchards, patios, basements or anywhere these pests are present.

THESE PESTY DEVILS do more damage to vegetables, flowers, citrus, shrubs, trees and lawns than any other living insect.

STOP THESE PESTS FOREVER with Farnam's new, unique Snail & Slug Jail. It attracts and kills these pests in one easy step.

COMES COMPLETE AND READY TO USE in a lightweight, long-lasting, attractive, portable container. One Snail & Slug Jail gives you over 100 weeks of safe, effective killing power. Order a full season's supply during this special introductory offer.

**SPECIAL INTRODUCTORY PRICES**

ALL SNAIL & SLUG JAILS SHIPPED POSTPAID.

**Farnam Equipment Co.**  
Dept. G10 943, P.O. Box 12044, Omaha, NE 68112  
Please send me \_\_\_\_\_ Snail & Slug Jails for \$\_\_\_\_.

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

MAGAZINE ADVERTISEMENT

## Appeared In:

Family Handyman, April 1979  
 Flower & Garden, April 1979  
 Kiwanis, April 1979  
 Mechanix Illustrated, April 1979  
 Workbench, May 1979, June 1979  
 Progressive Farmer, April 1979

EXHIBIT E

ADVERTISING SLICK SENT TO DEALERS



**Slug &  
Snail  
Jail**



ADVERTISING SLICK SENT TO MAILERS

EXHIBIT F

ATTRACTS/KILLS SNAILS, SLUGS, SOWBUGS, EARWIGS  
 PROTECTS CHILDREN • PROTECTS PETS  
 LASTS FOR WEEKS AND WEEKS

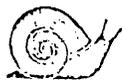


**Snail Jail™**



STORE NAME

**Snail Jail™**



ATTRACTS AND KILLS  
 • SNAILS  
 • SLUGS  
 • EARWIGS  
 • SOWBUGS

PROTECTS CHILDREN  
 PROTECTS PETS  
 LASTS FOR WEEKS

ONLY



STORE NAME



**Snail Jail™**




**Snail Jail™**

ATTRACTS/KILLS  
 SNAILS & SLUGS  
 PROTECTS CHILDREN  
 PROTECTS PETS

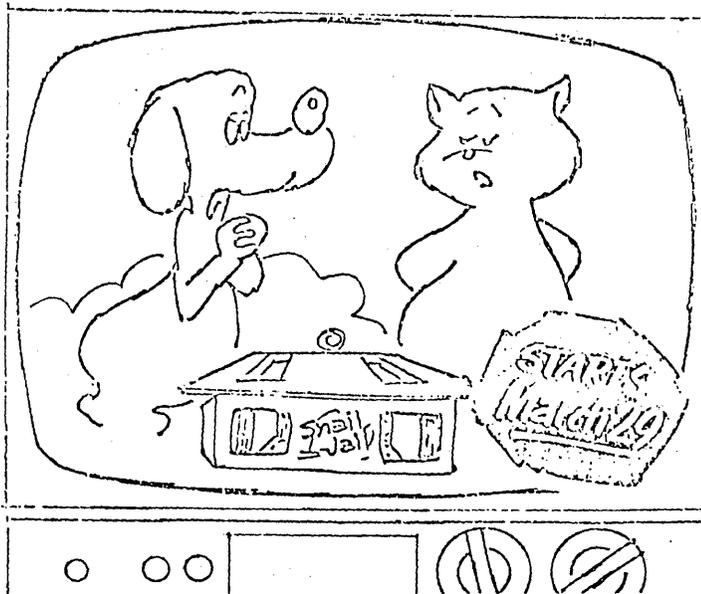


DEALER MAILER Story Board for Television Ads

EXHIBIT G

Introducing...

Your Two New Super Stomping  
Snail Jail Salesmen!



# Dynamic, Fully Animated Tele Commercial Starts Selling \$ For You On March 29th!

LOS ANGELES...  
SAN FRANCISCO...  
SAN DIEGO...

8 WEEK SCHEDULE ON  
NETWORK STATIONS

BEST TIMES!

:30 SECOND  
FULL-ANIMATION

OVER 1456  
HOUSEHOLD  
RATING POINTS



3. ...

4.



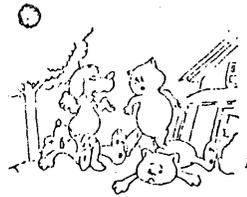
7. (Voice Over) Snail Zell, it's totally new!



11. ... snails and slugs ... for up to 500 square feet.

12.

ision  
Jail



1. DOG: "What Happened?"  
CAT: "Don't Cha Remember?"



2. CAT: "... We were in the back yard  
havin' a picnic with all these  
yummy lookin' pellets!"



... These ain't no doggy treats ...  
re snail pellets!"



5. DOG: "Why didn't our master use Snail  
Jail?"  
CAT: "I'll mention it to him ...."



6. "... I've got eight lives to go!"



No poison to spread in your yard.



9. Snail Jail's bait and chemicals are  
locked inside ....



10. ... away from pets and kids. Snail Jail  
attracts and kills ....



is for weeks! (End Video Over)



13. CAT: "In case your pet ...."



14. "... #oesn't have nine lives."

## DECISION AND ORDER

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

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

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

1. Respondent Farnam Companies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business located at 2230 East Magnolia St., Phoenix, Arizona.

Respondent Russell W. McCalley is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

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

## ORDER

*It is ordered*, That Farnam Companies, Inc., a corporation, successors and assigns, and its officers, and Russell W. McCall individually and as an officer of said corporation, and respondee

representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of pesticide products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing directly or by implication, by print or broadcast advertising, other promotional material, or through sales representatives' oral statements, that the pesticide products manufactured, distributed or sold by or through said respondents are absolutely or unqualifiedly safe, non-toxic or free of hazard to adults, children, pets, wildlife or the environment.

2. Making any representation, directly or by implication, by print or broadcast advertising or other promotional material, which contradicts, is inconsistent with, or detracts from the effectiveness of any warning, caution or direction for use required by law to be set forth as a label on pesticide products.

3. Representing that the Environmental Protection Agency or any other governmental agency had approved any pesticide product, unless such is the case; or misrepresenting the scope of approval granted any such product by any governmental agency.

*It is further ordered.* That for the period of three (3) years following the date of service of this order, respondents shall not disseminate or cause the dissemination of:

a) Any print advertising or print promotional material for any pesticide product unless the following statement is clearly and conspicuously included in such print advertising or print promotional material:

ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND  
THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY  
AND USE ONLY AS DIRECTED.

b) Any television broadcast advertisement for any pesticide product unless such advertisement orally and visually includes the following statement made in a clear and conspicuous manner:

ALL PESTICIDES CAN BE HARMFUL.  
READ THE LABEL. USE AS DIRECTED.

Any other broadcast advertisement for any pesticide product in which such advertisement orally includes the following statement in a clear and conspicuous manner:

ALL PESTICIDES CAN BE HARMFUL.  
READ THE LABEL. USE AS DIRECTED.

*It is further ordered,* That respondent, Farnam Companies, Inc., forthwith distribute a copy of this order to all its operating divisions engaged in the sale, advertising, promotion or distribution of pesticide products and to all present and future employees of said respondent responsible for the advertising, promotion, distribution or sale of such products, and that said respondents secure from each such person a signed statement acknowledging receipt of said order.

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

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

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

*It is further ordered,* That this order shall become effective upon service.