

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 Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Hyde Athletic Industries, Inc., is a Massachusetts corporation with its principal office or place of business at 13 Centennial Industrial Park Drive, Peabody, Massachusetts. Proposed respondent is a U.S. manufacturer, importer, and seller of footwear, with manufacturing facilities in Bangor, Maine.

2. The acts and practices of the respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. 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

DEFINITION

For purposes of this order, the term "*clearly and prominently*" shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement, the disclosure shall be in a type size, and in a location, that is sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that is sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

I.

It is ordered, That respondent, Hyde Athletic Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any footwear in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner,

directly or by implication, that footwear made wholly abroad is made in the United States.

Provided, however, that respondent will not be in violation of this order, if, in connection with a truthful representation about domestic production of its footwear, it makes one of the following disclosures, if truthful, in a clear and prominent manner.

- A. "Most Saucony models are made in the USA"; or
- B. "Models __ are not made in the USA"; or
- C. "Only models __ are imported"; or
- D. "__% of Saucony footwear is made in the USA."

This proviso shall not apply to any advertising, labeling or promotional material containing any depiction of or other representation relating to footwear made wholly abroad.

II.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All materials that were relied upon in disseminating such representations; and
- B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

III.

It is further ordered, That the respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

IV.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a 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 under this order.

V.

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

VI.

It is further ordered, That this order will terminate on December 4, 2016, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later;

Provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline

for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Commission Starek dissenting.

DISSENTING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I would have preferred to have issued the original consent agreement rejected by the Commission last fall. As I have consistently stated, case-by-case enforcement -- rather than a regulatory proceeding -- is the appropriate means to evaluate the "Made in USA" standard.¹ Since a majority of the Commission has opted to conduct a broad review of the "Made in USA" standard, however, it is premature for the Commission to condone use of the Made in USA claims set forth in the safe harbor until it proclaims what the standard is.

¹ See Request for Public Comment in Preparation for Public Workshop Regarding "Made in USA" Claims in Product Advertising and Labeling, 60 FR 53930 (October 18, 1995) (Dissenting Statement of Commissioner Roscoe B. Starek, III); Hyde Athletic Industries, Inc., File No. 922-3236 (Dissenting Statement of Commissioner Roscoe B. Starek, III).

IN THE MATTER OF

RBR PRODUCTIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3696. Complaint, Dec. 10, 1996--Decision, Dec. 10, 1996*

This consent order prohibits, among other things, a New Jersey-based company and its officer from misrepresenting the health, safety and environmental benefits of its beauty salon disinfectant products and aerosol spray, and requires the respondents to possess reliable and competent scientific evidence to substantiate such representations.

*Appearances*For the Commission: *Janet Evans* and *C. Lee Peeler*.For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that RBR Productions, Inc., a corporation, and Richard Rosenberg, individually and as an officer and director of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent RBR Productions, Inc., is a New Jersey corporation, with its offices and principal place of business located at 1010 Hoyt Avenue, Ridgely, New Jersey. From time to time, RBR Productions, Inc., does business under the name of Isabel Cristina Beauty Care Products.

Respondent Richard Rosenberg is or was at relevant times herein an officer and director of RBR Productions, Inc. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His office and principal place of business is the same as that of RBR Productions, Inc.

PAR. 2. Respondents have advertised, offered for sale, sold, and distributed products for use in beauty salons, including Let's Dance,

a concentrated disinfectant product that contains o-phenylphenol, para-tertiary amyphenol and phosphoric acid and is designed to be diluted and used for disinfection of non-metal instruments and other non-metal, non-porous surfaces; Let's Touch, a concentrated disinfectant product that contains o-phenylphenol and is designed to be diluted and used for cleaning and storage of metal beauty care instruments such as manicure scissors; and Let's Go spray, an aerosol spray that contains the volatile organic compounds ("VOCs") isobutane and propane and is designed for speeding nail glue drying.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for Let's Dance and Let's Touch, including but not necessarily limited to the advertisements and promotional materials attached hereto as Exhibits A through D. These advertisements and promotional materials contain the following statements and depictions:

(a) Brochure front:

Let's Touch

* * *

- Sold in pre-measured packets

Let's Dance

* * *

- Ultra concentrated for ease of use and storage. . .

[depiction of concentrated and diluted products]

Brochure back:

Here's why the combination of scientific and beauty care industry experience of the ISABEL CRISTINA team means more professional results for you.

[depiction of concentrated and diluted products] Let's Touch and Let's Dance

* * *

- EPA registered and meet or exceed all federal OSHA and State Board requirements. Environmental safe, biodegradable and non-toxic.

- Sold as concentrates for reduced shipping, storage and handling costs Packet-only re-orders reduce costs even more.

* * *

Let's Dance use dilution: pH 2.6
Let's Touch use dilution: pH 10.6

Complaint

122 F.T.C.

Let's Dance and Let's Touch are:
 -- Environmentally Safe -- Non-Toxic
 -- Non-Corrosive to Skin and Eyes -- Bio-degradable

Comparative Disinfectants Chart						
	Let's Touch	Let's Dance	Quats	Alcohol	Ultra-Violet	Glass Bead
* * *						
No Damage to Environmental Surfaces	Yes	Yes	Yes ¹	No	No	No
Non-Corrosive to Skin and Eyes	Yes	Yes	Yes ¹	No	No	No
Non-Toxic	Yes	Yes	No ¹	No	—	—
* * *						

¹ Perhaps. Consult EPA offices.

[EXHIBIT A-chart is abbreviated]

(b) Magazine ad:

LET'S DANCE!
 BECAUSE...

TOMORROW'S WORLD DEPENDS ON YOU

Environmentally Safe One Step Hospital Grade Disinfectant, Cleaner, and Deodorizer for Salons

[depiction of concentrated and diluted product]

Let's Dance!

- Environmentally Safe
- PH Buffered
- Non-Corrosive to Skin and Eyes
- Biodegradable and Non-Toxic
- Ultraconcentrated

Protect Yourself, Your Clients, Your Family

[EXHIBIT B]

(c) Magazine ad:

IS YOUR DISINFECTANT ENVIRONMENTAL SAFE?

LET'S TOUCH IS!

IN HANDY PREMEASURED FOIL PACKETS

BIODEGRADABLE

NON-TOXIC

NON-CORROSIVE TO SKIN AND EYES

[depiction of concentrated and diluted product]

[EXHIBIT C]

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Complaint

(d) Brochure:

Let's Touch and Let's Dance use-solutions as defined by the latest Federal Hazardous Substances Act Regulations are
NON-TOXIC AND NON-CORROSIVE TO SKIN AND EYES

* * * *

Let's Touch and Let's Dance are pH buffered phenolic products which deliver excellent Broad Spectrum Performance even under the most demanding use situations while offering the greatest degree of safety to the end user and the environment. Let's Touch and Let's Dance use-solutions are defined by the latest Federal Hazardous Substances Act Regulations as NON-TOXIC AND NON-CORROSIVE TO SKIN AND EYES.

.....

[EXHIBIT D]

(e) Proper Disinfection For The Beauty Industry--Video Transcript:

* * * *

Speaker: Phenols are another group of disinfectants. They are a benzene molecule derivative -- which means they are a very safe way to disinfect. Phenols are about 3 to 5 times less toxic than Quats when ingested. Buffered Phenols are non-corrosive to skin and eyes, non-toxic, they're biodegradable, environmentally safe, and last longer than other forms of disinfection because they're not as sensitive to organic matter. . . .

Super: Phenols

- very safe way to disinfect
- 3 to 5 times less toxic than quats
- buffered phenols are non-corrosive to skin and eyes
- biodegradable & non-toxic
- environmentally safe
- last longer-not as sensitive to organic matter
- little residue

* * *

Speaker: Armed with the knowledge you now have, you're just beginning to get an appreciation for some of the complexities, and variables involved with just trying to keep your instruments clean. . . . You might even be thinking -- "Does a disinfecting system exist out there that answers my needs?" Well, there is, and that's where we fit in We are ISABEL CRISTINA. We have developed a superior Disinfecting System -- consisting of LET'S TOUCH AND LET'S DANCE Let's Touch and Let's Dance are extremely unique products designed specifically for people in the salon industry, by people in the salon industry. Let's Touch and Let's Dance use solutions are completely non-corrosive to the skin and eyes, non-toxic, biodegradable and environmentally safe, which means you can pour them down the drain.

Super: Let's Touch & Let's Dance

Non-corrosive to Skin & Eyes
Non-toxic

Biodegradable
Environmentally Safe

* * *

Speaker: Let's Touch comes in pre-measured packets with a mixing jar and a starting kit. A child could mix it, its so simple!

* * *

PAR. 5. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that:

- a) Let's Dance concentrate is non-corrosive to skin and eyes, non-toxic, and does not pose a risk of adverse health effects;
- b) Let's Touch concentrate is non-toxic and does not pose a risk of adverse health effects; and
- c) Let's Dance and Let's Touch use dilutions are classified as non-toxic under the Federal Hazardous Substances Act regulations.

PAR. 6. In truth and in fact:

- a) Let's Dance concentrate is corrosive to skin and eyes, toxic, and poses a risk of adverse health effects;
- b) Let's Touch concentrate is toxic and poses a risk of adverse health effects; and
- c) Let's Dance and Let's Touch use dilutions are not classified as non-toxic under the Federal Hazardous Substances Act regulations. In fact, Let's Dace and Let's Touch are not regulated under the Federal Hazardous Substances Act, but under the Federal Insecticide, Rodenticide and Pesticide Act which requires that these products bear various label warnings about their potential for harmful health effects.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A

through D, respondents have represented, directly or by implication, that:

- a) Let's Dance and Let's Touch use dilutions are non-toxic and do not pose a risk of adverse health effects;
- b) Let's Dance and Let's Touch are three to five times less toxic than quaternary aluminum compound disinfectants;
- c) Let's Dance is safe for the environment after ordinary use, and
- d) Let's Dance will completely break down and return to nature -- *i.e.*, decompose into elements found in nature -- within a reasonably short period of time after customary disposal.

PAR. 8. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs five and seven, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 9. In truth and in fact, at the time they made the representations set forth in paragraphs five and seven, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for Let's Go spray, including product labeling, including but not necessarily limited to the advertisements and labeling attached hereto as Exhibits E and F. These advertisements and labeling contain the following statements and depictions:

(f) Let's Go aerosol can front label:

ENVIRONMENTAL FORMULA

Will not harm the ozone

Contains No Freon, Chlorofluorocarbons

Methylene Chloride, or 1,1,1-Trichloroethane.

[product logo]

Let's Go aerosol can back label:

Let's Go

* * *

[chasing arrows symbol]
RECYCLABLE ALUMINUM
[EXHIBIT E]

(g) Magazine ad:

LET'S GO

* * *

Environmental Formula -- Freon Free Ozone Friendly

Recyclable aluminum

[EXHIBIT F]

PAR. 11. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph ten, including but not limited to the advertisement and labeling attached as Exhibits E and F, respondents have represented, directly or by implication, that the Let's Go spray aluminum aerosol can is recyclable.

PAR. 12. In truth and in fact, while the Let's Go aluminum aerosol can is capable of being recycled, there are only a few collection facilities that accept aluminum aerosol cans for recycling. Therefore, the representation set forth in paragraph eleven was, and is, false and misleading.

PAR. 13. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph ten, including but not necessarily limited to the advertisements and labeling attached as Exhibits E and F, respondents have represented, directly or by implication, that Let's Go spray does not contain any ingredients that harm or damage the environment.

PAR. 14. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph ten, including but not necessarily limited to the advertisements and labeling attached as Exhibits E and F, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs eleven and thirteen, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 15. In truth and in fact, at the time they made the representations set forth in paragraph eleven and thirteen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph fourteen was, and is, false and misleading.

PAR. 16. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

EXHIBIT A

ISABEL CRISTINA BEAUTY CARE PRODUCTS

Scientifically Formulated *Hospital Grade*
Broad Spectrum Anti-Viral and Tuberculocidal Protection
for Your Customer, Yourself and the Environment

LET'S TOUCH[®]

Full immersion system for quality metal instruments.

- Does not rust or dull
— cleans instruments to a shine.
- pH Buffered — non-corrosive, lasts longer, environmentally safe and non toxic.
- Active color — reliable indication of time for fresh solution.
- Ideal for storage of instruments
— complete with lid, forceps or scissor hook.
- Sold in pre-measured packets

LET'S DANCE[®]

Hospital grade disinfectant for the entire salon.

- Combs, brushes, files, baths, beds, counters and stations.
- Furnishings, surfaces, restrooms, equipment, floors, windows and more.
- Fast, convenient sprayer application or immersion bath.
- Fresh lemon-y scent
- Ultra concentrated for ease of use and storage
— 16 oz. makes 32 gallons.
- Pre-measured pump or packets for accurate solution control.



ISABEL CRISTINA

*Beauty Care Products for the
Educated Professional*



EXHIBIT A

Here's why the combination of scientific and beauty care industry experience of the ISABEL CRISTINA team means more professional results for you.



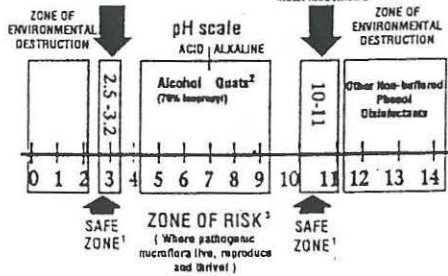
LET'S TOUCH® AND LET'S DANCE®

...the most effective salon disinfection products for protection against knowing or unknowing carriers of infectious diseases.

- Bactericidal, fungicidal, virucidal, staphylocidal, pseudomonacidal, tuberculocidal - including HIV-1.
- Hospital grade disinfection in just 10 minutes — clean, disinfect and deodorize in one step.
- EPA registered and meet or exceed all federal OSHA and State Board requirements. Environmentally safe, biodegradable and non toxic.
- Sold as concentrates for reduced shipping, storage and handling costs. Packet-only re-orders reduce costs even more.

LET'S DANCE®
One Step Germicidal Detergent
For All Salon Surfaces
and Plastic Items

LET'S TOUCH®
Hospital Grade Instrumental
Disinfection / Storage
System For Salon
Metal Instruments



LET'S DANCE® use dilution: pH 2.6
LET'S TOUCH® use dilution: pH 10.6

- LET'S DANCE® and LET'S TOUCH® are:
- Environmentally Safe • Non-Toxic
 - Non-Corrosive to Skin and Eyes • Bio-degradable

¹ Safe zones are where germicidal activity and maximum cleaning occur without environmental surface damage to pH sensitive materials.

² Most quats fall in the 3 - 6 pH range.

³ Osmyn cites five primary sources regarding neutral solutions, pH 9 - 3. Zone of Risk, having a higher recovery of bacterial survivors than alkalines.

Comparative Disinfectants Chart

	LET'S TOUCH®	LET'S DANCE®	Quats	Alcohol	Ultra-Violet	Glass Bead
U.S. Government EPA Registered Claims	Yes ¹	Yes ¹	Yes	No	No	No
Meets Latest Government Regulations	Yes ¹	Yes ¹	No ¹	No	No	No
Broad Spectrum	Yes ¹	Yes ¹	Yes ¹	Yes	Yes	No
Tuberculocidal	Yes ¹	Yes ¹	No ¹	No	No	No
Built In Activity Indicator	Yes	N/A	No	No	No	No
Contains Corrosion Inhibitors	Yes	N/A	No	No	No	No
Contains Natural Oil Lubricants	Yes	Yes	No	No	No	No
NON-CORROSIVE Does Not Cause Rust, Dulling and Overall Damage to Instrument	Yes	N/A	No	No	Yes	No
pH Buffered	Yes	N/A	No	No	No	No
Can Be Poured Down Drain***	Yes	Yes	Yes	Yes	No	No
No Damage to Environmental Surfaces	Yes	Yes	Yes ¹	No	No	No
Non-Corrosive to Skin and Eyes	Yes	Yes	Yes ¹	No	No	No
Non-Toxic	Yes	Yes	No ¹	No	—	—
Full Immersion - Full Coverage Disinfection	Yes	Yes	No ¹	Yes	No	No
Disinfects Box Joints of Nippers and Joints of Scissors	Yes	N/A	No ¹	Yes	No	No
Doesn't Allow Bacteria to Grow and Breed in Solution**	Yes	Yes	No	Yes	No	No
Doesn't Leave Residue Behind	Yes	Yes	No	Yes	—	No
Non-Flammable	Yes	Yes	Yes ¹	No	No	No
No Irritant Odors	Yes	Yes	—	No	—	No
Pleasant Fragrance	Yes	Yes	— ¹	No	No	No
Easy to Use	Yes	Yes	No	No	No	No
Pre-measured	Yes	Yes	No	No	No	No

Perhaps, Consult EPA offices.

¹No in box and X joints. Yes, only on surfaces exposed directly to light.

²Limited

N/A=Not Applicable

**With fresh solutions

***Use Diluents

00000367



Beauty Care Products for the Educated Professional

ISABEL CRISTINA

P.O. Box 3599, Teaneck, New Jersey 07666

For West Interstate Line: 1-800-247-4130. In NJ, dial 201-313-5730

G.A.S. 2

EXHIBIT B

EXHIBIT B

LET'S DANCE®!

Because... Tomorrow's World Depends *On You*

Environmentally Safe One Step Hospital Grade Disinfectant,
Cleaner, and Deodorizer for Salons

LET'S DANCE® FOR:

- Combs and Brushes
- Counters and Stations
- Nail Files and Foot Baths
- Restrooms and Sinks
- Floors and Windows

LET'S DANCE®!

- Environmentally Safe
- PH Buffered
- Non-Corrosive to Skin and Eyes
- Biodegradeable and Non-Toxic
- Ultraconcentrated - 16 oz.
Makes 32 Gallons
- Costs Just Pennies Per Day to Use
- Replaces the Need for 5 Products
- Saves Time - Disinfects, Cleans,
and Deodorizes in One Step
- Premeasured Pump for Ease of
Preparation and Accuracy



Master system - 16 oz. - 16 oz. with 16 oz. LET'S DANCE®
Ultraconcentrated with premeasured pump
dispenser and a professional long lasting
spray applicator and bottle
MAKES 32 GALLONS - JUST \$29.95

Protect Yourself, Your Clients, Your Family So Step Up and LET'S DANCE®

Because... *You* Make The Difference!

EPA REGISTRATION #1043-92-062296



ISABEL CRISTINA

11500 TEANECK ST. ELLEN, NJ 07023

Need more info? Circle Reader Service #194

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EXHIBIT C

EXHIBIT C

IS YOUR DISINFECTANT ENVIRONMENTALLY SAFE?



LET'S TOUCH™ IS!

AN EPA-REGISTERED, BROAD-SPECTRUM, HOSPITAL-GRADE DISINFECTANT
A COMPLETE PRACTICAL FULL-IMMERSION DISINFECTION AND STORAGE SYSTEM
FOR NAIL TECHNICIANS' TOOLS

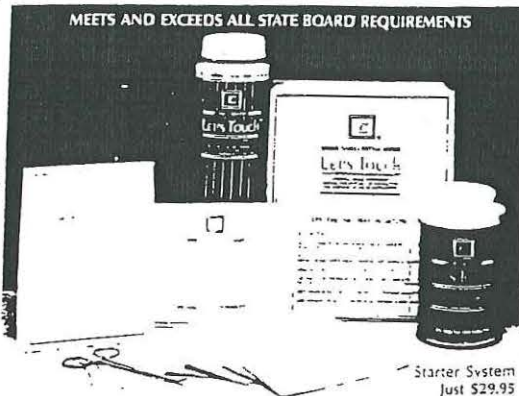
PROTECTS YOUR INSTRUMENTS
STORE QUALITY METAL
INSTRUMENTS IN SOLUTION
DOES NOT RUST
DOES NOT DULL

CLEANSSES INSTRUMENTS TO A SHINE
LASTS LONGER - PH BUFFERED
IN HANDY PREMEASURED FOIL PACKETS
WITH NO OFFENSIVE ODOORS

BIODEGRADABLE
NON-TOXIC
NON-CORROSIVE TO SKIN AND EYES
ACTIVITY INDICATED

The Clear Blue Solution Simply
Turns Cloudy, Displaying "Solution
Overload". When It's Time To Change!

CLIENT-REASSURING
EDUCATIONAL
PROFITABLE



MEETS AND EXCEEDS ALL STATE BOARD REQUIREMENTS

Starter System
Just \$29.95

Starter System Complete With: 4 Packets of Hospital Grade Disinfectant (Makes 4 Quarts), Full Immersion Instrument Bath with Air-Tight Lid, Instrument Cushion, Stainless Resistant Forecept, Mixing Jar, Client Awareness Card, and Salon Window Decal.

ALL AT A COST LESS THAN ALCOHOL AND OTHER METHODS

BACTERIOCIDAL, FUNGICIDAL, VIRUCIDAL, STAPHYLOCIDAL, PSEUDOMONACIDAL, TUBERCULOCIDAL

LET'S TOUCH™ WORKS!

IN JUST 10 MINUTES, SO YOU DON'T HAVE TO WAIT TO BE SURE!

Also used in ultrasonic disinfecting systems

EPA REGISTRATION #1043-3b-0b229b



ISABEL CRISTINA

Questions? Call or Write: ISABEL CRISTINA NAIL CARE PRODUCTS
P.O. Box 35799, SAN ANTONIO, TX 78235-0799 Tel: 300-247-4130

Complaint

122 F.T.C.

EXHIBIT D

IC

ISABEL CRISTINA

LET'S TOUCH® / LET'S DANCE®
NON-TOXIC CONFIRMATION

Brief Summary

Both LET'S TOUCH and LET'S DANCE decrease exposure to the active ingredients by using highly buffered germicidal cleansers and offer the greatest degree of Broad Spectrum Efficacy. Both LET'S TOUCH and LET'S DANCE work within a pH range, which acts against supporting the growth and reproduction of bacteria in the salons (always follow the label directions). The Disinfectants, Harmful Bacteria and pH Chart represents the three pH areas: Environmental Destruction, Risk and Safe Zones. LET'S TOUCH and LET'S DANCE fall within the safe Zone, while other products, *e.g.* Quats, Alcohol and other non-buffered phenolic disinfectants, perhaps, fall within the Zones of Risk and Environmental Destruction.

LET'S TOUCH and LET'S DANCE use-solutions
as defined by the latest Federal Hazardous Substances Act Regulations are
NON-TOXIC AND NON-CORROSIVE TO SKIN AND EYES

Specific Data**LET'S TOUCH**

The acute oral LD₅₀ of LET'S TOUCH concentrate is 12.6 grams per kilogram. This acute oral LD₅₀ is equivalent to the ingestion of 23 fluid ounces of concentrate or 5.8 gallons of 1:32 use-dilution by a 150 lb. adult. As the term is defined in the Federal Hazardous Substances Act Regulations, LET'S TOUCH is not a toxic substance.

The acute Dermal LD₅₀ of LET'S TOUCH concentrate is greater than 10.0 ml/kg of body weight. As the term is defined in the Federal Hazardous Substances Act Regulations, LET'S TOUCH is not a toxic substance.

A 1:32 use dilution of LET'S TOUCH when tested according to procedures accepted by the Environmental Protection Agency (EPA), showed a score of zero for the primary eye irritation test (16 CFR 1500.42). Therefore, a properly made use-solution of LET'S TOUCH is not considered a primary eye irritant as defined by regulations of the Federal Hazardous Substances Act.

Let's Dance

The normal use dilution of 1:256 of LET'S DANCE germicidal detergent is not considered toxic, nor is it classified as corrosive to skin and eyes. When tested according to protocol prescribed by the US Environmental Protection Agency (EPA) with a twenty-four hour exposure time, the use-solution was found to have a maximum Primary Irritation Score (skin) of 0.0. LET'S DANCE is considered as not a Primary Irritant as defined by the Federal Hazardous Substances Act.

A use-dilution (1:256) was tested according to protocol prescribed by the US Environmental Protection Agency (EPA). All tests were free from any signs of eye irritation at the 48-hour and subsequent readings. The investigating laboratory concluded that LET'S DANCE is not a Primary Eye Irritant.

Please note that Disinfectant products are labeled for the concentrate contained within.

LET'S TOUCH and LET'S DANCE use-solutions as defined by the latest Federal Hazardous Substances Act Regulations are
NON-TOXIC AND NON-CORROSIVE TO SKIN AND EYES

NOTE: When purchasing our products, you are purchasing them in a concentrated form. Thus, you purchase pure product and not watered down product. Additionally, unless a product falls within the 2.5 - 3.2 pH and 10 - 11 pH Range, the product cannot possibly last for extended periods of time. Considering the needs of today's salon, the extended life offered by Buffered Disinfection systems more than meet the practical level, the safety requirements of both operator and client. LET'S TOUCH and LET'S DANCE are pH buffered phenolic products which deliver excellent Broad Spectrum Performance even under the most demanding use situations while offering the greatest degree of safety to the end user and the environment. LET'S TOUCH and LET'S DANCE use-solutions are defined by the latest Federal Hazardous Substances Act Regulations as NON-TOXIC AND NON-CORROSIVE TO SKIN AND EYES. Some common examples of Phenolics are: INK and Chloroseptic throat spray medication.

Quaternary Ammonium Compounds (Quats) due to their significant number of drawbacks as a Disinfectant are not classified for Instrument Disinfection by many of the most significant authorities in both the Medical and the Dental fields.

EXHIBIT E

EXHIBIT E

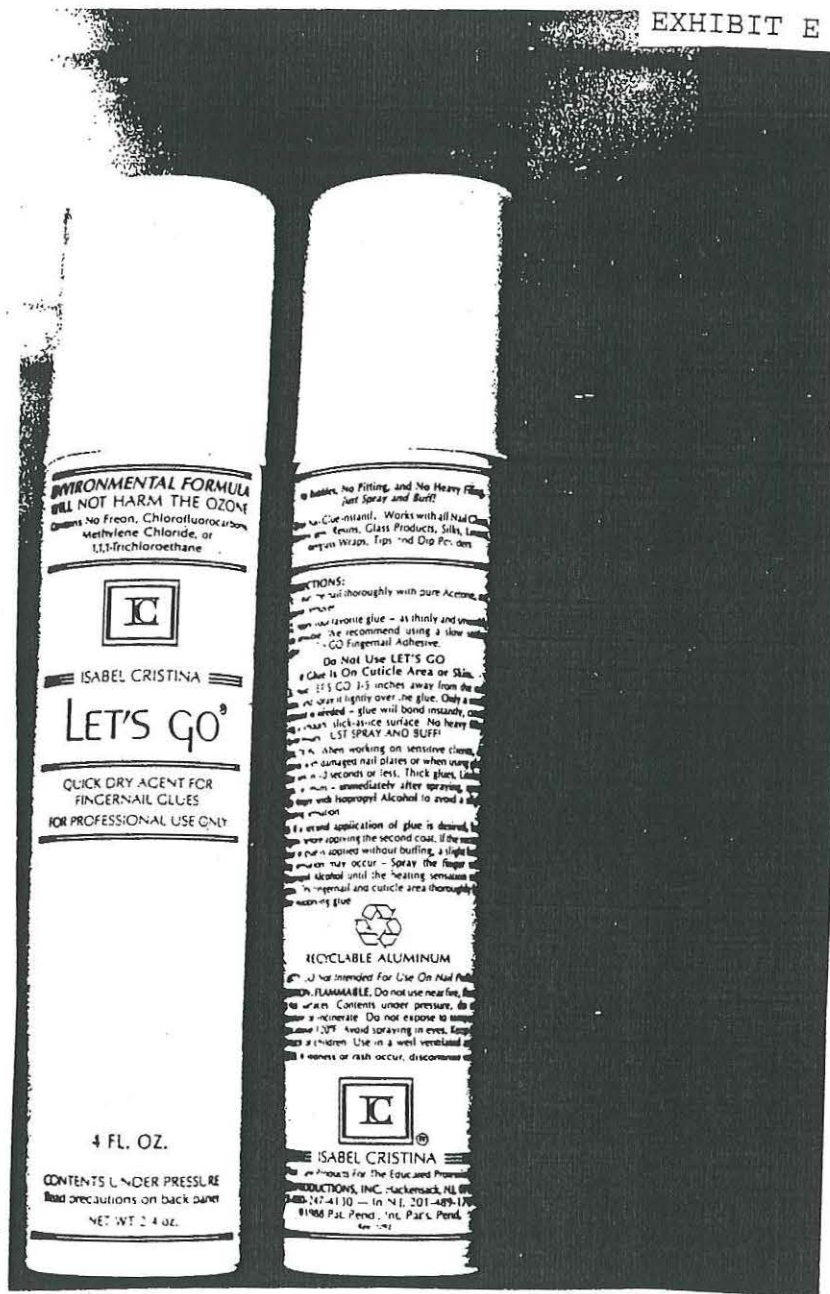


EXHIBIT F

EXHIBIT F

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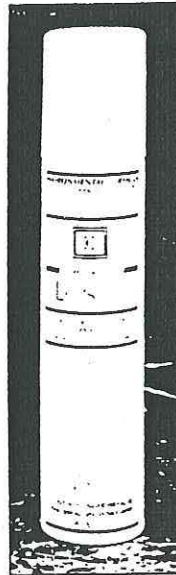
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Nail Care Products for the Educated Professional

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the 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, or that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 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 RBR Productions, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1010 Hoyt Avenue in the City of Ridgefield, State of New Jersey. From time to time, RBR Productions, Inc. does business under the name of Isabel Cristina Beauty Care Products.

Respondent Richard Rosenberg is an officer and director of RBR Productions, Inc. he formulates, directs, and controls the policies, acts, and practices of said corporation and his office and principal place of business is the same as that of said corporation.

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

ORDER

DEFINITIONS

For the purposes of this order:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

2. "*Volatile organic compound*" ("*VOC*") shall mean any compound of carbon which participates in atmospheric photochemical reactions as defined by the U.S. Environmental Protection Agency at 40 CFR 51.100(s), and as subsequently amended. When the final rule was promulgated, 57 Fed. Reg. 3941 (February 3, 1992), the EPA definition excluded carbon monoxide, carbon dioxide, carbonic acid, metallic carbides of carbonates, ammonium carbonate and certain listed compounds that EPA has determined are of negligible photochemical reactivity.

I.

It is ordered, That respondents, RBR Productions, Inc., a corporation, its successors and assigns, and its officers, and Richard Rosenberg, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Let's Dance and Let's Touch disinfectants, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that:

- A. Let's Dance concentrate is non-corrosive to skin or eyes, non-toxic, or does not pose a risk of adverse health effects;
- B. Let's Touch concentrate is non-toxic or does not pose a risk of adverse health effects; or
- C. Let's Dance and Let's Touch use dilutions are classified as non-toxic under the Federal Hazardous Substances Act regulations.

II.

It is further ordered, That respondents, RBR Productions, Inc., a corporation, its successors and assigns, and its officers, and Richard Rosenberg, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device:

A. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Let's Dance and Let's Touch disinfectants, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

1. Let's Dance or Let's Touch use dilutions are non-toxic or do not pose a risk of adverse health effects;
2. Let's Dance or Let's Touch concentrates or use dilutions are less toxic than quaternary ammonium compound disinfectants or any other disinfectant or product;
3. Let's Dance is biodegradable;
4. Let's Dance is safe for the environment after ordinary use; and

B. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Let's Go spray or any other product containing any volatile organic compound, through the use of such terms as "environmental formula," "environmental formula, freon free, ozone friendly," "environmental formula, will not harm the ozone, contains no freon, chlorofluorocarbons, methylene chloride, or 1,1,1-trichloroethane," or any other term or expression, that any such product will not harm the environment; and

C. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any disinfectant

or aerosol product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product will offer any absolute or comparative health, safety, or environmental evidence.

III.

A. *It is further ordered*, That respondents, RBR Productions, Inc., a corporation, its successors and assigns, and its officers, and Richard Rosenberg, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

- (1) Any such product or package is capable of being recycled; or,
- (2) Recycling collection programs for such product or package are available.

B. Provided, however, respondents will not be in violation of Part III.A(2) of this order, in connection with the advertising, labeling, offering for sale, sale or distribution of any aluminum aerosol can, if it truthfully represents that such package is recyclable, provided that:

- (1) Respondent discloses clearly, prominently, and in close proximity to such representation:

- (a) That such packaging is recyclable in the few communities with recycling collection programs for aluminum aerosol cans; or
- (b) The approximate number of U.S. communities with recycling collection programs for such aluminum aerosol cans; or
- (c) The approximate percentage of U.S. communities or the U.S. population to which recycling collection programs for such aluminum aerosol cans are available.

For the purposes of this order, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears.

IV.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors or assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers and complaints or inquiries from governmental organizations.

V.

It is further ordered, That respondent RBR Productions, Inc. shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

VI.

It is further ordered, That respondent RBR Productions, Inc., its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a 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 under this order.

VII.

It is further ordered, That respondent Richard Rosenberg shall, for a period of five (5) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, and a statement describing the nature of the business or employment and his duties and responsibilities.

VIII.

It is further ordered, That this order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on

appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IX.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

THE B.F. GOODRICH COMPANY, ET AL.

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

Docket 9159. Modified Final Order, July 18, 1989--Modifying Order, Dec. 12, 1996

This order reopens a 1989 modified final order -- that required Goodrich to divest its Calvert City, Kentucky facility, for the production of vinyl chloride monomer ("VCM") and ethylene dichloride, instead of the LaPorte VCM plant, and also required Commission approval before acquiring any interest in any producer of VCM located in the United States -- and this order modifies the order by setting aside the prior approval requirement.

ORDER REOPENING AND MODIFYING ORDER

On August 23, 1996, The Geon Company ("Geon") filed a Petition to Reopen and Modify Order ("Petition") in this matter. Geon was formed by respondent The B.F. Goodrich Company ("Goodrich") in 1993, and became the wholly-owned subsidiary of Goodrich into which Goodrich placed its vinyl chloride monomer ("VCM") and polyvinyl chloride ("PVC") resin and compound businesses. Goodrich subsequently sold all of its shares of Geon in two public offerings. As a result, Geon is currently the owner and operator of Goodrich's former operations in the VCM industry. Geon is joined in its Petition by respondent Goodrich.¹ In its Petition, Geon asks that the Commission reopen and modify the Modified Final Order issued on July 18, 1989, in Docket No. 9159 ("order") to delete the prior approval provision set forth in paragraph IX of the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement").² Should the Commission determine that deletion of the prior approval requirement would be inconsistent with the public interest, Geon requests that the Commission modify paragraph IX to remove the prior approval requirement and replace it with a

¹ Goodrich has joined in Geon's Petition by stating in an affidavit by Jon V. Heider, Goodrich's Executive Vice President and General Counsel, that it does not object to the modification sought by Geon.

² 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

prior notice requirement.³ In the alternative, Geon requests that the Commission determine that the order does not apply to Geon.⁴ The thirty-day public comment period on the Petition ended on September 30, 1996. No comments were received.

The order for which Geon seeks reopening and modification arises from the Commission's 1988 decision that Goodrich's acquisition of the VCM business of respondent Diamond Shamrock Chemicals Company violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.⁵ On appeal from the Commission's decision and final order, the Commission and Goodrich stipulated to a modification of the Commission's final order which substituted divestiture of Goodrich's Calvert City, Kentucky, VCM plant ("Calvert City VCM plant") for divestiture of the La Porte, Texas, VCM plant originally ordered by the Commission to be divested. The order was further modified to require Goodrich to provide the acquirer with raw material feedstocks and services necessary for operation of the Calvert City VCM plant. On July 18, 1989, the Commission entered its Modified Final Order, which became final on July 25, 1989.

On February 21, 1990, the Commission approved Goodrich's divestiture of its Calvert City VCM plant to Westlake Monomers Corporation ("Westlake") in compliance with its divestiture obligations under paragraph II of the order. In connection with the divestiture, Goodrich, among other things, provided Westlake with VCM technology and certain agreements pertaining to the Calvert City VCM plant, entered into agreements to supply or exchange raw material feedstocks and to supply necessary services and utilities, and granted Westlake a right of first refusal on the purchase of its retained ethylene plant, chlorine plant and utilities and services facilities ("Calvert City Assets") located adjacent to the Calvert City VCM plant, pursuant to the requirements of paragraphs III, IV, VI, VII and VIII of the order.

Following divestiture of the Calvert City VCM plant up until 1993, Goodrich's remaining VCM business and its PVC resin and compound businesses were conducted by Goodrich through its Geon

³ Petition at 2.

⁴ *Id.* Geon states that, although it does not believe the order applies to it, it is concerned that the Commission or its staff might take a contrary view. See Petition at 1.

⁵ *The B.F. Goodrich Co.*, 110 FTC 207 (1988), order modified, 112 FTC 83 (1989) (entered pursuant to stipulation between Commission and Goodrich during appeal of Commission decision and final order).

Vinyl Division. Goodrich's remaining VCM operations consisted of its VCM plant located at La Porte, Texas, which is the plant designated for purposes of the feedstock exchange requirements set forth in paragraph VII of the order. Goodrich also continued to own and operate the Calvert City Assets which are the subject of the supply agreements with Westlake pursuant to paragraph VI of the order, as well as the right of first refusal pursuant to paragraph VIII of the order.

In 1993, Goodrich assigned all of the assets of its Geon Vinyl Division, including Goodrich's remaining VCM and PVC resin and compound businesses, to Geon, then a newly-formed subsidiary corporation wholly-owned by Goodrich. By the end of 1993, Goodrich had sold off all of the voting securities of Geon through two public offerings. As a result of its divestiture to Westlake and its spinoff of Geon, Goodrich no longer operates in the VCM industry and has no equity interest in Geon.⁶ Goodrich's former operations in the VCM industry are now owned and operated entirely by Geon.⁷ However, Goodrich continues to own and operate the Calvert City Assets, and to supply Westlake pursuant to agreements entered into at the time of divestiture pursuant to paragraphs VI and VII.⁸

Paragraph I.A of the order defines respondent "Goodrich" to mean The B.F. Goodrich Company as well as, among other things, "its. . . successors, and assigns." The Commission believes that Geon, by virtue of its acquisition and operation of Goodrich's remaining VCM business, is a successor under the order for purposes of the prior approval obligations of paragraph IX.⁹ For the reasons discussed below, Geon's Petition to modify the order by setting aside the prior approval requirement in paragraph IX is granted.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement.¹⁰ The Commission announced that it will "henceforth

⁶ Petition at 1.

⁷ *Id.*

⁸ Goodrich's ongoing order obligations, including supply agreements with Westlake entered pursuant to the order, continue in effect for a period of ten years from the date of divestiture to Westlake.

⁹ Geon may be a successor, or may in the future become a successor, to other ongoing obligations under the order.

¹⁰ Prior Approval Policy Statement at 2.

rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements."¹¹

Narrow prior approval or prior notification requirements may be appropriate in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger."¹² The need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order."¹³ The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement.¹⁴

The presumption is that setting aside the general prior approval requirement in this order is in the public interest. No facts have been presented that overcome this presumption, and nothing in the record,

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Id.* at 4.

¹⁴ *Id.*

including the complaint and order, suggests that the exceptions described in the Prior Approval Policy Statement are warranted.¹⁵ The Commission has therefore determined to reopen the proceeding in Docket No. 9159 and modify the order to set aside the prior approval requirement set forth in paragraph IX.¹⁶

Accordingly, *It is hereby ordered*, That this matter be, and it hereby is, reopened;

It is further ordered, That the Commission's order issued on July 18, 1989, be, and it hereby is, modified, as of the effective date of this order, to set aside paragraph IX of the order.

¹⁵ In its Petition, Geon states:

The industry covered by the order -- the production and sale of VCM -- is at least national in scope and manufacturing facilities are expensive to acquire. It is unlikely that the acquisition of any competitively significant VCM plant in the United States could be completed without the parties first filing an HSR Form. Petition at 2.

¹⁶ This modification applies both to respondent Goodrich and to successor Geon.

Complaint

122 F.T.C.

IN THE MATTER OF

NGC CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3697. Complaint, Dec. 12, 1996--Decision, Dec. 12, 1996*

This consent order permits, among other things, NGC Corporation ("NGC"), a Texas-based corporation, to acquire certain natural gas transportation and processing assets from Chevron Corporation, and requires NGC to divest the Mont Belvieu I plant to a Commission-approved buyer. If the transaction is not completed as specified, the consent order requires the respondent to agree to a Commission-appointed trustee.

Appearances

For the Commission: *Arthur Nolan, Phillip Broyles and William Baer.*

For the respondent: *Alex Kogan, Akin, Gump, Strauss, Hauer & Feld, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent NGC Corporation ("NGC"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement to acquire certain assets of Chevron U.S.A. Inc. ("Chevron USA"), a wholly-owned subsidiary of Chevron Corporation ("Chevron"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint:

"Natural gas liquids" means hydrocarbon compounds produced when natural gas (methane) is purified, with molecules containing two to five or more carbon atoms, whether commingled as raw mix from gas processing plants or fractionated into individual specification products. Natural gas liquids specification products are ultimately used in the manufacture of petrochemicals, in the refining of gasoline, and as bottled fuel, among others uses.

"Fractionation" means separating raw mix natural gas liquids into natural gas liquids specification products such as ethane or ethane-propane, propane, iso-butane, normal-butane, and natural gasoline via a series of distillation processes.

THE RESPONDENT

PAR. 2. Respondent NGC 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 at 13430 Northwest Freeway, Suite 1200, Houston, Texas.

PAR. 3. Respondent NGC is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

THE ACQUISITION

PAR. 4. Chevron Corporation 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 at 575 Market Street, San Francisco, California.

PAR. 5. Chevron U.S.A. Inc. 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 at 575 Market Street, San Francisco, California.

PAR. 6. Chevron and Chevron USA are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are

corporations whose businesses are in or affect commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

PAR. 7. Respondent NGC entered into an agreement with Chevron USA, dated May 22, 1996, to acquire certain assets of Chevron USA in exchange for a 28% ownership interest in NGC along with \$300 million in cash and debt assumption. The assets to be acquired include natural gas and natural gas liquids processing facilities, transportation and terminaling assets, the fractionation facility at Mont Belvieu, Texas and associated underground storage, and gas marketing and sales contracts.

THE RELEVANT MARKET

PAR. 8. The relevant line of commerce in which to analyze the effects of the acquisition described herein is the fractionation of natural gas liquids.

PAR. 9. The relevant section of the country in which to analyze the effects of the acquisition is the vicinity of Mont Belvieu, Texas. Mont Belvieu offers extensive storage facilities, unmatched pipeline connections for raw mix and specification products, and numerous specification products buyers. As a result, Mont Belvieu is the U.S. hub for fractionation of raw mix natural gas liquids. And it is the nation's premier marketplace for sales of fractionated specification products. Producers of raw mix natural gas liquids throughout much of Texas, New Mexico, western Wyoming, and western Colorado have no good alternative to Mont Belvieu for their fractionation needs.

PAR. 10. The relevant line of commerce is highly concentrated in the relevant section of the country whether measured by Herfindahl-Hirschmann Indices or two-firm and four-firm concentration ratios.

PAR. 11. NGC is an actual and potential competitor of Chevron in the relevant line of commerce in the relevant section of the country. NGC would, after the acquisition, have the largest market share in the relevant line of commerce throughout the relevant section of the country. NGC would, after the acquisition of Chevron's fractionator, control three of the four fractionators at Mont Belvieu. NGC's control would extend over approximately 70 percent of the current fractionating capacity at Mont Belvieu.

PAR. 12. Entry into the relevant line of commerce is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects in the relevant section of the country.

EFFECTS OF THE ACQUISITION

PAR. 13. The effects of the acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the relevant line of commerce in the relevant section of the country in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating actual and potential competition between NGC and Chevron to provide fractionation services to producers of natural gas liquids,
- b. By increasing the likelihood that NGC will unilaterally exercise market power, and
- c. By increasing the likelihood of, or facilitating, collusive or coordinated interaction,

each of which increases the likelihood that the prices of fractionation services will increase in the relevant section of the country.

VIOLATIONS CHARGED

PAR. 14. The acquisition agreement described in paragraph seven violates Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

PAR. 15. The proposed acquisition described in paragraph seven, would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of certain assets and businesses of Chevron Corporation ("Chevron"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge

respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent NGC 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 13430 Northwest Freeway, Suite 1200, Houston, Texas.

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, as used in this order, the following definitions shall apply:

A. "*Combination*" means the transactions contemplated by the Combination Agreement and Plan of Merger, dated as of May 22, 1996, among NGC Corporation, Chevron U.S.A. Inc., and Midstream Combination Corp.

B. "*Commercial operator*" means the person or entity with the legal authority to enter into contracts on behalf of a fractionation facility to provide third parties with the service of fractionation for a fee and to set the prices offered to third parties for such service.

C. "*Facility operator*" means any person or entity with the legal authority to engage in any activity involved in the routine management, supervision or operation of a fractionation facility, including, but not limited to: the receipt, measurement, handling and storage of raw natural gas liquids delivered to the fractionation facility; the maintenance, repair and operation of any equipment, machinery or other assets used in the course of the operation of the fractionation facility; the handling, storage and movement of specification products produced at the fractionation facility prior to receipt by a third party; the purchase and use of material and supplies in connection with the operation, maintenance and repair of the fractionation facility; the provision of accounting, billing and scheduling functions necessary for the processing of transactions with fractionation customers; the provision of engineering services necessary for operation of the fractionation facility; preparation and submission of any necessary reports to governmental authorities; the procurement of any necessary licenses and permits on behalf of the fractionation facility; the purchase of services necessary for the fractionation facility's operation; and the supervision of the implementation of any decision to expand or modify, repair or maintain the fractionation facility.

D. "*Fractionation*" means the process of separating raw natural gas liquids into specification products.

E. "*Fractionation facility*" means a facility that separates raw natural gas liquids into specification products.

F. "*GCF*" means Gulf Coast Fractionators, a Texas general partnership.

G. "*GCF Expansion Project*" means any current or future project involving an expenditure for equipment or other capital assets reasonably necessary to increase the capacity of the GCF fractionation facility beyond its effective capacity level at the time the expenditure is undertaken.

H. "*GCF Fractionation Facility*" means the fractionation facility owned by GCF located at 1.5 miles west of Highway 146 on FM 1942, Mont Belvieu, Chambers County, Texas.

I. "*GCF Partnership Agreement*" means the Amended and Restated Partnership Agreement between Trident NGL, Inc. and

Liquid Energy Corporation and Conoco Inc., effective December 1, 1992.

J. "*MB I*" means Mont Belvieu I, a fractionation facility, originally constructed by Cities Service Company in 1970, located at 9900 FM 1942, Mont Belvieu, Chambers County, Texas.

K. "*MB I Ownership Agreement*" means the Agreement for the Construction, Ownership and Operation of the Mont Belvieu I Fractionation Facility between Trident NGL, Inc. and Union Pacific Fuels, Inc., dated November 17, 1993, and any subsequent amendments thereof.

L. "*NGC*" means NGC Corporation, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by NGC, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

M. "*Property to be divested*" means NGC's interest in (1) MB I; and (2) all assets, title, properties, interest, rights and privileges, of whatever nature, tangible and intangible, and other property of whatever description and location used in the business of MB I including, without limitation:

1. All buildings, machinery, fixtures, equipment, vehicles, pipelines, storage facilities, furniture, tools, supplies, spare parts and other tangible personal property located in Mont Belvieu, Texas;

2. All rights, title and interest in and to real property located in Mont Belvieu, Texas, together with appurtenances, licenses, and permits;

3. All books, records and files;

4. All rights under warranties and guarantees for equipment, express or implied;

5. All technical information and drawings for equipment;

6. All vendor lists, catalogs, sales promotion literature, and advertising materials;

7. All inventory of finished goods, work in progress, raw materials and supplies;

8. At the option of the acquirer all rights, title and interests in and to the contracts and leases entered into in the ordinary course of business with suppliers, measurement equipment operators, storage facility operators, transmission pipeline operators, fractionation customers and personal property lessors and licensors, pertaining to the operation of MB I, provided that where third party consent is

required to complete the transfer described in this subparagraph, NGC shall use best efforts to obtain such third party's consent.

N. "*Specification products*" mean ethane, propane, ethane-propane mix, iso-butane, normal-butane and natural gasoline.

II.

It is further ordered, That:

A. Within six (6) months after the signing of the agreement containing consent order, NGC shall divest, absolutely and in good faith, the property to be divested. The property to be divested shall be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture required by this order is to ensure the continued operation of MB I in the fractionation business in the same manner as conducted by MB I at the time of the proposed divestiture and to remedy the lessening of competition alleged in the Commission's complaint.

B. Upon the signing of the agreement containing consent order, NGC shall immediately give the requisite six (6) month notice under the MB I Ownership Agreement of its intent to cease serving as the commercial and facility operator at MB I. Within thirty (30) days after the signing of the agreement containing consent order, NGC shall cease to serve as the commercial operator of MB I, provided the other party to the MB I Ownership Agreement agrees to be installed as the commercial operator of MB I by that date. In the event that the other party to the MB I Ownership Agreement has not elected to become the commercial operator within said thirty (30) day period, NGC may continue to serve as the commercial operator of MB I, but shall do so: (i) under the provisions of paragraph 3 of the Hold Separate Agreement ("Hold Separate"), attached hereto and made a part hereof as Appendix I; and (ii) only until the divestiture contemplated in paragraph II.A of this order is achieved, provided such divestiture occurs within the six-month period described therein. If such divestiture does not occur within said six-month period, NGC shall cease to serve as the commercial operator of MB I by the date on which that six-month period expires and the provisions of paragraph III.C of this order shall apply. NGC may continue to serve as facility operator of MB I until the divestiture contemplated in

paragraph II.A of this order is achieved, provided such divestiture occurs within the six-month period described therein. If such divestiture does not occur within that six-month period, NGC shall cease to serve as the facility operator of MB I by the date on which that six-month period expires and the provisions of paragraph III.C of this order shall apply.

C. NGC shall do nothing to prevent, impede or interfere with the person or entity that succeeds NGC as either the commercial operator or the facility operator of MB I in undertaking reasonable efforts to offer employment to any NGC employees who assist in the performance of any activities that NGC engages in as the commercial operator or facility operator at MB I, respectively.

D. Pending divestiture of the property to be divested, NGC shall take no action impairing the viability and marketability of the property to be divested and shall not cause or permit the destruction, removal, or impairment of any assets or business of the property to be divested, except in the ordinary course of business and except for ordinary wear and tear.

E. NGC shall comply with the Agreement to Hold Separate attached to this order and made a part hereof ("Hold Separate"). Said Hold Separate shall continue in effect until NGC has divested the property to be divested or until such other time as the Hold Separate provides.

III.

It is further ordered, That:

A. If NGC has not divested, absolutely and in good faith and with the Commission's prior approval, the property to be divested as required by paragraph II of this order within six (6) months after the signing of the agreement containing consent order, the Commission may appoint a trustee to divest the property to be divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5 (l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, NGC shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade

Commission Act, or any other statute enforced by the Commission, for any failure by NGC to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, NGC shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of NGC, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If NGC has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to NGC of the identity of any proposed trustee, NGC shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the property to be divested.

3. Within ten (10) days after appointment of the trustee, NGC shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided, however, that the Commission may extend the divestiture period only two (2) times.

5. NGC shall provide the trustee with full and complete access to the personnel, books, records and facilities relating to the property to be divested, or any other relevant information, as the trustee may request. NGC shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. NGC shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by NGC shall extend the time for divestiture under this paragraph in

an amount equal to the delay, as determined by the Commission or for a court-appointed trustee, the court.

6. The trustee shall make reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to NGC's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by NGC from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of NGC, on such reasonable and customary terms and conditions as the Commission or the court may set. The trustee shall have authority to employ, at the cost and expense of NGC, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of NGC and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the property to be divested.

8. NGC shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the property to be divested.

12. The trustee shall report in writing to NGC and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

C. If NGC has not divested, absolutely and in good faith and with the Commission's prior approval, the property to be divested as required by paragraph II of this order within six (6) months after the signing of the agreement containing consent order, NGC shall, by such date: (i) cease to serve as the commercial operator of MB I (assuming NGC is then serving as commercial operator under the provisions of paragraph three of the Hold Separate); (ii) cease to serve as the facility operator of MB I; and (iii) take all necessary steps under the MB I Ownership Agreement to install the other party to said Ownership Agreement as the commercial operator and the facility operator of MB I.

IV.

It is further ordered, That:

A. Upon the signing of the agreement containing consent order, NGC shall immediately give the requisite six (6) month notice under the GCF Partnership Agreement of its intent to cease serving as the commercial and facility operator at GCF. Within thirty (30) days after the signing of the agreement containing consent order, NGC shall cease to serve as the commercial operator of GCF, provided a replacement agrees to be installed as the commercial operator of GCF by that date. Within one hundred and twenty (120) days after the signing of the agreement containing consent order, NGC shall cease to serve as the facility operator of GCF, provided a replacement agrees to be installed as the facility operator of GCF by that date. In the event that a replacement has not elected to assume the activities of the commercial operator of GCF within the thirty (30) day period provided or that a replacement has not elected to assume the activities of the facility operator of GCF within the one hundred and twenty

(120) day period provided, then the provisions of paragraph four of the Hold Separate shall apply, but only until six (6) months after the signing of the agreement containing consent order. NGC shall, by the end of said six (6) month period: (i) cease to serve as the commercial operator of GCF (assuming NGC is then serving as commercial operator under the provisions of paragraph four of the Hold Separate); (ii) cease to serve as the facility operator of GCF; and (iii) take all necessary steps under the GCF Partnership Agreement to install one of the other parties to said Partnership Agreement as the commercial operator and the facility operator of GCF.

B. NGC shall do nothing to prevent, impede or interfere with the person or entity that succeeds NGC as either the commercial operator or the facility operator of GCF in undertaking reasonable efforts to offer employment to any NGC employees who assist in the performance of any activities that NGC engages in as the commercial operator or as the facility operator at GCF, respectively.

C. In its capacity as a GCF partner, NGC shall sponsor and support an amendment to the GCF Partnership Agreement to allow any two partners (together holding at least a 50% ownership interest in GCF) to commit GCF to undertake a GCF Expansion Project, while providing that a partner may choose to limit its participation in the costs and benefits of such Project. Until such time as the GCF Partnership Agreement is so amended, NGC shall vote in favor of any GCF Expansion Project proposed by another GCF partner, and furthermore NGC shall take no action to prevent, block, delay or impede in any way any GCF Expansion Project, but rather shall provide all reasonable cooperation necessary to facilitate any such Project sought by other GCF partner or partners; provided however, that this provision does not obligate NGC to accept any financial burden or legal responsibility with respect to such GCF Expansion Project to the extent that such burden or responsibility is out of proportion to NGC's ownership interest in GCF.

Except as permitted in the Hold Separate, NGC shall not participate in any matter or negotiations pertaining to fractionation fees or other terms pursuant to which customers other than NGC obtain fractionation services at GCF.

V.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, NGC shall not, without providing

advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise: (i) acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged at the time of such acquisition, or within the two years preceding such acquisition, in the fractionation business within ten (10) miles of Mont Belvieu, Texas, or (ii) become the commercial operator or facility operator of any fractionation facility within ten (10) miles of Mont Belvieu, Texas, other than the fractionation facility currently operated by Chevron U.S.A. Inc. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that: no filing fee will be required for any such notification, notification shall be filed with the Office of the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of NGC and not of any other party to the transaction. NGC shall provide the Notification to the Commission at least thirty (30) days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, NGC shall not consummate the acquisition until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition.

Provided, however, that prior notification shall not be required by this paragraph V of this order for:

A. The construction or development by NGC of a new fractionation facility or the installation of NGC as the commercial operator or facility operator of any such facility; or

B. The expansion or enhancement of an existing fractionation facility owned by NGC in whole or in part; or

C. Any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

VI.

It is further ordered, That:

A. Within sixty (60) days after the date the agreement containing consent order is signed and every sixty (60) days thereafter until NGC has fully complied with the provisions of paragraphs II or III of this order, NGC shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order. NGC shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. NGC shall include in its compliance reports, subject to any legally recognized privilege, copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, NGC shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraphs IV and V of this order. Such reports shall include, but not be limited to, a listing by name and location of all fractionation facilities in Mont Belvieu, Texas, in which NGC has any ownership interest, including but not limited to ownership interest obtained due to default, foreclosure proceedings or purchases in foreclosure, made by NGC during the twelve (12) months preceding the date of the report.

VII.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, NGC shall notify the Commission at least thirty (30) days prior to any proposed change in its organization that may affect compliance obligations under this order, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations under this order.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, upon written request with reasonable notice to NGC made to its principal officer, NGC shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of NGC and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of NGC relating to any matters contained in this order; and

B. Upon five (5) days' notice to NGC and without restraint or interference therefrom, to interview officers or employees of NGC, who may have counsel present, regarding such matters.

IX.

It is further ordered, That this order shall terminate on December 12, 2016.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and between NGC Corporation ("NGC"), a corporation organized and existing under the laws of the state of Delaware, with its office and principal place of business located at 13430 Northwest Freeway, Suite 1200, Houston, Texas, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, as amended, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, on or about May 22, 1996, NGC entered into a Combination Agreement and Plan of Merger with Chevron U.S.A. Inc., a subsidiary of Chevron Corporation ("Chevron"), and Midstream Combination Corp., which contemplates certain

transactions (hereinafter, such transactions collectively referred to as "the Proposed Combination"); and

Whereas, NGC and Chevron both operate fractionation facilities in Mont Belvieu, Texas; and

Whereas, the Commission is now investigating the Proposed Combination to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission must place the Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving competition during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm, and relief resulting from a proceeding challenging the legality of the Proposed Combination might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Proposed Combination is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Properties to be Divested as described in paragraph I of the Consent Order and the Commission's right to seek to restore the NGC and Chevron fractionation businesses at Mont Belvieu, Texas as independent, viable competitors; and

Whereas, the purpose of this Hold Separate and the Consent Agreement is to:

(i) Preserve the property to be divested as a viable independent business pending its divestiture as a viable and ongoing enterprise;

(ii) Remedy any anticompetitive effects of the Proposed Combination; and

(iii) Preserve the property to be divested as an ongoing, competitive entity engaged in the same business in which it is presently employed until divestiture is achieved; and

Whereas, NGC's entering into this Hold Separate shall in no way be construed as an admission by NGC that the Proposed Combination constitutes a violation of any statute; and

Whereas, NGC understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the Proposed Combination will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting periods for any transactions that are part of the Proposed Combination and are subject to any Hart-Scott-Rodino waiting period that has not yet expired, and unless the Commission determines to reject the Consent Agreement, it will not seek further relief from NGC with respect to the Proposed Combination, except that the Commission may exercise any and all rights to enforce this Hold Separate, the Consent Agreement to which it is annexed and made a part thereof, and the order contained therein, once it becomes final, and in the event that the required divestiture is not accomplished, to seek divestiture of the property to be divested, and other relief, as follows:

1. NGC agrees to execute and be bound by the Consent Agreement;

2. NGC agrees that from the date of its signing of the Consent Agreement until the earliest of the dates listed in subparagraphs 2.a - 2.c, it will comply with the provisions of paragraphs 3, 4, 5 and 6 of this Hold Separate:

a. Three business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the Consent Agreement, unless by that date the Commission has finally accepted such Agreement;

c. The day after the divestitures required by the Consent Agreement have been completed.

3. With respect to the fractionation facility located in the city of Mont Belvieu, Chambers County, Texas, partially owned by NGC and known as Mont Belvieu I ("MB I"), NGC agrees to cease serving as the commercial operator within thirty days (30) after signing the

Consent Agreement, provided that the other party to the MB I Ownership Agreement agrees to be installed as the commercial operator of MB I by that date. In the event that the other party to the MB I Ownership Agreement has not elected to become the Commercial Operator within said thirty (30) day period, NGC will hold its interests in the assets and business of MB I separate and apart on the following terms and conditions:

a. NGC's rights, obligations and duties as the commercial operator of MB I shall be exclusively administered by David Rook. All NGC employees who are necessary to perform, or in any way assist in the performance of, any of the activities of the commercial operator of MB I shall report to Mr. Rook, and NGC shall provide the Commission with a list of all such employees, together with a full description of the assigned duties of each listed employee and an explanation of how such duties are necessary for the effective functioning of the commercial operator of MB I, which list shall be updated whenever its membership or any member's assigned duties change. NGC shall have no authority to remove Mr. Rook or any other NGC employee thus assigned to report to him, except for cause.

b. Except as provided by this Hold Separate, neither Mr. Rook nor any employee of NGC named in the list required in paragraph 3.a above shall disclose any confidential information concerning MB I to an NGC employee not named on any such list or use confidential information for any purpose other than in the performance of that employee's assigned duties enumerated in the list required in paragraph 3.a above. Said employees shall enter a confidentiality agreement prohibiting disclosure of confidential information. Neither Mr. Rook nor any NGC employee assigned to report to him pursuant to this Hold Separate shall participate in any business decision or attempt to influence any such decision involving any other fractionation facility in which NGC has an interest. Neither Mr. Rook or any NGC employees assigned to report to him pursuant to this Hold Separate shall have access to any confidential information concerning any other fractionation facility in which NGC has an interest. Meetings of the MB I Management Committee during the term of this Hold Separate shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Hold Separate; and

c. NGC shall do nothing to prevent, impede or interfere with the person or entity that succeeds NGC as either the commercial operator

or the facility operator of MB I in undertaking reasonable efforts to offer employment to any NGC employees who assist in the performance of any activities that NGC engages in as the commercial operator at MB I or as the facility operator at MB I, respectively.

4. With respect to the fractionation facility located in the city of Mont Belvieu, Chambers County, Texas, and owned by a partnership known as Gulf Coast Fractionators ("GCF") in which NGC is a partner, NGC agrees to cease serving as the commercial operator within thirty days(30) after signing the Consent Agreement, provided a replacement agrees to be installed as the commercial operator of GCF by that date. Within one hundred and twenty (120) days after the signing of the Consent Agreement, NGC shall cease to serve as the facility operator of GCF, provided a replacement agrees to be installed as the facility operator of GCF by that date. In the event that a replacement has not elected to assume the activities of the commercial operator of GCF within the thirty (30) day period provided or that a replacement has not elected to assume the activities of the facility operator of GCF within the one hundred and twenty (120) day period provided, NGC will hold its interests in the assets and business of GCF separate and apart on the following terms and conditions:

a. NGC's rights, obligations and duties as the commercial operator of GCF, in the first instance, and as the facility operator of GCF, in the second instance, shall be exclusively administered by an NGC designee. In either instance, all NGC employees who are necessary to perform, or in any way assist in the performance of, any of the activities being administered by said designee shall report to said NGC designee, and NGC shall provide the Commission with a list of all such employees, together with a full description of the assigned duties of each listed employee and an explanation of how such duties are necessary for the effective functioning of, in the first instance, the commercial operator of GCF, and in the second instance, the facility operator of GCF, which list shall be updated whenever its membership or any member's assigned duties changes. NGC shall have no authority to remove its designee or any other NGC employee thus assigned to report to said designee, except for cause.

b. Except as provided by this Hold Separate, neither the NGC designee to be identified pursuant to paragraph 4.a above nor any employee of NGC named in the list required by paragraph 4.a above

shall disclose any confidential information concerning GCF to an NGC employee not named on any such list or use confidential information for any purpose other than in the performance of that employee's assigned duties enumerated in the list required in paragraph 4.a above. Said employees shall enter a confidentiality agreement prohibiting disclosure of confidential information. Neither the NGC designee nor any NGC employee assigned to report to this individual pursuant to this Hold Separate shall participate in any business decision or attempt to influence any such decision involving any other fractionation facility in which NGC has an interest. Neither the NGC designee nor any NGC employees assigned to report to him pursuant to this Hold Separate shall have access to any confidential information concerning any other fractionation facility in which NGC has an interest. Meetings of the GCF Management Committee during the term of this Hold Separate shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Hold Separate.

5. With respect to GCF, NGC further agrees:

a. To do nothing to prevent, impede or interfere with the person or entity that succeeds NGC as either the commercial operator or the facility operator of GCF in undertaking reasonable efforts to offer employment to any NGC employees who assist in the performance of any activities that NGC engages in as the commercial operator at GCF or as the facility operator at GCF, respectively; and

b. In its capacity as a GCF partner, NGC shall sponsor and support an amendment to the GCF Partnership Agreement to allow any two partners (together holding at least a 50% ownership interest in GCF) to commit GCF to undertake a GCF Expansion Project, while providing that a partner may choose to limit its participation in the costs and benefits of such Project. Until such time as the GCF Partnership Agreement is so amended, NGC shall vote in favor of any GCF Expansion Project proposed by another GCF partner, and furthermore NGC shall take no action to prevent, block, delay or impede in any way any GCF Expansion Project, but rather shall provide all reasonable cooperation necessary to facilitate any such Project sought by other GCF partner or partners, provided however, that this provision does not obligate NGC to accept any financial burden or legal responsibility with respect to such GCF Expansion

Project to the extent that such burden or responsibility is out of proportion to NGC's ownership interest in GCF; and

c. Except as permitted in this Hold Separate, NGC shall not participate in any matter or negotiations pertaining to fractionation fees or other terms pursuant to which customers other than NGC obtain fractionation services at GCF.

6. From the date of the signing of the Consent Agreement, NGC shall take no action impairing the viability and marketability of the Property to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or business of the property to be divested, except in the ordinary course of business and except for ordinary wear and tear. From the date of the signing of the Consent Agreement, NGC shall take no action that would in any manner impair, impede or restrict its ability to comply with any provisions of the Consent Agreement.

7. NGC waives all rights to contest the validity of this Hold Separate.

8. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to NGC made to its principal office, NGC shall permit any duly authorized representative or representatives of the Commission:

a. Access, during the office hours of NGC and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of NGC relating to compliance with this Hold Separate; and

b. Upon five (5) days' notice to NGC and without restraint or interference from it but in the presence of its counsel, to interview officers or employees of it regarding any such matters.

9. Should the Federal Trade Commission seek in any proceeding to compel NGC to divest itself of the property to be divested under the Consent Agreement, or any other assets that it may hold, or to seek any other injunctive or equitable relief, NGC shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Proposed Combination. NGC also waives all rights to contest the validity of this Hold Separate.

10. This Hold Separate shall be binding upon NGC upon the signing of the Consent Agreement. NGC agrees that should it violate any of the provisions of this Hold Separate, it is subject to the payment of up to ten thousand dollars (\$10,000) for each such violation. NGC also agrees that the violation of any of the provisions of this Hold Separate may subject NGC to such other and further equitable relief as a United States district court may deem appropriate to grant.

IN THE MATTER OF

BUDGET MARKETING, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
ELECTRONIC FUND TRANSFER ACT, REGULATION E AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3698. Complaint, Dec. 13, 1996--Decision, Dec. 13, 1996

This consent order prohibits, among other things, an Iowa-based telemarketer of magazine subscriptions and 11 of its dealers from misrepresenting either that they are selling magazines or the cost and conditions of the subscriptions they are selling. The consent order also prohibits the respondents from: threatening and harassing consumers in order to collect payments; failing to honor offers that allow cancellation; and violating the Electronic Fund Transfer Act.

Appearances

For the Commission: *Joseph J. Koman.*

For the respondents: *John R. Mackaman, Dickinson, Mackaman, Tyler & Hagen, Des Moines. IA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Electronic Fund Transfer Act and Regulation E, its implementing Regulation, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Budget Marketing, Inc., a corporation, and Charles A. Eagle, individually; Dennis H. Gougion, individually; Dale T. Lenard, individually, and who has done business as Mega-Magazine Service, Colorado Dawn, and key Concept; Charles P. Donly, individually, and doing business as Budget Renewal Service; Roy Golden, individually, and doing business as American Marketing Service; Dave Keown, individually, and who has done business as Publishers Marketing; Richard Prochnow, individually, and doing business as Direct Sales International; John Harrison, individually, and who has done business as a telemarketer of magazine subscriptions; Dale Branson, individually, and doing business as Leisuer Day Marketing; Steven Johnson, individually, and who has done business as a telemarketer of magazine subscriptions; and William J. Stemple, Sr., individually, and doing business as Budget Marketing of Virginia; hereinafter

sometimes referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Budget Marketing, Inc., hereinafter Budget Marketing, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 1171 Seventh Avenue, in the city of Des Moines, State of Iowa.

Respondents Charles A. Eagle and Dennis H. Gougion have formulated, directed and controlled the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Messrs. Eagle and Gougion's office and principal place of business are the same as that of respondent Budget Marketing.

Budget Marketing is engaged in the sale, by subscription, of magazines and other publications, throughout the United States, through its own representatives and its franchises, dealer and independent contractor activities.

PAR. 2. Respondents Dale T. Lenard, individually, and who has done business as Mega-Magazine Service, Colorado Dawn, and Key Concept, Colorado Springs, Colorado; Charles P. Donly, individually, and doing business as Budget Renewal Service, Minneapolis, Minnesota; Roy Golden, individually, and doing business as American Marketing Service, Des Moines, Iowa; Dave Keown, individually, and who has done business as Publishers Marketing, Arvada, Colorado; Richard Prochnow, individually, and doing business as Direct Sales International, Atlanta, Georgia; John Harrison, individually, and who has done business as a telemarketer of magazine subscriptions, Buffalo, New York; Dale Branson, individually, and doing business as Leisure Day Marketing, Tampa, Florida; Steven Johnson, individually and who has done business as a telemarketer of magazine subscriptions, Des Moines, Iowa; and William J. Stemple, Sr., individually, and doing business as Budget Marketing of Virginia, Virginia Beach, Virginia, are engaged or have been engaged in the sale, by subscriptions, or magazines and other publications and services to the consuming public.

The aforementioned respondents cooperate in carrying out the acts and practices hereinafter set forth.

PAR. 3. Respondents are now and have been engaged in the advertising, offering for sale, sale, or distribution of magazines and

other publications and of merchandise and services relating to such products, as well as of subscriptions to purchase such products, and in the collection or attempted collection of allegedly delinquent accounts for subscription or other contracts, in or affecting commerce.

The magazines and other publications which Budget Marketing, through its own representatives, as well as the above-named franchisees, dealers or individual contractors, sells nationwide, pursuant to subscription sales contracts include those published by national publishers of business and professional magazines and consumer magazines. All such products, whether magazines, books or any other printed matter, will hereinafter be referred to as "publications."

Subscriptions sales are made to consumers or members of the general public, hereinafter sometimes referred to as "customers," "subscribers" or "purchasers," pursuant to contracts which generally run from two to five years and, depending upon the number and type of publications selected by the customer, vary in price from approximately \$600 to \$1,000.

Budget Marketing's gross revenues derived from subscription sales of magazines and other publications through its own representatives, and its dealers, and independent contractors have averaged in excess of twenty (20) million dollars annually during the time period covered by this complaint.

PAR. 4. In the course and conduct of its business of selling publications pursuant to subscription contracts, as aforesaid, Budget Marketing has entered into agreements with numerous individuals located throughout the United States, including the parties named individually herein. Said individuals, referred to by respondents as "franchisees," "dealers," or independent contractors, through personnel variously designed as "telemarketers," "verifiers," "sales personnel," "closers," "solicitors," or otherwise hereinafter referred to as "representatives" have induced substantial numbers of customers to subscribe to national publications so offered for sale.

Respondents, through their said dealers and representatives, place into operation and, through various direct and indirect means and devices, control, direct, supervise, recommend and otherwise implement sales methods whereby members of the general public are contacted by mail (post cards) and telephone calls and are induced to enter into subscription agreements, which provide for the purchase of publications and payment therefor on an installment basis. Said

subscription contracts, among other things, make provisions for the listing of publications chosen by the purchaser; the period of delivery; and the terms and conditions for payment. Customers may pay for their subscriptions in monthly or bi-monthly installments via cash, credit card charge, or electronic fund transfer. This method of sale is referred to in the industry as "Paid-During-Service" (PDS).

The subscription order is thereafter returned by the representative to the dealer for processing. The dealer in turn forwards the contract and various forms, reports and other documents to respondent Budget Marketing for further processing.

Ultimately, the subscriber receives, if a monthly installment cash payment plan is selected, among other things, a book of coupons, prepared by respondent Budget Marketing, with instructions to detach and submit a single coupon with each monthly payment. Payments are made, as directed, either to the dealer or to the respondent Budget marketing depending upon whether or not the dealer is equipped to handle such deferred payments. If payment is made directly to Budget Marketing, it pays the dealer the amount due him or her, by credit or otherwise. If the dealer receives payment from the subscriber, he or she in turn remits to Budget Marketing the amount due it. In either event, respondent Budget Marketing receives and accepts the revenues from said sales of publications, either directly from the subscriber or indirectly from the dealer.

In the manner aforesaid, respondent Budget Marketing, directly or indirectly controls, furnishes the means, instrumentalities, services and facilities for, approves and accepts the pecuniary and other benefits flowing from the acts, practices and policies hereinafter set forth, of its respective dealers and representatives, hereinafter collectively referred to as respondent representatives.

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

PAR. 5. In the course and conduct of its subscription sales business, as aforesaid, respondent Budget Marketing causes, and has caused said publications, when sold, to be shipped from their places of business or sources of supply by mail to purchasers thereof located in the same and various states of the United States other than the state of origination and has transmitted and received and caused to be transmitted and received in the course of selling, delivering, and collecting payment for said publications among and between the several states of the United States, subscription orders, contracts, invoices, checks, collection notices and various other kinds of

commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of business in such products and commercial intercourse in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, as aforesaid, and for the purpose of inducing members of the general public to enter into subscription agreements, respondents, directly or through their representatives, utilize sales promotional materials or other means and instrumentalities furnished, approved or ratified by respondent Budget Marketing. In conjunction therewith, they have made certain oral and written statements and representations concerning the terms and conditions of said subscription contracts, their renewal or cancellation, special offers, the nature and purpose of the solicitation, and the identity of an organization purportedly involved in the solicitation. In the foregoing manner, respondents and their representatives have represented, directly or indirectly:

(a) That they are conducting or participating in *bona fide* sweepstakes, surveys, or contests.

(b) That publications or other products will be given free, or for the cost of mailing, handling, editing or printing of said publications, or at special or reduced prices.

PAR. 7. In truth and in fact:

(a) Respondents and their representatives were not conducting or participating in *bona fide* sweepstakes, surveys, or contests but, to the contrary, were engaged in inducing the general public to enter into subscription agreements.

(b) Publications or other products were not given free, nor solely for the cost of mailing, handling, editing, printing of said publications, nor at special or reduced prices. To the contrary, the subscription contracts provided for payment to cover respondents' regular or prevailing subscription contract prices.

Therefore, the statements and representations as set forth in paragraph six hereof were, and are, misleading and deceptive.

PAR. 8. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of and payment for said publications by the general public, respondents and

their representatives, directly or indirectly, have engaged in the following additional acts and practices:

(a) In a substantial number of instances, they have stated approximate costs of a subscription contract on a weekly basis, in conjunction with statements of typical subscription periods as, for example, a cost of a few dollars per week and a period of 60 months. Respondents and their representatives falsely and deceptively fail to disclose, in connection with such statements, the material fact that their contracts seldom, if ever, provide for weekly installment payments, or for payments spread over 60 months. In truth and in fact, the contracts require monthly installment payments of substantially higher amounts over a substantially shorter period of time than stated during such oral presentations.

(b) In a substantial number of instances, they have induced customers to enter into a subscription agreement by falsely and deceptively representing or implying that all publications covered by said contract will be delivered over the same period of time, such as 60 months. In truth and in fact, subscription periods for different publications covered by the same contract are frequently different.

(c) In a substantial number of instances, they have induced customers to enter into a subscription agreement by failing to fully inform the customers as to the following material facts: cost, name and number of issues of each publication; the total cost of the contract; the amount of the downpayment; the amount and due date of each payment and the total number of such payments.

(d) In their efforts to collect what respondents elect to treat as delinquent accounts of subscribers, they have, from time to time, resorted to telephone calls at unreasonable hours and other forms of harassment, including but not limited to those set forth below, by means of which they have unfairly, falsely and deceptively represented, directly or indirectly:

(1) That the general or public credit rating or standing of any such customer will be adversely affected unless payment is made.

(2) That the failure of a customer to remit money to respondents will result in the institution of legal action to affect payment. In truth and in fact, respondents seldom if ever take any action, including legal action, which adversely affects the general or public credit rating of such subscribers.

Therefore, respondents' statements, representations, acts and practices, and their failure to reveal material facts, as set forth herein were, and are, unfair, false, misleading, and deceptive acts and practices.

PAR. 9. In the course and conduct of their business, as described above, most of the respondents have, on numerous occasions, violated Section 1693e(a) of the Electronic Fund Transfer Act and Section 205.10(b) of Regulation E by failing to satisfy the requirement that preauthorized electronic fund transfers may be authorized by the consumer only in writing and not by a payee signing a written authorization on the consumer's behalf, with only an oral authorization from the consumer.

PAR. 10. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, and the Electronic Fund Transfer Act and Regulation E, its implementing regulation.

DECISION AND ORDER

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

The respondents, 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 a 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 Budget Marketing, Inc. ("BMI") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 1171 Seventh Avenue, in the City of Des Moines, State of Iowa.

Respondents Charles A. Eagle and Dennis H. Gougion have formulated, directed and controlled the policies, acts and practices of said corporation and their address is the same as that of said corporation.

2. Respondent Dale T. Lenard is an individual who has done business as Mega-Magazine Service, Colorado Dawn, and Key Concept, who currently resides at 245 N. Rancho Santa Fe Road, Suite 205, in the city of San Marcos, State of California.

3. Respondent Charles P. Donly is an individual doing business as Budget Renewal Service, with his office and principal place of business located at 101 W. Burnsville Parkway, Suite #225, in the City of Burnsville, State of Minnesota.

4. Respondent Roy Golden is an individual doing business as American Marketing Services, with his office and principal place of business located at 4513 72nd, in the City of Des Moines, State of Iowa.

5. Respondent Dave Keown is an individual who had done business as Publishers Marketing, who currently resides at 7340 West 74th Place, in the City of Arvada, State of Colorado.

6. Respondent Richard Prochnow is an individual doing business as Direct Sales International, with his office and principal place of business located at 2550 Heritage Ct. NW, Suite #106 in the City of Atlanta, State of Georgia.

7. Respondent John Harrison is an individual who has done business as a telemarketer of magazine subscriptions, who currently resides at 6505 Metcalf, Suite #106, in the City of Shawnee Mission, State of Kansas.

8. Respondent Dale Branson is an individual doing business as Leisure Day Marketing, with his office and principal place of business located at 12101 N. 56th Street, #3, in the City of Temple Terrace, State of Florida.

9. Respondent Steven Johnson is an individual who has done business as a telemarketer of magazine subscriptions, who currently resides at 1609 Twana Drive, in the City of Des Moines, State of Iowa.

10. Respondent William J. Stemple, Sr., is an individual business as Budget Marketing of Virginia, with his office and principal place of business located at 240 Mustang Trail, Suite #6, in the City of Virginia Beach, State of Virginia.

ORDER

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

(a) "*Consumer*" shall mean a purchaser, subscriber, customer, or person being solicited;

(b) "*Paid-During-Service Plan*" ("*PDS Plan*") shall mean the offering for sale or sale of a combination of two or more publications to a consumer, for a term of more than one year, payment for which is to be made in three or more installments;

(c) "*Subscription order*" shall mean an arrangement made over the telephone with a consumer for the purchase of publication subscriptions pursuant to a paid-during-service plan in which the seller does not require the purchaser's signature to obtain the publication subscriptions.

(d) "*Service Company*" shall mean an organization other than the seller of subscription orders to whom notices of cancellation may be sent.

(e) "*Telemarketing*" means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of three or more telephones.

I.

It is ordered, That respondent Budget Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondents Charles A. Eagle, individually; Dennis H. Gougion,

individually; Dale T. Lenard, individually, and who has done business as Mega-Magazine Service, Colorado Dawn, and Key Concept; Charles P. Donly, individually, and doing business as Budget Renewal Service; Roy Golden, individually, and doing business as American Marketing Service; Dave Keown, individually, and who has done business as Publishers Marketing; Richard Prochnow, individually, and doing business as Direct Sales International; John Harrison, individually; Dale Branson, individually, and doing business as Leisure Day Marketing; and Steven Johnson, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, licensee, dealer, independent contractor, or other device, in connection with, via telemarketing, the advertising, offering for sale, sale or distribution of magazines or any other publications or merchandise, or subscriptions to purchase any such products or services, or in the collection or attempted collection from any consumer of any delinquent contract or other account, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Failing to comply, in connection with any pre-authorized Electronic Fund Transfer in payment of any subscription order or payment for other products or services, with Section 205.10(b) of Regulation E, 12 CFR 205, which states:

Preauthorized electronic fund transfers from a consumer's account may be authorized by the consumer only in writing, and a copy of the authorization shall be provided to the consumer by the party that obtains the authorization from the consumer.

Respondents are also enjoined from failing to comply with the Official Commentary to 12 CFR 205.10, Question 10-18.6. If Regulation E is in the future amended or officially interpreted either by a contested-case final decision binding on the government (all rights of appeal having expired) by a court of the United States, or by the Federal Reserve Board, or by amendment of relevant portions of the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, defendants' compliance with such amendment or interpretation will not be deemed a violation of this order.

(b) Representing, directly or indirectly, that any representative or other person calling upon a customer or prospective customer for the purpose or with the result of inducing or securing a subscription to,

order for, or the purchase or agreement to purchase any products or services:

(i) Is conducting or participating in any survey, quiz or contest, or is engaged in any activity other than soliciting business; or otherwise misrepresenting, in any manner, the purpose of the call or solicitation;

(ii) Represents, or otherwise claims to be performing services for any educational, charitable, social or other organization, or any individual or firm other than one engaged in soliciting business; or otherwise misrepresenting, in any manner, the identity of the solicitor or of his firm and of the business they are engaged in;

(iii) Will give any product or service free or as a gift or without cost or charge, or that any product or service can be obtained free or as a gift or without cost or charge, in connection with the purchase of, or agreement to purchase, any product or service, unless the stated price of the product or service required to be purchased in order to obtain such free product or gift is the same or less than the customary and usual price at which such product or service has been sold separately from such free or gift item, and in the same combination if more than one item is required to be purchased, for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made;

(c) Failing, clearly, emphatically and unqualifiedly to reveal, at the outset of the initial and all subsequent contacts or solicitations of purchasers or prospective purchasers, whether directly or indirectly, or by telephone, by written or printed communication, or person-to-person, that the purpose of such contact or solicitation is to sell products or services as the case may be, which shall be identified with particularity at the commencement of each such contact or solicitation;

(d) Representing, directly or indirectly, that any price for any product or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost; or that any price is a special or reduced price unless it constitutes a significant reduction from an established selling price at which such product or service has been sold in substantial quantities by the seller in the same combination of items in the recent and regular course of its business; or otherwise misrepresenting, in any manner, the savings which will be accorded or made available to purchasers;

(e) Representing, directly or indirectly, that any subscription contract or other purchase agreement can be cancelled at the purchaser's option, or that the right to cancel will be accorded to any purchasers, when there is no provision in such contract or agreement for cancellation on the terms and conditions represented, and unless cancellation is in fact granted on such terms and conditions;

(f) Refusing or failing upon request to cancel a contract when the representation has been made directly or indirectly that the contract will be cancelable;

(g) Making any reference or statement concerning "a few dollars per week," "60 months," or any other statement as to a sum of money or duration or period of time in connection with a subscription contract or other purchase agreement which does not in fact provide, at the option of the purchaser, for the payment of the stated sum, at the stated interval, and over the stated duration or period of time; or misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to purchasers or prospective purchasers;

(h) Failing, in the case of PDS Plan sales, to clearly reveal orally prior to the time the subscription contract is agreed to by the customer and in writing on the subscription order form and the sales agreement (or separate schedule), with such conspicuousness and clarity as will likely to be read by the purchaser, the following terms of the subscription order:

(i) The name, the exact number of issues, and the exact number of months of service of each publication covered by the contract;

(ii) The total cost of each publication and all the publications covered by the contract; and

(iii) The downpayment or first payment required and the number, amount, and due dates of all subsequent installment payments, and the amount of any finance charges;

(iv) The method of payment (*e.g.*, coupon book, credit card, or electronic banking); and

(v) The purchasers right to rescind or cancel the subscription order or sale within three (3) business days after date of receipt of the sales agreement by mailing a notice of cancellation to the seller's address or, if the seller uses a service company, to the service company's address, before the expiration of the cancellation period. It is not a violation of the order if BMI adopts a cancellation policy giving the consumer a longer time to cancel than that set forth herein;

(i) Representing, directly or indirectly, that a subscription contract or other purchase agreement is a "preference list," "guarantee," "route slip" or any kind of document other than a contract or agreement; or otherwise misrepresenting, in any manner, the nature, kind or legal characteristics of any document;

(j) Failing, clearly, emphatically and unqualifiedly to reveal orally and in writing to each consumer before execution, the identity, nature and legal import of any document that he or she is requested or required to execute in connection with the purchase of any product or service;

(k) Engaging in any unfair or deceptive practices in order to effect payment of any account by any means, including but not limited to the following:

(i) Communicating with consumers in a harassing or abusive manner;

(ii) Making telephone calls to consumers before 8 a.m. or after 9 p.m. at the consumer's time zone;

(iii) Using forms or any other printed or written materials purporting to be simulated legal documents or process when in fact they are not;

(iv) Representing, directly or indirectly, that, in the event of non-payment or delinquency in any account or alleged debt arising from any subscription agreement, the credit rating of any consumer may be adversely affected unless the information concerning such delinquency is actually referred to a *bona fide* credit reporting agency;

(v) Threatening to take action that cannot legally be taken, or that is not intended to be taken;

(vi) Representing, directly or indirectly, that attorneys' fees or other amounts will be added to a consumer's debt if the consumer fails to pay the amount allegedly owed and legal action is taken, unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(vii) Misrepresenting in any manner the action to be taken or results of any action which may be taken to effect payment of any delinquent account or alleged debt;

(viii) Using any other practice which debt collectors are prohibited from using by the Fair Debt Collection Practices Act;

(l) In the case of PDS Plan sales, cancelling any subscription contract for any reason other than a breach by the subscriber or pursuant to a request from the consumer;

(m) Failing to furnish to each consumer a final copy of the consumer's subscription contract, showing either the date mailed to the consumer or the date the consumer signs the contract, and the name of the seller with the seller's address and telephone number or, if the seller uses a service company, the address and telephone number of the service company;

(n) Failing to provide on a sheet separable from the written sales agreement a clearly understandable form which the purchaser may use as a notice of cancellation;

(o) Failing to cancel the sales agreement where the purchaser's written cancellation request is received within fourteen (14) calendar days from the date of mailing or delivering the sales agreement form to the purchaser, and, in such event, refund within thirty (30) days after cancellation any payment received from the purchaser;

(p) In the case of PDS Plan sales, failing to include on the cover of each coupon book furnished to consumers electing to use payment coupons:

(i) A statement showing a total number of coupons in the book, the dollar amount of each such coupon, and the total dollar amount of all such coupons;

(ii) A legend stating: "Check the number of coupons in this book and their amounts against your original subscription contract," and

(iii) The seller's address and telephone number or, if the seller uses a service company, the service company's address and telephone number on the cover of the first separate inside page or on each coupon;

(q) In the case of PDS Plan sales, in the event of the discontinuance of publication, or other unavailability, of any magazines subscribed for, at any time during the life of the contract, failing to offer the subscriber the right to substitute one or more magazines or other publications of the subscriber's choice from respondents' current list of publications on a pro rata dollar-for-dollar basis, or the extension of subscription periods of magazines already selected;

(r) Failing or refusing to cancel, at the subscriber's sole option, all or any portion of a subscription contract entered into after entry of

this order whenever any misrepresentation prohibited by this order has been made; and

(s) Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner or as to things prohibited by the order.

Provided, however, in the event the Commission promulgates a trade regulation rule prohibiting deceptive (including fraudulent) and other abusive telemarketing activities applicable to respondents' sale of magazine subscription contracts and other products and services to consumers and to their collection of delinquent accounts, which trade regulation rule contains provisions that contradict any provisions of this order, the Commission, upon a request from respondent(s), shall reopen this proceeding and modify this order to conform it to the Rule.

II.

It is further ordered:

(A) That respondents shall deliver, by registered mail, or in person, a copy of this order to each of their present and future dealers, franchisees, licensees, employees, salespersons, agents, solicitors, independent contractors, and other representatives who are not themselves respondents and who sell or promote the products or services included in this order, or who make or attempt to make collections for the accounts of any of the respondents hereto;

(B) That respondents shall provide each person described in paragraph (A) above with a form, returnable to respondents clearly stating each person's intention to be bound by and to conform his or her business practices to the requirements of this order;

(C) That respondents shall inform all such present and future dealers or franchisees, licensees, employees, salespersons, agents, solicitors, independent contractors, or other representatives who are not themselves respondents and who sell or promote the products or services included in this order, or who make or attempt to make collections for the account of any of the respondents hereto, that respondents shall not use any third party; or the services of any third party, unless such third party agrees to, and does, file notice with

respondents that he or she will be bound by and conform his or her business practices to the requirements contained in this order;

(D) That respondents shall not use any such person described in paragraph (A) above to sell or promote the products or services in this order or to make or attempt to make collections for the account of respondents, if such person will not agree to so file notice with the respondents and be bound by the provisions contained in this order;

(E) That the obligations of respondents as set forth in paragraphs (A) through (D) above and in paragraphs (F) and (G) hereafter of this order shall, with respect to persons engaged solely to make, or attempt to make, collections for the account of the respondents, apply only to compliance with those provisions of this order relating to said activity and said persons solely so engaged shall be required under this order only to conform their practices to the provisions of paragraph (k) of this order;

(F) That respondents shall institute and continue for any period they are engaged in practices covered by this order a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order; and

(G) That respondents shall discontinue dealing with any persons (including dealers, independents, and outside collection agents or other third-parties) who, as revealed by the aforesaid program of surveillance, continue the deceptive acts or practices prohibited by this order.

III.

It is further ordered, That the respondent BMI Corporation shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent, such as dissolution, assignment, reorganization 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.

IV.

It is further ordered, That the individually named respondents shall notify the Commission at least thirty (30) days prior to sale or discontinuance of the entities through which they have been engaging

in the sale of magazine subscription contracts or of the creation of any additional business entities (doing business as or trading as firms), or any decision to enter or entry into any new business engaged in the telemarketing of any product or service in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

V.

It is further ordered, That this order shall hereafter govern the conduct of the respondents, and, to that end, the Decision and Order in Docket No. 8831, issued on August 3, 1972, is hereby vacated insofar as it applies to respondents in this matter.

Complaint

122 F.T.C.

IN THE MATTER OF

TELEBRANDS CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3699. Complaint, Dec. 13, 1996--Decision, Dec. 13, 1996*

This consent order prohibits, among other things, a Virginia-based mail order company and its officer from representing that their antenna improves television and radio reception, provides the best, crispest, clearest or most focused television reception achievable without cable installation, and requires any claim concerning the relative or absolute performance, attributes, or effectiveness of any product intended to improve a television's or radio's reception, sound, or image to be truthful and substantiated by competent and reliable evidence.

Appearances

For the Commission: *Donald D'Amato* and *Michael Bloom*.

For the respondents: *Robert Ullman, Bass & Ullman*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Telebrands Corp., a corporation; and Ajit Khubani, individually and as an officer and director of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Telebrands Corp., also doing business as Uncle Bernie's and U.S. Buyers Network, and previously having been known as Telebrands Direct Response Corp. and Telebrands Wholesale Corp., is a Virginia corporation with its office and principal place of business located at 2428 Patterson Avenue, Roanoke, Virginia.

Respondent Ajit Khubani is an officer and director of the corporate respondent. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondent, including the various acts and practices alleged

in this complaint. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents have advertised, labelled, offered for sale, sold, and distributed to consumers the Sweda Power Antenna, a device intended to capture television and radio signals; the WhisperXL, a sound amplification device intended to be worn by the user; and other products.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

SWEDA POWER ANTENNA

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements for the Sweda Power Antenna, including but not necessarily limited to the attached Exhibit A. These advertisements contain the following statements:

A. "Amazing New Product Gives Crisp, Clear TV Reception WITHOUT Cable!";

B. "Until recently, the only convenient way to guarantee great TV reception was to get cable installed. But who wants to pay those irritating monthly cable fees just to get clear reception? Now . . . a new device has been developed . . . [i]t's called the SWEDA Power Antenna and is without a doubt 'the single most important thing you should own if you have a TV!";

C. "Just imagine watching TV and seeing a picture so brilliantly clear that you'd almost swear you were there live! Just plug this tiny 2" x 4" Power Antenna into any ordinary AC outlet, connect your TV and get ready for the best reception you've ever had without cable.";

D. "You'll watch in amazement as YOUR TV set suddenly displays a sharp, focused picture. You literally 'won't believe your eyes!' Even older TV sets suddenly come to life.";

E. ". . . Power Antenna takes that signal and electronically boosts it before it gets to your TV set. The results are amazing!";

F. "WHAT ABOUT MY TV 'DISH' ANTENNA? Return it!.... The truth is that they're no more effective than rabbit-ears, a loop, or rod antenna The incredible SWEDA Power Antenna makes everything else seem obsolete. Just plug it in and watch it work."; and

G. "[Sweda Power Antenna] Works just as good for radio reception too!";

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit A, respondents have represented, directly or by implication, that:

A. The Sweda Power Antenna provides the best, crispest, clearest, or most focused television reception achievable without cable installation;

B. The Sweda Power Antenna takes a television or radio signal and electronically boosts it before it gets to a television or radio; and

C. The installation of a Sweda Power Antenna will more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio dish antenna.

PAR. 6. In truth and in fact:

A. The Sweda Power Antenna does not provide the best, crispest, clearest, or most focused television reception achievable without cable installation;

B. The Sweda Power Antenna does not take a television or radio signal and electronically boost it before it gets to a television or radio; and

C. The installation of a Sweda Power Antenna will not more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio dish antenna.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit A, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Respondents have disseminated or have caused to be disseminated advertisements for the Sweda Power Antenna, including but not necessarily limited to the attached Exhibit A, that make satisfaction or money-back guarantees for the Sweda Power Antenna. These advertisements make the following statement: "Experience the best reception you've ever had or simply return it [Sweda Power Antenna] within 30 days for a prompt and courteous refund."

PAR. 10. Through the use of the statement contained in the advertisements referred to in paragraph nine, including but not necessarily limited to the attached Exhibit A, respondents have represented, directly or by implication, that the purchaser of a Sweda Power Antenna would readily obtain a prompt refund of the full purchase price upon timely demand and return of the Sweda Power Antenna.

PAR. 11. In truth and in fact, in numerous instances, purchasers could not readily obtain a prompt refund of the full purchase price of the Sweda Power Antenna upon timely demand and return of the Sweda Power Antenna. Respondents provided refunds only after delays of several months or only after requiring the purchaser to satisfy other conditions not previously disclosed. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

WHISPERXL

PAR. 12. Respondents have disseminated or have caused to be disseminated advertisements for the WhisperXL, including but not necessarily limited to the attached Exhibits B and C. These advertisements contain the following statements:

A. "HEAR A WHISPER UP TO 100 FEET AWAY! Incredible WhisperXL Gives You Super Hearing" (Exhibits B and C);

B. "The WhisperXL may look like a simple device designed to hide right behind your ear, but is actually a major breakthrough in sound enhancement technology." (Exhibit B);

C. "The WhisperXL . . . is actually a major breakthrough in sound interception and amplification technology." (Exhibit C);

D. "State-of-the-art electronic engineering actually allows you to hear a whisper up to 100 feet away." (Exhibits B and C);

E. "Incredibly, you'll be able to hear people talking in the next room loudly and clearly, or a pin drop from 50 feet away!" (Exhibit C);

F. "Take a walk outdoors and you'll hear . . . deer coming before they hear you!" (Exhibit C); and

G. "Don't Miss A Word! WhisperXL has dozens of practical uses! Take it to the movies, theater, or lecture hall and you'll never miss a word." (Exhibits B).

PAR. 13. Through the use of the statements contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the attached Exhibits B and C, respondents have represented, directly or by implication, that:

A. The WhisperXL is a major breakthrough in sound enhancement technology;

B. The WhisperXL is an effective hearing aid;

C. The WhisperXL is designed to produce and produces clear amplification of whispered or normal speech, television, radio, and other mid- to high-frequency sounds at a distance of more than a few feet;

D. The WhisperXL allows the user to hear a whisper from as far as 100 feet away; and

E. The WhisperXL allows the user to hear a pin drop from 50 feet away.

PAR. 14. In truth and in fact:

A. The WhisperXL is not a major breakthrough in sound enhancement technology;

B. The WhisperXL is not an effective hearing aid;

C. The WhisperXL is not designed to produce and does not produce clear amplification of whispered or normal speech, television, radio, and other mid- to high-frequency sounds at a distance of more than a few feet;

D. The WhisperXL does not allow the user to hear a whisper from as far as 100 feet away; and

E. The WhisperXL does not allow the user to hear a pin drop from 50 feet away.

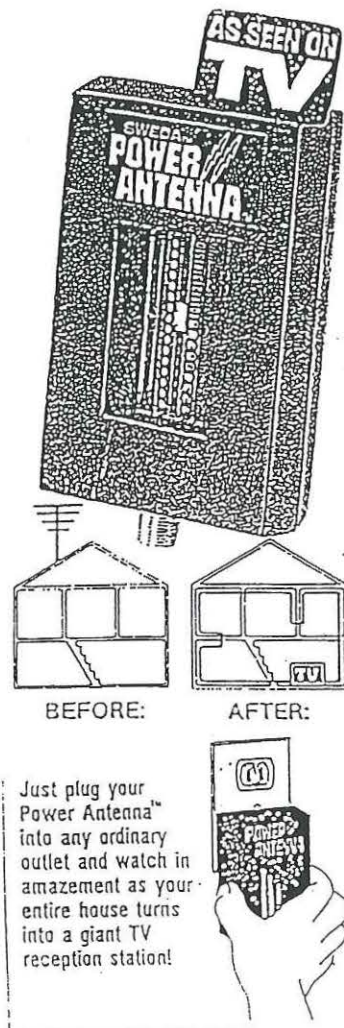
Therefore, the representations set forth in paragraph thirteen were, and are, false and misleading.

PAR. 15. Through the use of the statements contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the attached Exhibits B and C, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph thirteen, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 16. In truth and in fact, at the time they made the representations set forth in paragraph thirteen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph fifteen was, and is, false and misleading.

PAR. 17. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A



Amazing New Product Gives Crisp, Clear TV Reception WITHOUT Cable!

Until recently, the only convenient way to guarantee great TV reception was to get cable installed. But who wants to pay those irritating monthly cable fees just to get clear reception? Now, thanks to years of micro-electronic research, a new device has been developed that's so advanced it actually makes other antennas a thing of the past. It's called the SWEDA™ Power Antenna and is without a doubt "the single most important thing you should own if you have a TV!"

A PICTURE OF ADVANCED TECHNOLOGY!

Just imagine watching TV and seeing a picture so brilliantly clear that you'd almost swear you were there live! Just plug this tiny 2" x 4" Power Antenna into any ordinary AC outlet, connect your TV and get ready for the best reception you've ever had without cable. You'll watch in amazement as YOUR TV set suddenly displays a sharp, focused picture. You literally "won't believe your eyes!" Even older TV sets suddenly come to life. The Power Antenna is so easy to install, so convenient to use, and so incredibly effective that you'll wonder how you ever got by without it!

A THOUSAND FOOT ANTENNA?

Power Antenna is a highly sophisticated electronic product (like a transistor radio) with a simple function. It takes the electrical wiring in your house or apartment (hundreds or thousands of feet) turns it into a giant TV reception

station! It's almost like having an antenna the size of your entire house! Imagine how effective that would be. But there's more, because Power Antenna takes that signal and electronically boosts it before it gets to your TV set. The results are amazing! You can finally enjoy your favorite prime time shows or sports events the way they were meant to be watched.

WHAT ABOUT MY TV "DISH" ANTENNA?

Return it! Millions of these things have been sold in recent years because people were led to believe they would work like a satellite dish. The truth is that they're no more effective than rabbit-ears, a loop, or rod antenna — and people have been struggling with these things for years! The incredible SWEDA™ Power Antenna makes everything else seem obsolete. Just plug it in and watch it work. There's simply NOTHING ELSE better valued on the market today!

LIMITED TIME OFFER!

Electronic antennas like this one normally sell for \$50 or more! But now, for a limited time (if you respond before May 30, 1993), you can have the amazing SWEDA™ Power Antenna for just \$19.95. Experience the best reception you've ever had or simply return it within 30 days for a prompt and courteous refund. You absolutely must see it to believe it! ORDER TODAY.

P.S. Works just as good for reception too! Limit 3 per order.

RESPOND BEFORE MAY 30TH FOR THIS SPECIAL OFFER!

YES! Please rush me the following SWEDA™ Power Antenna(s):

One Power Antenna for just \$19.95 plus \$4 P&H.

SAVE \$11 Two for just \$34.95 plus \$5 P&H.

SAVE \$18 Three for just \$54.95 plus \$6 P&H.

Qty. Extra length 8 foot construction cable just \$2 ea. to \$5.00 more. Expedited \$... VA residents add sales tax.

Payment method: Check Money Order

VISA Mastercard Amex Other Discover Cash Branch

Card # _____ Expiry Date _____

Print Name _____

Address _____

Apt. _____ City _____

State _____ Zip _____

Mail: U.S. Buyert Network, Dept. AT5122
 P.O. Box 10000, Roanoke, VA 24016

EXHIBIT B

HEAR A WHISPER UP TO 100 FEET AWAY!



Incredible WhisperXL™ Gives You Super Hearing For Only \$29.95?

"You'll love your WhisperXL. I guarantee it!"
Steve Allen



"So Small... It Hides Right Behind Your Ear!"

This is the SAME famous WhisperXL™ sound amplification device that has been nationally publicized on TV and in leading publications - similar to those that have been sold in Europe for much, much more! But during this nationwide publicity campaign, TeleBrands is offering them for the unbelievable price of just \$29.95 only to those who respond to this ad before Midnight, October 5, 1994.

High Technology So Small, It Fits Right Behind Your Ear!

Don't be fooled by the small size or appearance of this device. The WhisperXL™ may look like a simple device designed to hide right behind your ear, but is actually a major breakthrough in sound enhancement technology. State-of-the-art electronic engineering actually allows you to hear a whisper up to 100 feet away. It works so incredibly well that you literally won't believe your ears!



A New World Through Super Ears!

Just imagine what it would be like to hear sounds that you couldn't hear before. Studies show that there are thousands of

different sounds that are not normally audible to the average person. Slip on this technologically advanced device and you'll instantly hear like a super hero. Incredibly, you'll be able to hear a pin drop up to 50 feet away! Take a walk outdoors and you'll hear birds sing like you've never heard them sing before, and even hear a deer coming. It's an outdoorsman's dream come true.

Don't Miss A Word!

WhisperXL™ has dozens of practical uses! Take it to the movies, theater, or lecture hall and you'll never miss a word. It's great for watching TV with a spouse - just keep the volume on low and turn on WhisperXL™. She can read while you watch the ball game! Now you can enjoy the crisp, clear sound of a TV or radio playing at low levels, without annoying everyone else in the room. Experience the fascinating world of super hearing - order today! The WhisperXL™ weighs less than an ounce, has 6 sound levels to accommodate your own sound enhancement desires, an on/off switch right at your fingertips and, best of all, it adjusts

and rotates so you can wear the WhisperXL™ behind your left or right ear! WhisperXL™ comes complete with battery and a one year money back guarantee.

Complete 5 Piece Set!



Warning: It is prohibited by law to spy or listen in the private conversations of others without the permission of at least one party.

MAIL BEFORE OCTOBER 5TH FOR THIS AMAZING OFFER!

YES! Please rush me the following sets of WhisperXL.

One WhisperXL for only \$29.95 plus \$3 S&H.

SAVE! Two for only \$54.95 plus \$6 S&H.

SAVE! MORE! Three for \$84.95 plus \$7 S&H.

Qty. Additional batteries just \$2.00 each.

Enclosed \$ _____ VA res. add sales tax.

Payment Method: (Check One)

Check Money Order Visa MC

Amex Discover Cash/Stand

Card # _____

Expire Date _____ / _____

Name _____

Address _____

City _____

State _____ Zip _____

TeleBrands, Dept. XL254H

One American Way, Roanoke, VA 24016

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Exhibit B

EXHIBIT C

ADVERTISEMENT

HEAR A WHISPER UP TO 100 FEET AWAY!

Incredible WhisperXL™ Gives You Super Hearing For \$29.95?

This is the SAME famous WhisperXL™ sound amplification device that has been nationally publicized on TV and in leading publications - similar to those that have been sold in Europe for much, much more! But during this nationwide publicity campaign, TeleBrands is offering them for the unbelievable price of just \$29.95 only to those who respond to this ad before Midnight, September 25, 1994.

High Technology
So Small, It Fits
Right Behind Your Ear!

Don't be fooled by the small size or appearance of this device. The WhisperXL™ may look like a simple device designed to hide right behind your ear, but is actually a major breakthrough in sound interception and amplification technology. State-of-the-art electronic engineering actually allows you to hear a whisper up to 100 feet away. It works so incredibly well that you literally won't believe your ears!



A New World
Through Super Ears!

Just imagine what it would be like to hear sounds that you could never hear before. Studies show that there are thousands of different sounds that are not normally audible to the average person. Slip on this technologically advanced device and



"You'll love your WhisperXL. I guarantee it!"

Steve Allen



Exhibit C

you'll instantly hear like a super hero. Incredibly, you'll be able to hear people talking in the next room loudly and clearly, or a pin drop from 50 feet away! Take a walk outdoors and you'll hear birds sing like you've never heard them sing before, and hear deer coming before they hear you! It's an outdoorsman's dream, come true.

Never Miss A Word!

WhisperXL™ has dozens of practical uses! Take it to the movies, theater, or lecture hall and you'll never miss a word. It's great for watching TV with a spouse - just keep the volume on low and turn on WhisperXL™. She can read while you watch the ball game! Now you can enjoy the crisp, clear sound of a TV or radio playing at low levels, without annoying everyone else in the room. Experience the fascinating world of super hearing - order today!

The WhisperXL™ weighs less than an ounce, has 6 sound levels to accommodate your own sound enhancement desires, an on/off switch right at your fingertips and, best of all, it adjusts and rotates for ultimate comfort so you can wear the WhisperXL™ behind your left or right ear! WhisperXL™ comes complete with battery and a one year money back guarantee.



WARNING: It is prohibited by law to spy or listen to the private conversations of others without the permission of at least one party.

MAIL BEFORE SEPT. 25TH FOR THIS AMAZING OFFER!

YES! Please rush me the following sets of WhisperXL.

- One WhisperXL for only \$29.95 plus \$5 S&H.
- SAVE! Two for only \$54.95 plus \$6 S&H.
- SAVE MORE! Three for \$69.95 plus \$7 S&H.

City, Additional batteries just \$2.00 each.

Enclosed \$ _____, VA res. add sales tax.

Payment Method: (Check One)
 Check Money Order Visa MC
 Amex Discover Carte Blanc

Card # _____

Expire _____

Name _____

Address _____

City _____

State _____

Zip _____

Phone _____

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 New York 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a 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 Telebrands Corp., also doing business as Uncle Bernie's and U.S. Buyers Network, and previously having been known as Telebrands Direct Response Corp. and Telebrands Wholesale Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business located at 2428 Patterson Avenue, Roanoke, Virginia.

Respondent Ajit Khubani is an officer and director of Telebrands Corp. Mr. Khubani, individually or in concert with others, formulates, directs, and controls the policies, acts, and practices of said corporation, and his business address is the same as that of said corporation.

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

ORDER

I.

It is ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the "Sweda Power Antenna" or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that such product:

A. Provides the best, crispest, clearest, or most focused television reception achievable without cable installation; or

B. Will more effectively improve a television's or radio's reception, sound, or image than the installation of a television or radio satellite or external dish antenna.

For purposes of this paragraph "substantially similar product" shall mean any product or device that relies or purports to rely on house wiring to serve as the antenna to capture television or radio signals.

II.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the "Sweda Power Antenna" or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do

forthwith cease and desist from representing in any manner, directly or by implication, that such product takes a television or radio signal and electronically boosts it before it gets to a television or radio unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

For purposes of this paragraph "substantially similar product" shall mean any product or device that relies or purports to rely on house wiring to serve as the antenna to capture television or radio signals.

III.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any product or device intended to improve a television's or radio's reception, sound, or image in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, the relative or absolute performance, attributes, or effectiveness of such product or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by

persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

IV.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, by act or omission, any guarantee of satisfaction or refund offer in connection with the promotion, advertising, offering for sale, sale or distribution of any product. Any such guarantee of satisfaction or refund offer shall be deemed to require the full refund of the purchase price of a product, as well as any shipping, insurance, handling charges, or any other fee or charge paid by the consumer, within seven (7) business days of the respondents' receipt of the consumer's request for a refund pursuant to any guarantee of satisfaction or refund offer made by respondents; provided, however, that respondents may exclude shipping, insurance, handling charges, or any other fee or charge paid by the consumer from the terms of any guarantee of satisfaction or refund offer if such exclusion is clear, conspicuous, and in close proximity to the guarantee of satisfaction or refund offer.

V.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the "WhisperXL" or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do

forthwith cease and desist from representing in any manner, directly or by implication, that such product:

- A. Is a major breakthrough in sound enhancement technology;
 - B. Is an effective hearing aid;
 - C. Is designed to produce or produces clear amplification of whispered or normal speech, television, radio, or other mid- to high-frequency sounds at a distance of more than a few feet;
 - D. Allows the user to hear a whisper from as far as 100 feet away;
- or
- E. Allows the user to hear a pin drop from 50 feet away.

For purposes of this paragraph "substantially similar product" shall not include any hearing aid that has received pre-market approval and/or pre-market clearance from the United States Food & Drug Administration, which approval and/or clearance remains in effect at the time of the making of any of the representations set forth as A through E above.

VI.

It is further ordered, That Telebrands Corp., its successors and assigns, and its officers, and Ajit Khubani, individually and as an officer and director of said corporation, and respondents' agents, servants, representatives, employees, and attorneys, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any hearing aid or other sound amplification device intended to be worn or carried by the user, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, the relative or absolute performance, attributes, or effectiveness of any such aid or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by

persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

For purposes of this paragraph "other sound amplification device intended to be worn or carried by the user" shall not include any television, radio, tape player, compact disc player, or similar device, marketed solely for listening to broadcast, cablecast, or pre-recorded material.

VII.

It is further ordered, That respondents, their successors and assigns, and their officers, for three (3) years after the last date of dissemination of any representation covered by this order, shall maintain and, within ten (10) business days of their receipt of a written request, make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII.

It is further ordered, That respondents, their successors and assigns, and their officers, for three (3) years after service of this order, shall maintain and, within ten (10) business days of their receipt of a written request, make available to the Federal Trade Commission for inspection and copying records demonstrating compliance with the terms and provisions of this order.

IX.

It is further ordered, That respondents, their successors and assigns, and their officers, within thirty (30) days after service of this order, shall provide a copy of this order to each of respondents' current principals, officers, and directors, and to all supervising employees, agents, and representatives having any sales, advertising,

recordkeeping, fulfillment, customer service, or policy responsibility with respect to the subject matter of this order.

X.

It is further ordered, That respondents, their successors and assigns, and their officers, for a period of three (3) years from the date of service of this order, shall provide a copy of this order to each of respondents' principals, officers, and directors, and to each of respondents' supervising employees, agents, and representatives having any sales, advertising, recordkeeping, fulfillment, customer service, or policy responsibility, within three (3) days after such person assumes his or her position; provided, however, that a person who previously has been provided a copy of the order pursuant to paragraph IX need not be provided with another copy pursuant to this paragraph.

XI.

It is further ordered, That the corporate respondent, its successors and assigns, and its officers, shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporate respondent's structure, including but not limited to, change of corporate name or address, place(s) of business, merger, incorporation, dissolution, assignment, or sale which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change which may affect respondents' obligations arising out of this order.

XII.

It is further ordered, That the individual respondent, for a period of seven (7) years from the date of issuance of this order, shall notify the Federal Trade Commission within thirty (30) days of any change in his affiliation with, or change in his active participation in the management or direction of, any business which is engaged in the sale or distribution of any merchandise covered by the terms and conditions of this order.

XIII.

It is further ordered, That this order will terminate on December 13, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later, provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XIV.

It is further ordered, That respondents shall, within sixty (60) days after the service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission reports, in writing, setting forth in detail the manner and form in which respondents have complied with this order, including but not limited to the name and title of each person to whom a copy of the order has been provided pursuant to the requirements of paragraphs IX and X.

IN THE MATTER OF

CLASS RINGS, INC., ET AL.

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

Docket C-3701. Complaint, Dec. 20, 1996--Decision, Dec. 20, 1996

This consent order permits Class Rings, Inc. to acquire L.G. Balfour Company and prohibits, among other things, Class Rings, Inc. and Castle Harlan from acquiring or agreeing to acquire from Town & Country any stock, share capital, equity, or other interest in or assets of Gold Lance.

Appearances

For the Commission: *Joseph Krauss and William Baer.*

For the respondents: *Joseph Kattan, Morgan, Lewis & Bockius,* Washington, D.C. and *Keith Shugarman, Goodwin, Proctor & Hoar,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Class Rings, Inc., a corporation controlled by Castle Harlan Partners II L.P. ("Castle Harlan"), has entered into an Asset Purchase Agreement with Town & Country Corporation ("Town & Country") and CJC Holdings, Inc. ("CJC"), whereby Class Rings, Inc. has agreed to acquire the class ring assets of Town & Country and has agreed to acquire the class ring assets of CJC, and Town & Country has agreed to acquire stock of Class Rings, Inc., in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisitions, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

A. THE RESPONDENTS

1. Respondent Class Rings, Inc., a corporation formed and controlled by Castle Harlan Partners II, L.P., 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 150 East 58th Street, New York, New York.

2. Respondent Castle Harlan Partners II, L.P. ("Castle Harlan") is a limited partnership 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 150 East 58th Street, New York, New York. Castle Harlan is a venture capital partnership organized by Castle Harlan Inc., a New York-based investment firm.

3. Respondent Town & Country Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 25 Union Street, Chelsea, Massachusetts.

4. At all times relevant herein, all respondents have been and are now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and are partnerships or corporations whose business or practices are in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. THE PROPOSED ACQUISITIONS

5. On May 20, 1996, Class Rings, Inc., agreed to purchase all of the class ring assets of Town & Country and CJC, pursuant to an Asset Purchase Agreement by and between Class Rings, Inc. as buyer and CJC Holdings, Inc. and CJC North America, Inc. as seller, and an Asset Purchase Agreement by and between Class Rings, Inc. as buyer and Town & Country Corporation, Gold Lance, Inc. ("Gold Lance"), and L.G. Balfour Company, Inc. ("Balfour") as sellers. As consideration for the sale of the assets, Town & Country is to receive cash of approximately \$55 million and approximately 8% of the voting securities of Class Rings, Inc. with rights to receive and additional 10% of the voting securities of Class Rings, Inc.

6. CJC, based in Austin, Texas, is one of the leading manufacturers of commemorative jewelry in the United States. Its class ring division manufactures and markets class rings primarily

under the ArtCarved and R. Johns brand names, and also under the Class Rings, Ltd., Keystone, and Master Class Rings brand names. CJC distributes its class rings primarily through retail jewelry stores, college bookstores, and certain mass merchandisers.

7. Town & Country, through its class ring divisions, Gold Lance and Balfour, is a leading producer of high school and college class rings. Town & Country's class rings are available through retail jewelry stores and mass merchandisers under the Gold Lance brand name, and through both independent sales representatives and direct sales in schools under the Balfour brand name. Gold Lance and Balfour rings are manufactured in separate plants (Gold Lance in Houston, Texas and Balfour in North Attleboro, Massachusetts), and the two divisions are operated independently. Balfour also produces a variety of other products, including graduation announcements, personalized jewelry, and sports and recognition products.

8. Town & Country and CJC are substantial, direct competitors in the United States market for the manufacture and sale of high school and college class rings.

C. RELEVANT OF COMMERCE

9. One relevant line of commerce within which to analyze the effects of the proposed acquisitions is the United States market for class rings. Class rings are rings manufactured and sold to high school, junior high school, undergraduate, graduate, trade school, and community college students, and students of any other post-high school institutions to commemorate their graduation. Class rings are generally made of gold, silver or of steel alloy metals and often include a precious or synthetic stone, the school name, student's interests or activities, date of graduation, and various other inscriptions.

10. Class rings are purchased by students to commemorate their graduation from high school or college. There are no substitutes for class rings and students would not switch to other types of commemorative jewelry, such as pins and medallions, even in response to a significant price increase in class rings. Students generally buy or receive as gifts other commemorative products in addition to, not instead of, class rings. Students do not view other products or graduation gifts as substitutes for a class ring. Commemorative products are usually purchased close to the time of

graduation, whereas class rings are typically ordered well before graduation, often one or two years in advance.

11. Students often have the option of purchasing a class ring at their schools or at a retail jewelry store. CJC distributes virtually all of its high school class rings through retail jewelry stores and accounts for a dominant share of the high school rings sold in retail stores. Town & Country's Gold Lance subsidiary is CJC's principal competitor; it sells only through retail jewelry stores, and the vast majority of its business is in high school rings. Jostens, Inc. has the leading share of in-school sales of high school class rings, and sells only small volumes of class rings in retail jewelry stores. Balfour sells only in schools or in college bookstores and has no sales through retail jewelry stores.

12. The relevant geographic market within which to analyze the effects of the proposed transactions is the United States. The sale of class rings is a uniquely American phenomenon.

13. Total sales of class rings in the United States are approximately \$330 million. Approximately 40% of all class rings are sold through retail distribution in retail jewelry stores.

D. CONCENTRATION

14. The United States class ring market is highly concentrated. CJC and Town & Country are two of only four major manufacturers of class rings in the United States and have a combined market share of over 40% of all class rings sold in the United States. Jostens, Inc. (currently the largest manufacturer of class rings in the United States), CJC, Town & Country, and Herff Jones, Inc., together account for over 95% of all class ring sales. The proposed merger of CJC and Town & Country assets would increase the Herfindahl-Hirschmann Index ("HHI") over 900 points to approximately 3760.

15. The remaining 5% of the class ring market is composed of several smaller class ring manufacturers whose combined share historically has not exceeded 5%. These firms are limited in their ability to expand by their limited inventory of molds and limited distribution.

16. The combination of the CJC and Town & Country class ring assets would give the merged entity a combined market share of over 90% of class rings sold through the retail distribution channel.

E. CONDITIONS OF ENTRY

17. *De novo* entry or fringe expansion into the class rings market which would be sufficient to deter or offset reductions in competition resulting from the proposed acquisitions would not be timely or likely.

18. The four major class ring manufacturers each have hundreds of thousands of molds and produce a variety of styles, sizes, options and features for class rings sold across the United States. The small fringe producers each have inventories of only several thousand molds. The costs and time necessary to create a large inventory of molds are significant and the costs to build a mold inventory are sunk costs.

19. Distribution barriers are also substantial. Schools and jewelry store operators are reluctant to replace their existing class ring suppliers. Marketing impediments include the need to build a reputation and a specialized sales force. Class ring manufacturers must deliver highly customized products in a timely manner.

20. Manufacturers of recognition jewelry use the same manufacturing process as that used by manufacturers of class rings. However, recognition jewelry manufacturers do not have the necessary molds to produce class rings and are not organized to deliver customized products to customers in a timely manner.

F. FACTORS THAT INCREASE LIKELIHOOD OF
COORDINATED INTERACTION

21. The class ring market already has several indicia of a market susceptible to coordinated interaction and the proposed acquisitions would increase competitors' ability to coordinate. Product lines, while adverse, are comparable across firms. Pricing and unit sales information is widely available among firms, and the major firms are moving toward more simple pricing structures which will make that information even more easily available. Transactions are numerous and small. Market shares have been relatively stable, with little or no shifting of share among the leading firms.

22. There already is substantial communication and interaction between the leading firms in the class ring market. Company documents reveal contacts between firms in the market and the exchange of pricing and promotional information.

G. EFFECTS OF THE PROPOSED ACQUISITIONS

23. The proposed acquisition of the class ring assets of CJC and T&C by Class Rings, Inc., may substantially lessen competition in the United States market for class rings by, among other things:

- a. Increasing concentration substantially in a highly concentrated market;
- b. Eliminating substantial head-to-head competition between Gold Lance and CJC;
- c. Substantially increasing the risk of coordinated interaction;
- d. Substantially increasing the risk of unilateral effects in class rings sold through the retail distribution channel;
- e. Increasing prices for class rings.

H. VIOLATIONS CHARGED

24. The agreements described in paragraph five violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

25. The proposed acquisition of the class ring assets of Town & Country and CJC by Class Rings, Inc., and the acquisition of stock in Class Rings, Inc., by Town & Country, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Class Rings, Inc., a corporation controlled by Castle Harlan partners II, L.P. ("Castle Harlan"), of the class ring assets of CJC Holdings, Inc. and CJC North America, Inc. (collectively "CJC") and the class ring assets of Town & Country Corporation ("Town & Country"), and the proposed acquisition by Town & Country of voting securities of Class Rings, Inc. (Class Rings, Inc., Castle Harlan and Town & Country hereinafter sometimes referred to as "respondents"), and respondents having been furnished with a copy of a complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents

with violations of the Clayton Act and 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 respondents of all the jurisdictional facts set forth in the aforesaid 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 Acts, and that a 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, makes the following jurisdictional findings and enters the following order:

1. Respondents Class Rings, Inc., a corporation controlled by Castle Harlan Partners II, L.P., 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 150 East 58th Street, New York, New York.

2. Respondent Castle Harlan Partners II, L.P., is a limited partnership 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 150 East 58th Street, New York, New York.

3. Respondent Town & Country Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 25 Union Street, Chelsea, Massachusetts.

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

ORDER

I.

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

A. "*Respondent Class Rings, Inc.*" or "*Class Rings, Inc.*" means Class Rings, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Class Rings, Inc.; and their respective directors, officers, employees, agents and representatives and the respective successors and assigns of each.

B. "*Respondent Castle Harlan*" or "*Castle Harlan*" means Castle Harlan Partners II, L.P., its predecessors, subsidiaries (including, but not limited to Class Rings, Inc. and Keepsake Jewelry, Inc.), divisions, groups and affiliates controlled by Castle Harlan; and their respective general partners, officers, employees, agents and representatives and the respective successors and assigns of each.

C. "*Respondent Town & Country*" or "*Town & Country*" means Town & Country Corporation, its predecessors, subsidiaries (including but not limited to, Gold Lance, Inc.), divisions, groups and affiliates controlled by Town & Country; and their respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each. For purposes of this order, Town & Country shall not include L.G. Balfour Company, Inc., the assets of L.G. Balfour Company, Inc., and any assets related to the business of L. G. Balfour Company, Inc., to be purchased by Class Rings, Inc., referred to in the Asset Purchase Agreement dated May 20, 1996.

D. "*Gold Lance*" means Gold Lance, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Gold Lance, Inc.; and their respective directors, officers, employees, agents and representatives and the respective successors and assigns of each.

E. "*Respondents*" means Class Rings, Inc., Castle Harlan and Town & Country.

F. "*Commission*" means the Federal Trade Commission.

G. "*Class rings*" means rings manufactured and sold to high school, junior high school, college, undergraduate, graduate, trade school, and community college students, and students of any other post-high school institutions to commemorate their graduation. Class rings are generally made of gold, silver or steel alloy metals and often include a precious or synthetic stone, the school name, student's

interests or activities, date of graduation, and various other inscriptions.

II.

It is ordered, That, at or before the time respondent Class Rings, Inc., acquires L. G. Balfour Company, Inc., its assets and any other assets related to the business of L.G. Balfour Company, Inc., to be purchased by Class Rings, Inc., referred to in the Asset Purchase Agreement dated May 20, 1996, Castle Harlan and Class Rings, Inc., shall not acquire from or agree to acquire from Town & Country, and Town & Country shall not sell to or agree to sell to Castle Harlan or Class Rings, Inc., any stock, share capital, equity, debt, or other interest in or assets of Gold Lance or any stock, share capital, equity, debt, or other interest in or assets of Town & Country; and respondent Town & Country shall not acquire or agree to acquire from Castle Harlan or Class Rings, Inc., and Castle Harlan and Class Rings, Inc., shall not sell or agree to sell to respondent Town & Country any stock, share capital, equity, debt, or other interest in or assets of respondents Castle Harlan or Class Rings, Inc.

The purpose of this provision is to ensure the continuation of Gold Lance as an independent competitor in the design, manufacture and sale of Class Rings and to remedy the lessening of competition as alleged in the Commission's complaint.

III.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent Class Rings, Inc., and respondent Castle Harlan shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, debt, or other interest in Gold Lance or Town & Country, or;

B. Acquire any assets used in the design, manufacture, or sale of Class Rings from Gold Lance or Town & Country.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final respondent Town & Country shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, debt, or other interest in Class Rings, Inc., or Castle Harlan, or;

B. Acquire any assets used in the design, manufacture, or sale of Class Rings from Castle Harlan or Class Rings, Inc.;

Provided, however, Town & Country may purchase assets from Castle Harlan or Class Rings, Inc., totaling not more than \$2 million in any twelve (12) month period, without prior approval of the Commission.

V.

It is further ordered, That:

Respondent Castle Harlan and respondent Class Rings, Inc., shall not, for a period of one (1) year from the date this order becomes final, employ or seek to employ any person who is or was employed at any time during calendar year 1996 by Gold Lance or by Town & Country in any position relating to the design, manufacture, or sale of Class Rings.

VI.

It is further ordered, That:

A. Within sixty (60) days after the order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of paragraph II of this order, each of the respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraph II of this order.

B. One year (1) from the date of this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may

require, each of the respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraphs III, IV, and V of this order.

VII.

It is further ordered, That respondent Castle Harlan, Class Rings, Inc., and Town & Country shall notify the Commission at least thirty (30) days prior to any proposed change in the respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or partnership, the creation or dissolution of subsidiaries or any other change in the respondents that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, each of the respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of respondents and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondents and without restraint or interference from them, to interview officers, directors, or employees of respondents.

IX.

It is further ordered, That this order shall expire ten (10) years from the date this order becomes final.

Commissioner Azcuenaga concurring in part and dissenting in part.

ATTACHMENT A

INTERIM AGREEMENT

This Interim Agreement is by and between Class Rings, Inc., a corporation organized and existing under the laws of the State of Delaware ("Class Rings, Inc."), Castle Harlan Partners II, L.P., a limited partnership organized and existing under the laws of the State of Delaware ("Castle Harlan"), Town & Country Corporation, a corporation organized and existing under the laws of the State of Massachusetts ("Town & Country"), and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (the "Commission").

PREMISES

Whereas, Class Rings, Inc. has proposed to acquire all of the class ring assets of Town & Country pursuant to the Asset Purchase Agreement dated May 20, 1996 ("the proposed Acquisition");

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm, and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the entering into this Interim Agreement by Class Rings, Inc., Castle Harlan and Town & Country shall in no way be construed as an admission by Class Rings, Inc., Castle Harlan and Town & Country that the proposed Acquisition constitutes a violation of any statute; and

Whereas, Class Rings, Inc., Castle Harlan and Town & Country understand that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, Class Rings, Inc., Castle Harlan and Town & Country agree, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Class Rings, Inc., Castle Harlan and Town & Country agree to execute the Consent Agreement and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date Class Rings, Inc., Castle Harlan and Town & Country sign the Consent Agreement.

2. Class Rings, Inc., Castle Harlan and Town & Country agree to submit, within twenty (20) days of the date the Consent Agreement is signed by Class Rings, Inc., Castle Harlan and Town & Country, and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraph II of the Consent Agreement, written reports, pursuant to Section 2.33 of the Commission's Rules, signed by Class Rings, Inc., Castle Harlan and Town & Country setting forth in detail the manner in which Class Rings, Inc., Castle Harlan and Town & Country will comply or have complied with paragraph II of the Consent Agreement.

3. Class Rings, Inc., Castle Harlan and Town & Country agree that, from the date Class Rings, Inc., Castle Harlan and Town & Country sign the Consent Agreement until the first of the dates listed in subparagraphs 3.a. and 3.b., it will comply with the provisions of this Interim Agreement:

a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The date the order is final.

4. Class Rings, Inc., Castle Harlan and Town & Country waive all rights to contest the validity of this Interim Agreement.

5. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege, and upon written request, and on reasonable notice, Class Rings, Inc., Castle Harlan and Town & Country shall permit any duly authorized representative or representatives of the Commission:

a. Access, during the office hours of Class Rings, Inc., Castle Harlan and Town & Country and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Class Rings, Inc., Castle Harlan and Town & Country relating to compliance with this Interim Agreement; and

b. Upon five (5) days' notice to Class Rings, Inc., Castle Harlan and Town & Country and without restraint or interference from it, to interview officers, directors, or employees of Class Rings, Inc., Castle Harlan and Town & Country who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

Today the Commission issues a consent order resolving allegations that the proposed acquisitions by Class Rings, Inc., a newly created subsidiary of Castle Harlan Partners II, L.P., of certain assets of Town & Country Corp. (two subsidiaries, Gold Lance, Inc., and L.G. Balfour, Inc.) and CJC Holdings, Inc., would be unlawful. The proposed order prohibits the acquisition of Gold Lance.

I concur, except with respect to the prior approval provisions in paragraphs III and IV of the proposed order, which are inconsistent with the "Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions" ("Prior Approval Policy Statement" or "Statement"). In its Statement, the Commission announced that it would "rely on" the Hart-Scott-Rodino premerger notification requirements in lieu of imposing prior approval or prior notice provisions in its orders. Although the Commission reserved its power to use prior approval or notice "in certain limited circumstances," it cited only a single situation in which a prior approval clause might be appropriate, that is, "where there is a credible risk that a company" might attempt the same merger.

The complaint does not allege any facts showing a "credible risk" that the parties might attempt to acquire Gold Lance a second time. Nor am I aware of any reason to think that the parties have a concealed plan or intention to circumvent the order by doing so. Of course, as evidenced by their premerger notification report filed pursuant to the requirement of the Hart-Scott-Rodino Act, the parties wanted to acquire Gold Lance, but every merger case involves parties who want to combine firms or assets.

As I understand it, the primary reason for assuming that the parties will try again is that they seemed so much to want to consummate this transaction. The intensity of the parties' interest in a proposed transaction as perceived by the Commission (even assuming that we can distinguish between the vigor of their legal representation and the intensity of their own feelings) has no established predictive value of the likelihood that parties will again attempt a transaction now known to be viewed unfavorably by the FTC. In addition, the intensity of their feelings as perceived by the Commission is unlikely to result in an evenhanded selection of exceptions to our prior approval policy.

It also has been suggested that one reason for imposing a prior approval requirement is that the Commission is prohibiting the acquisition of Gold Lance, rather than allowing it subject to a divestiture requirement, under which the Commission supervises the divestiture. In fact, however, the choice of remedy is not predictive of the likelihood of recurrence. Once a divestiture has been accomplished, the Commission has no greater ability to deter a particular transaction than it will here.

I am most sympathetic to the concern that if the parties attempted to repeat the transaction in the future, the Commission might be faced with a significant duplicative expenditure of resources. That is one of the reasons I dissented from the Commission's Prior Approval Policy Statement. Dissenting Statement of Commissioner Mary L. Azcuenaga on Decision to Abandon Prior Approval Requirements in Merger Orders, 4 CCH Trade Reg. Rep. ¶ 13,241 at 20,992 (1995). But given that we have the policy, it seems to me incumbent on the Commission either to live by it or to change it.¹

¹ See Dissenting Statement of Commissioner Mary L. Azcuenaga in *The Vons Companies, Inc.*, Docket No. C-3391 (May 24, 1996).

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ISBN 0-16-049678-0



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