

Complaint

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EXHIBIT A

**Transcript of Stimulator Infomercial
"Saying No To Pain"**

Super: "The following program is a paid presentation from Natural Innovations, Inc."

Voice-over: The following program is a paid presentation from Natural Innovations.

Voice-over: There are many stringent government regulations involved in selling a pain relief product on television, because some products sold in the past may have been ineffective, built false hope, and in some cases, could have been harmful. This product has not undergone the extensive testing that would allow us to satisfy all of the federal regulations. However, similar products have been in use for years with no record of ill effects; in fact, this concept has been used for centuries for pain relief. We make no medical claim that the Stimulator cures any disease, or does anything other than relieve pain for the people seen on this program. We simply believe that each of you has the right to try a product for yourself, and the opportunity to make your own decision to take active control of your own healthcare choices, including what gives you relief from your pain.

Super: Simultaneous visual scrolling of voice-over.

Depiction: A man jogging with a red highlight pointing to his right ankle. A woman on a telephone in a kitchen rubbing her neck with her left hand.

Bill Walton: Unfortunately I know far too much about pain.

Depiction: A boy throwing a baseball and rubbing his right elbow.

Evel Knievel: You know, you're not talking to someone who fell off of a bar stool.

Depiction: A man rubbing his hands.

I fell off of a motorcycle on pavement going 100 miles per hour.

Depiction: A woman grabbing her lower back in pain.

Unidentified Woman #1: The pain is there.

Depiction: A man playing tennis and grabbing his left elbow after hitting the ball.

And it's going to scream at you. "Don't do that to me."

Lee Meriwether: Pain, pain go away. Stay tuned because you're about to meet a very special doctor who has brought us a key to unlock the grip of pain. And if you know someone who's living with pain, please, I'd like you to take a moment and call them right now. Ask them to join us as we hear some amazing stories from people who have been set free -- free to get on with the business of enjoying life and feeling good. Today, on "Say No to Pain."

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Joe Anthony: If they said that they were never going to be available again and somebody wanted to buy mine, and I couldn't replace it, I wouldn't sell it for \$5,000.

Evel Knievel: I think that this is a better product to use, and you can keep things that do not belong in your system out of your system.

Bill Walton: It's very effective in terms of enabling me to have a better life.

Depiction: Still shots of the people depicted earlier.

Voice-over: Back pains, headaches, joint pain, foot pain. Join Lee Meriwether as she talks with health practitioner Dr. Steven Gandee, NBA all-star player and announcer Bill Walton, special guest star Evel Knievel, and people just like you, whose only special quality is that they're living without pain. Today, on "Say No to Pain."

Depiction: Still shots of Lee Meriwether, Dr. Gandee, Bill Walton, Evel Knievel, and consumer endorsers.

Super: The word "Pain" superimposed on the still shots, followed by the word "No" in large red letters.

Lee Meriwether: Hi, I'm Lee Meriwether. And no matter who you are, what you do, you, me and the rest of world all have something in common. We hurt sometimes. Many of us ignore it, hope it goes away. Or we reach into the medicine cabinet for drugs. Generally, we do whatever we can to live around the pain. But what happens to your life in the meantime? You make sacrifices, don't you? Pain can literally take away our lives.

Unidentified Woman #2: Even like when I pick my child up, and she's ten months old now, when I first had her, it would sometimes cramp a lot. If I'd hold her for a long period of time, like in my elbow area.

Bill Walton: My goal was to get pain free. My goal was to have a life. I had no life.

Unidentified Woman #3: That wasn't me. I was very unhappy because I couldn't function the way I was used to functioning. I just couldn't do the things I was used to doing.

Lee Meriwether: I'd like to introduce a man who has been doing something about pain for almost 20 years.

Depiction: Dr. Gandee examining a patient and presenting a speech.

Dr. Steve Gandee has the largest single doctor practice in Ohio. Over 40,000 office visits a year. Now that puts him in the top one percent in the country. He's the Ohio state representative to the International Chiropractic Association. He's been featured in numerous medical publications as well as his own television series on chiropractic care. His mission has been to help people find a way to say no to pain. Now Dr. Gandee, I know most people seem to do one of two things when they're in pain. They either try to ignore it hoping it will go away. Or, well, unfortunately, they reach into the medicine cabinet.

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- Dr. Gandee: Lee, that's true and that's a shame. People nowadays search and reach for drugs first, instead of trying something different. But fortunately with the Stimulator people can take control of their life, of their pain, of their suffering themselves. People like that. I wish you could follow me around my office one day, just one day, and watch people's attitudes when they can start themselves, like you and I can take control of what we feel, what we want to do, and not go to the drug cabinet. It's great. It's a great feeling, great.
- John Trippe: I've been on Darvocets and other pain killers all this time. Darvocets and Darvons and codeines, Tylenol with codeine. And since I've been introduced to this, I haven't used any of it.
- Unidentified Woman #4: Some things are addictive. You don't want to -- you end up relying on something that it causes other health problems. And I look for a natural way to deal with any health problems that I have.
- Glen Matz: Some of us can't just take aspirin. Some of us just can't take certain medications or anti-inflammatory drugs because they upset our stomach. This, I can relieve the pain and I don't have to swallow anything.
- Lee Meriwether: What these people are talking about is this simple pain-relief device. It's called the Stimulator and it changes the lives of those who use it. You know, Doctor, when I first saw this product, well, and I heard the phenomenal effects it had on people, I thought, how in the world can something so small have such a phenomenal effect on the body?
- Dr. Gandee: I thought the same way. It is small, isn't it? But I'll tell you, when I first saw the Stimulator, I personally needed something in my office to help me. And the reason is the knuckle on the forefinger of my hand hurt so bad for the last two years I thought I was going to have to quit chiropractic. I could not work on my patients the way I wanted to. I had to change techniques. I think, seriously, if I hadn't had the Stimulator, I wouldn't be in chiropractic right now. Or I would've had to cut back dramatically on the patients I was seeing.
- Lee Meriwether: So you used it on yourself?
- Dr. Gandee: I certainly did. About three or four times a day over a period of a week, I have no more pain. And you know what I did? At that point in time, I made a conscious effort that I was going to get this product to society, to America. Not only America, the world.
- Unidentified Woman #5: That was the biggest surprise to me -- that a little thing like that Stimulator could help that sinus in that day. No hot and cold packs, no bend over and feel like your eyes are going to fall out.
- James Larmore: It works for me in the area of the sinus problem. It works for me in the area of the muscle problem.
- Unidentified Woman #6: Oh, I think it works much faster than any medication.

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- Linda Anthony: The pain is so excruciating and the relief is so wonderful. I mean, it's like no aspirin, no pain medication; no nothing can take that gives you that instant relief. I mean I'm talking instant.
- Bill Ramsell: My wife could tell you, I came home and I felt wonderful. I told her, "I just don't believe it. That little thing there could work a miracle [inaudible]. And it was.
- Bill Walton: If I had the Stimulator available to me my entire career, I would've had a better career. The short term and long term pain relief that the Stimulator provides would have helped me -- would have helped me work harder -- would've helped me play better.
- Lee Meriwether: Doctor, how does the Stimulator actually create such amazing results?
- Dr. Gandee: Very simple. You put the Stimulator up to wherever you hurt, wherever it is. You press in the plunger and a little spark comes out. Feel that?
- Lee Meriwether: Oh, yes.
- Dr. Gandee: You can do it wherever you have pain. The knuckle, your elbow, your shoulder, your knees, your feet, your ankles, your wrist, the calves. It does not matter. And what it does is allows the body to help itself. The Creator put us here with a body that was supposed to be healthy. I believe that and most people believe that. And this Stimulator helps the body help itself.
- Pat Wayne: I just had sacroiliac pain for years and years. And, like I said, I worked for fifteen to 20 years at Goodyear and I had problems with my legs when I worked there and I have never been so relieved since I got this Stimulator.
- Glen Matz: At first, I was a little skeptical. Who wasn't? Who wouldn't be? Something clicks and throws a spark, you know, but the darn-- it takes care of pain. Say what you want to. It alleviates pain.
- Ron Hartline: My truck driving and my football injuries and whiplash and all the things over years that I've accumulated. It's just aches and pains. Carpal tunnel in the wrist, which I didn't think anything but surgery could take care of that. But this works real well. I mean it loosens -- it's like instantly -- it loosens up the wrist. When you do as much lifting like I do -- like a weight lifter -- and your wrists get swelled, your hands get swelled. The swelling in my hands is actually going down. I can't explain that but the swelling in my hands has actually gone down. My watch actually slides now whereas it's always been tight. In the mornings I'd use it on my knees, like from carrying the concrete, carrying the bricks and standing on a concrete floor all day. It just -- it just seems like it relieves it. And the lower back, it's unreal how it worked down there. Because, like, my low back on the one side has always bothered me. And I zap it and it's like it relieves it, you know? It's like taking back ten years on my body. This is something that works on me. You know, you start getting older and you do the work I'm doing and you get so sore. And pretty soon you're just kind of thinking, "God, how long am I going to be able to do this?" But this is my future. This is my job. This is my money, you know. So, for some silly little thing like this to work this well, I'm hanging on to it. And if it lasts for life I'm in good shape.

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Lee Meriwether: It's obvious the Stimulator works for the people we've seen so far in this program. But I want you to stay tuned because we have a couple of special guests that I'm sure you're going to recognize who really know the meaning of the word pain.

[Break to ordering spot.]

Evel Knievel: You know, you're not talking to someone who fell off of a bar stool. I fell off of a motorcycle on pavement going 100 miles per hour.

Bill Ramsell: I had excruciating pain in my knees. And it was fantastic. I couldn't believe what it did for me. You know, it just felt wonderful. As a matter of fact, I golfed 18 holes yesterday and walked quite a bit and it never bothered me at all.

Super: "Sold nationally \$150.00" with a red "X" through it.

Dr. Gandee: The Stimulator may sound to good to be true, but it is true. The Stimulator works. It helps your body help itself naturally. What you've seen here are exactly the results that people have gotten. As a matter of fact, if anything, we've understated the relief people get. People ask, "Dr. Gandee, if the Stimulator works so well, why doesn't it cost more?" The reason is I want to help as many people as possible get pain relief. This isn't about money. This about helping you feel better. It's that simple. That's how my office works. I'd rather help a lot of people rather than just a few. The Stimulator is self-powered, uses no batteries, is American-made, and comes with a one-year guarantee. And I give you my personal guarantee that if you're not completely satisfied with your Stimulator, you can return it within 30 days for a full refund. You're going to love it.

Voice-over: Order now and receive an instructional video, instruction booklet, carrying pouch, and a copy of Dr. Gandee's newsletter, "Secrets of Health." Credit card orders just four easy payments of \$19.95. Call 1-800-982-2600. Or send check or money order for \$79.80, plus \$8.50 shipping and handling, to the Stimulator, Box 36700, Canton, Ohio 44735.

Depiction: Still shot of the Stimulator, newsletter, carrying pouch, and videotape.

Super: Visual of ordering telephone number and address.

Ruth Minard: I started out with a stomach ache and I had a stomach ache for, oh, a couple, maybe three months. It was diagnosed through my internist that it was diverticulosis. And so I had heartburn and gas like you wouldn't believe -- 24 hours, all the time. I couldn't believe, after having pain that long, and I had tried everything that I knew to try over the counter, and it did the trick. I mean, I got results immediately. It's still unbelievable what it did for me. Today I have no stomach ache.

[End of ordering spot.]

Lee Meriwether: Welcome back. If you just joined us, we've been talking about this amazing little device. It's called the Stimulator. And I'm here with Dr. Steven Gandee who's been using the Stimulator to treat his own patients. Now Doctor, has anyone used the Stimulator and not experienced relief from their pain?

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Dr. Gandee: Nothing works 100% of the time on 100% of the people, unfortunately. But I'll tell you what. I've been using the Stimulator on many people for different problems, like headaches. All they have to do, wherever the pain is, stimulate the head, right around the area of pain. Sinuses. The Stimulator works very well with sinuses. Allergies, the runny eyes, the runny nose. It really seems like it gives a lot of relief for that. Sore, stress areas, from the neck down into the shoulders, knees, elbows. All joint pains. It's amazing.

James Larimore: I've been a teamster for almost 30 years. And I've been driving antiquated equipment for an awful long time. No power steering, no power brakes. Consequently, I get cramps in the hands, cramps in the arms, shoulders, across the top of the neck, back, lower back. And from crawling in and out, I get it in the knees. It's just, it just goes along with the job. Now I don't have to tolerate it anymore. If I have a cramp in my hand or something like that, I can relieve the cramp within 30 seconds. I use it in the evenings when I'm home after work. I use it on the balls of my feet, around my ankles, knees. And when I go to bed, I hit the lower back and I sleep like a baby. It serves as a pain relief without [inaudible]. And to me that's a plus. If you're the type of person I am, if it works for you, you'll talk about it. I don't see how it works. I don't understand how it works. I don't care how it works -- as long as it works. And if I could have had one of these 20 years ago, I'd have been in a lot less pain for a long time.

Lee Meriwether: I hadn't really no idea that electricity could be useful in pain prevention.

Dr. Gandee: Well, it's true. Even the ancient Greeks. Picture this in your mind. The ancient Greeks realized that the body is an electrical system. You know what they did?

Lee Meriwether: No.

Dr. Gandee: They put a person in a tub of water and they put eels in the tub of water with them, so they could send electrical current and help the body. That's what they did.

Glen Matz: I had gone through knee surgery and went through the therapy -- the physical therapy -- and they use elec-- I don't know what words I want to use. What is it, is it electrolysis? Or whatever. But they hooked the wires up to me and I got the same shocking effect. So I really couldn't scoff at the idea because if they use it, why couldn't I use it?

Linda Anthony: He started telling me about this, you know, and I am like having one of the worst headaches because I have an osteoma right up here. That's a non-malignant tumor that's just going to be there forever unless I have it surgically removed. And I get pressure headaches from it. You just feel like your whole head is just going to explode. They get so bad that I can take Darvocets and it doesn't relieve it. You know, I can be taking them for days and it doesn't relieve it. He puts the Stimulator here and here, it's gone within seconds. The pain is so excruciating and the relief is so wonderful. I mean, it's like no aspirin, no pain medication, no nothing can take that -- give you that instant relief. I mean I'm talking instant. Within minutes, I'm back to working and doing whatever I was doing before. And I don't even realize it. All at once I have to say, "Oh my God, that pain is gone."

Lee Meriwether: Listening to all these people and their incredible, incredible stories, it seems to be that one would be hard pressed to get the Stimulator away from them.

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Dr. Gandee: When I first started working with the Stimulator, what I actually did is I tried to buy the Stimulator back from a patient.

Lee Meriwether: Really?

Dr. Gandee: And they said, "Well, where I can get another one?" And I said, "Well, you can't. I have to have it back." And they said, "Well, you're not getting it back." Once you have this, and you can use it on yourself, you can take control of your own health to some degree. You can't get it back.

Lee Meriwether: Well, there's at least one man I know that will never give up his Stimulator and he's someone that needs no introduction. A death-defying daredevil who's put millions of us on the edge of our seats: Evel Knievel.

Depiction: Evel Knievel jumping a motorcycle off a ramp.

Evel, it scares me just watching you on tape in all your jumps. Now what has happened to your poor body?

Depiction: Evel Knievel crashing, flying off a motorcycle.

Evel Knievel: I've had fourteen major open reduction operations. That's where they open you up and put a plate in a bone and attach it to another bone so that you can heal. It's an inner cast.

Lee Meriwether: How many bones have you broken?

Evel Knievel: I've broken about 34 or 35. Everybody kids me about how I've broken every bone in my body, but I used to tell them that I've broken every one except my little finger. But the truth is I've only broken about 34 or 35. When you talk about an injury on the football field or when you talk about a person being hurt playing tennis, or baseball, or a rodeo rider falling off a horse into deep soft dirt or cow manure or whatever it is -- I'll tell you what pain really is. You get on the hood of a car and when your driver gets to 80 miles per hour, have him blow the horn, you bail off out here on the freeway, you're going to find out what pain is.

Depiction: Evel Knievel crashing.

Dr. Gandee: That's what you did.

Lee Meriwether: Oh, oh, oh.

Evel Knievel: And I have been there. When I wake up in the morning, my wrist tends to hurt me very badly. When I put it on and I click it, and use it, say, half a dozen or a dozen times on different parts of my wrist, my wrist begins to feel good. I also use it on my knees. It does help me feel a lot better and I use it on my ankles. I've broken both of my ankles. It's such a simple thing to use. You don't have to rub it on you. If you have something bothering you and you're out playing golf or no matter what you're doing, if you got it in your pocket, you can pull it out and snap yourself with it three or four times. In fact, I like to use it on the guys when I hit a good shot on the golf course. I pull it out and go

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Depiction: Evel Knievel using the Stimulator several times.

and they say, "What's he got? What is that?" They know that if I use it after all I've been through and all the things that I've tried to kill pain -- that if I use it and they don't see me taking any kind of a drug for pain -- everybody that knows me knows that I do not take drugs -- and they just absolutely know that if I've got a product and I'm using it to help me, then it must be working for me and you can keep things that do not belong in your system out of your system. If you use this product, it will work for you. If you have nothing to lose by trying something and everything to gain if you're successful, then by all means, try it. I hope that people will try it and I hope that I will meet people years from now who say I saw you on TV and thank you for telling me about the Stimulator.

Lee Meriwether:

Well, we thank you. Now coming up next, we'll visit with basketball great Bill Walton and more people just like you saying no to pain.

[Break to ordering spot.]

Kevin Culver:

Well, being a police officer, I'm extremely skeptical. You can't just walk up to me and say, "Hey, this is going to work" without me having a little knowledge of it. It's gotta work. You've gotta show me it's going to work. And fortunately it did. It saved me a trip to the podiatrist, I know that. I'm up at the club there and I'm bragging about this thing and that's how I ended up here. I said, "That thing worked." You know, I haven't had any pain since.

Depiction: Still shot of the Stimulator, newsletter, carrying pouch, and videotape.

Voice-over:

Write down this important number to take advantage of this revolutionary pain relief secret.

Super: "1-800-982-2600"

Order the Stimulator now and receive free Dr. Gandee's instruction booklet and exciting video "Pain Free Today." They give every technique you need to start saying no to pain immediately with the Stimulator. Also receive absolutely free a plush carrying pouch and plus your free issue of Dr. Gandee's exciting newsletter, "Secrets of Health," packed with dynamic ideas and techniques to help you get healthy and stay that way. The Stimulator is sold nationally for over \$150.00. But everyone with pain should be able to afford relief. So for a limited time, we're offering the Stimulator to you for just four easy payments of \$19.95. Take advantage of this special offer and call now.

To order the Stimulator for just four easy payments of \$19.95, have your credit card ready and call 1-800-982-2600. That's 1-800-982-2600. Or send check or money order for \$79.80 plus \$8.50 shipping and handling to The Stimulator, Box 36700, Canton, Ohio 44735. This exclusive TV offer comes with a 30-day money back guarantee. So call 1-800-982-2600. Call now.

Super: Visual of ordering telephone number and address.

[End of ordering spot.]

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- Lee Meriwether: Hello again. During his basketball career, Bill Walton was a dominating center. He's one of the few players to ever win national championships both in college and the pros, and he's also a member of the pro basketball Hall of Fame. But in the world of sports, pain is common. And sometimes greatness comes at a great expense.
- Bill Walton: I was the type of player that by midway through my career, I realized that I was going to leave my game and my health on the basketball court. I had approximately 30 operations on my feet. I was in physical therapy on a constant basis. I worked with people who practiced all sorts of medicine. Orthopedists at the top. Massage therapist, chiropractors, acupuncture, acupressure, reflexology, tremendous amounts of yoga. You name it, I did it. If you have a life where you sit around and are in pain, you're going to be thinking all day long about the things that cause those pains. One of the things that I try to do with my life is help people who are also in that chronic pain. That's why I recommend the Stimulator. So that they can move on and have a productive and happy life. And that smile will return to their face, the way it has to mine.
- Lee Meriwether: Well, there's certainly no question about that. He's definitely a believer. And the Stimulator is making believers out of more people every day.
- Dr. Gandee: Because it's safe, effective, and it works.
- Lee Meriwether: I have to tell you something about the Stimulator that I really think is fantastic. Now I know that I have something that will help alleviate pain with the people that I love.
- Dr. Gandee: I know the feeling of helplessness because I have two children and many times they've awakened me in the middle of the night, crying with pain or hurting or sickness. Now I'm not saying that we should stay away from medical care, of course. But what I am saying is that this feeling of helplessness will no longer be there because you at least have an opportunity to try something yourself to help the family or friends or neighbors.
- Lee Meriwether: Dr. Gandee, I know we only have a few moments left, but is there anything that you'd like to say to our viewers?
- Dr. Gandee: No matter what we've done today, some people are still going to be skeptical. That's just the way human nature is. I can sit here and I can say, well, you should've watched Evel before he even came out here doing himself on his knuckles and his wrist. Remember? Or his knees. And we talked to Bill Walton. And Bill Walton was in pain. And because of [inaudible] surgery [inaudible] had done to his ankles, he couldn't even walk without limping. People can't see that though. All they can see is us up here talking. No matter how skeptical a person is, no matter what they think or what they feel, the only way they're truly going to find out if they can get help and if they can help their family or friends or loved ones to keep from suffering, no matter how much pain they're in, the only thing they can do is try it.
- Lee Meriwether: What we've seen here today is really nothing short of miraculous for those who have used this amazing little power house. People who have literally pushed pain away and started enjoying life once again. Now if you could experience results, powerful results, like you've seen here today, wouldn't it be worth almost anything? Do something now to say no to pain, for yourself or for someone you love.

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Bill Walton: There is no way that I could talk about the positive benefits of this Stimulator if it didn't work for me. I'm into things that work. I'm into winning.

Joe Anthony: It's a minimum investment with maximum results.

Glen Matz: Try it and you'll find out. It's that simple. It does work. And if you don't believe me, do it yourself. Give it a try.

Ruth Minard: Every home needs one.

Unidentified Woman #7: Even that time of month when you get back cramps.

Unidentified Man #1: I think everybody should have one.

Evel Knievel: By all means, try it.

Unidentified Man #2: It's always there. It's handy. You don't have to go make a call or set an appointment. It just helps relieve the pain instantly.

Linda Anthony: No one could take it away from me.

James Larimore: If I could have had one of these 20 years ago, I would've been in a lot less pain for a long time.

Unidentified Man #3: It does work. There's no doubt in mind whatsoever.

Unidentified Woman #7: It always -- every time I use it helps me. Every single time I've used it.

Unidentified Woman #8: I've lived my whole life in pain and it's not worth it. If you have something that will help you, then I'd say go for it.

Bill Walton: Thank God, thank God for the Stimulator.

Dr. Gandee: The Stimulator may sound too good to be true. But it is true. The Stimulator works. It helps your body help itself naturally. What you've seen here are exactly the results that people have gotten. As a matter of fact, if anything, we've understated the relief people get. People ask, "Dr. Gandee, if the Stimulator works so well, why doesn't it cost more?" The reason is I want to help as many people as possible get pain relief. This isn't about money. This is about helping you feel better. It's that simple. That's how my office works. I'd rather help a lot of people than just a few. The Stimulator is self-powered, uses no batteries, is American-made, and comes with a one-year guarantee. And I give you my personal guarantee that if you're not completely satisfied with your Stimulator, you can return it within 30 days for a full refund. You're going to love it.

Depiction: Still shot of the Stimulator, newsletter, carrying pouch, and videotape.

Super: Visual of ordering telephone number and address.

End screen: Order now and receive an instructional video, instruction book, carrying pouch, and a copy of Dr. Gandee's newsletter, "Secrets of Health." Credit card orders just four

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easy payments of \$19.95. Call 1-800-982-2600. Or send check or money order for \$79.80, plus \$8.50 shipping and handling, to the Stimulator, Box 36700, Canton, Ohio 44735.

Ruth Minard: I got up this morning and I wasn't feeling very well. My feet were hurting me so bad. And I came to sit down to eat my breakfast and Nan got the zapper and she come and zapped me good. Before I could eat my breakfast, my feet were better. It doesn't take me too long to eat either.

Pat Wayne: If anyone is skeptical of my activator -- I [inaudible] to say Stimulator, but it's my activator -- you can call me.

Voice-over: The preceding program was a paid presentation from Natural Innovations.

Super: "The preceding program was a paid presentation from Natural Innovations, Inc."

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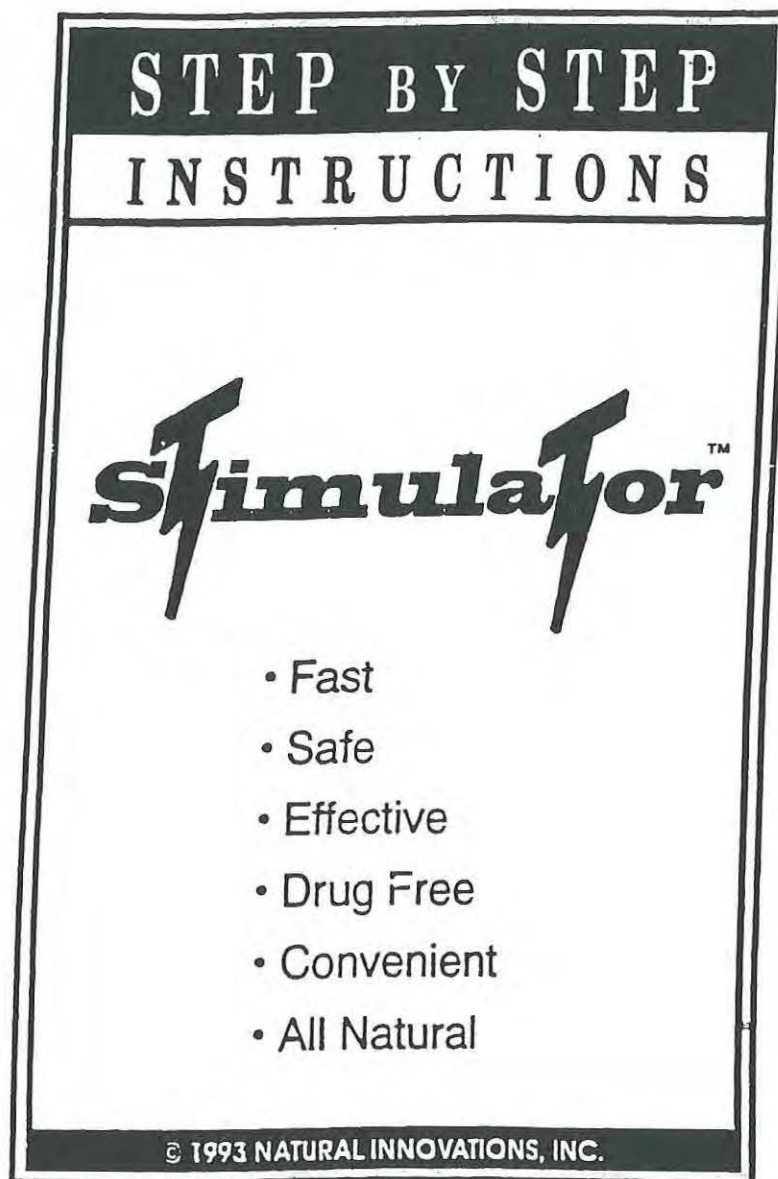


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EXHIBIT B

WELCOME

Congratulations on making a decision that will help you and your family or friends lead a more active, productive and pain-free life! And welcome to joining thousands of people just like you who have made a decision to take action and do something about the pain they are feeling.

Pain can be devastating. It can linger, get worse and control your life. Pain forces you to cut back activities, guard every move and constantly think about what you can do to get relief.

To help you break this vicious cycle of pain, we developed the STIMULATOR as a natural, safe and effective way to help you get relief from your pain, whether occasional, acute or chronic.

We believe the STIMULATOR is something people throughout the world need. We believe every household should have at least one. We believe the STIMULATOR will come to play a prominent role in helping you, as well as your family and friends maintain a more pain-free lifestyle and enjoy a higher quality of life.

The results brought about by the STIMULATOR are in harmony with nature, and with no side effects as with many medications, so you can use it often. Most people carry their STIMULATOR with them so they can use it immediately at the onset of any discomfort. We believe the STIMULATOR will become indispensable to you. As the beneficial results of the STIMULATOR become apparent to you, it will be worth many times the small investment you've made.

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In most cases, The STIMULATOR provides almost instant relief from pain. In cases of chronic pain, it may require several treatments per day over a period of time to achieve results. It has been our experience that as your pain decreases, the frequency with which you use the STIMULATOR will decrease also, until it's only necessary to use it on an occasional basis.

Please remember that the STIMULATOR does not cure anything, it can only assist and work in harmony with nature. Nature herself is the real healer. The STIMULATOR method of controlling or eliminating pain is safe, simple and easy to use.

You cannot buy back health once it is gone, but you can, if you know how, help yourself while it is slipping. Your STIMULATOR will become one of your most treasured possessions.

We at Natural Innovations, Inc. urge you to write and share your experiences with the STIMULATOR. We believe that special interest groups may attempt to stop us from making the STIMULATOR available to people like yourself. We believe that each of you has the right to buy a product that may help alleviate your pain particularly one that works in harmony with nature and your body. Your letter is of vital importance. So please take the time to let us hear from you, and tell us how the STIMULATOR has helped you.

Address all correspondence to:

NATURAL INNOVATIONS, INC.
CUSTOMER SERVICE CENTER
2717 S. Arlington Rd., Suite E
Akron, Ohio 44312

EXHIBIT B

Who Can Use The STIMULATOR?

We at Natural Innovations have had numerous very beneficial personal experiences using the STIMULATOR on children as young as six years as well as seniors into their nineties. In fact, every nursing home should have several STIMULATORS. We all hurt at one time or another, and the STIMULATOR can provide relief for almost everyone.

We want you to be as active and healthy as you can be. But, we also want you to be smart about your health. The STIMULATOR is not intended as a substitute for medical care or as a replacement for medical treatment. We do not recommend that you discontinue any care or procedures prescribed by your Chiropractor or M.D.

Painful conditions which the STIMULATOR may be helpful for:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Painful joints | <input checked="" type="checkbox"/> Shoulder pain |
| <input checked="" type="checkbox"/> Stiff joints | <input checked="" type="checkbox"/> Back pain |
| <input checked="" type="checkbox"/> Swollen joints | <input checked="" type="checkbox"/> Menstrual cramps |
| <input checked="" type="checkbox"/> Muscle spasms | <input checked="" type="checkbox"/> Carpal tunnel syndrome |
| <input checked="" type="checkbox"/> Sciatica | <input checked="" type="checkbox"/> Numbness and tingling |
| <input checked="" type="checkbox"/> Frontal headaches | <input checked="" type="checkbox"/> Allergies |
| <input checked="" type="checkbox"/> Occipital headaches | <input checked="" type="checkbox"/> Neck pain |
| <input checked="" type="checkbox"/> Migraine headaches | <input checked="" type="checkbox"/> Muscle strain |
| <input checked="" type="checkbox"/> Cluster headaches | <input checked="" type="checkbox"/> Foot cramps |
| <input checked="" type="checkbox"/> Stress headaches | <input checked="" type="checkbox"/> Abdominal pain |

EXHIBIT B

When To Use The STIMULATOR

"An ounce of prevention is worth a pound of cure."

Well, the same rule applies to the care of your body! Always keep your STIMULATOR handy for immediate use at the first signs of a developing condition. Whenever and wherever you have aches and pains, think of using the STIMULATOR first to provide relief. At the onset of aches and pains the STIMULATOR is very effective; the important thing to remember is that in order to get maximum benefits from your STIMULATOR, you must always keep it in a convenient place; your pocket, purse, glove compartment, desk or next to your bed. Although the STIMULATOR may not work 100% of the time on 100% of your problems, we are confident that you'll find it extremely effective for the vast majority of your aches and pains as well as enabling you to provide relief for family and friends.

Your STIMULATOR can be your first line of defense against pain. Most people quickly find that they can't get along with just one STIMULATOR in the family and soon order more for family members

**When Not To Use The STIMULATOR**

While the STIMULATOR may be beneficial for temporary relief of minor aches and pains, Natural Innovations, Inc. makes no medical or health claims of any kind, nor is the STIMULATOR recommended as a substitute for medical care. If your problem persists, see your Chiropractor or M.D.

The Stimulator is not recommended for:

- Children under 6 years of age.
- Persons with a pacemaker or any type of electrical medical implants.
- Use over the abdominal area of a pregnant women.
- In the vicinity of malignant tumor.
- In the presence of pure oxygen or any flammable gas or liquid.
- Over any metal surgical implants.
- Directly on the eye.

EXHIBIT B

**Tips for Getting the Most
Out of Your STIMULATOR**

- Q. Do I have to use a lot of pressure when I am using my STIMULATOR?
- A. You don't need to use any pressure, just make contact with the skin and press the plunger.
- Q. Does the STIMULATOR have to be directly touching the skin or will it work through clothing?
- A. The STIMULATOR will work just as well through light clothing, although it may not penetrate several layers of clothing.
- Q. My STIMULATOR doesn't spark every single time I push the plunger -- is it broken?
- A. Occasionally after rapid, and repeated activations of your STIMULATOR, you may have to wait a few seconds until the internal mechanism has time to recharge. If this doesn't work, try turning the plunger slightly in one direction or the other. Your STIMULATOR should then continue to function properly.
- Q. If the fingers of the hand in which I am holding my STIMULATOR should happen to come in contact with the skin, will it still work?
- A. Yes, but the stimulation effect will be greatly reduced, maybe to the point of being ineffective. Always exercise care and deliberation when using the STIMULATOR. Do not allow the hand in which you are holding the STIMULATOR to touch the skin. This "short circuits" the STIMULATOR and directs the current to the wrong area. Always try to keep the STIMULATOR perpendicular to the body as in the photographs on the following pages.

EXHIBIT B

**Tips for Getting the Most
Out of Your STIMULATOR**

Q. I've been using my STIMULATOR for a while now, and I'm still getting good results, but it feels like the current is getting weaker ... Could it be?

A. The energy your STIMULATOR generates cannot diminish in strength. Your perception of the strength of this energy is diminishing because you have gotten used to the feeling.

Q. Can my STIMULATOR be used on acupuncture and acupressure points on my body?

A. Yes! Your STIMULATOR can be used to stimulate all the acupuncture and acupressure points throughout your body. In fact, many people refer to the STIMULATOR as acupuncture without needles. You can find very good books on acupuncture and acupressure at leading health food stores or the library.

Q. Is there any difference between using the STIMULATOR on myself as compared with using it with a partner?

A. Some people believe that the STIMULATOR is somewhat more effective when used with a partner because you can stimulate a larger area and the stimulation seems stronger. However, you can expect to receive excellent results when using the STIMULATOR alone. In fact, many people feel that the STIMULATOR works better when used alone because they are better able to pinpoint the area of pain. Of course, results vary from one person to another. So you must try different techniques to see what works best for you.

Q. Since there are no batteries in my STIMULATOR, how does it work?

A. There is a self-contained mechanism inside your STIMULATOR which has been designed using crystals to generate its own energy.

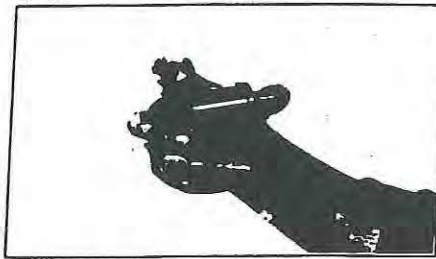
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EXHIBIT B

How to Hold the STIMULATOR

Grasp the STIMULATOR in one hand with your thumb on the plunger and your first and second finger on the metal grips as shown. Always remember that when using the STIMULATOR, don't allow any portion of the hand in which the STIMULATOR is being held to touch the skin of the person being treated. If the fingers, knuckles or wrist is touching the person, it will "short circuit" the STIMULATOR and direct the stimulation to the wrong area.



How to hold the STIMULATOR

Using the STIMULATOR on Yourself

The procedure for using STIMULATOR on yourself is very simple. Touch the tip of the STIMULATOR to the general area in which you feel pain. Activate the plunger 8 to 12 times as you move the STIMULATOR all around the area which is hurting. Remember, you don't need to use a lot of pressure. Just make contact with your skin. If you don't get the degree of relief needed, repeat the process. The STIMULATOR is all natural and you needn't worry about using it too often.

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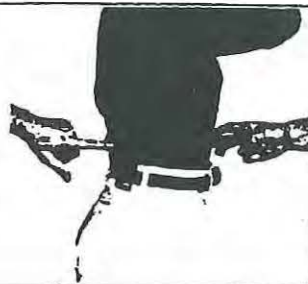
Using the STIMULATOR with a Partner

Some people believe the STIMULATOR is slightly more effective when using it with a partner. This is because when using the STIMULATOR on another person, you are able to take a finger on the hand which is not holding the STIMULATOR and place it on the person being treated to form a complete circuit. This will allow the current to travel from the point where the STIMULATOR is touching them to wherever your other finger is placed, thereby stimulating a much larger area. Each person reacts differently so use the STIMULATOR both ways and decide which is more effective for you.

The following series of photographs demonstrate how the STIMULATOR should be used with a partner for various painful conditions.

Abdominal Pain:

Place the STIMULATOR on the abdominal area and your finger directly opposite the STIMULATOR on the back. Move the STIMULATOR around the vicinity of the pain as you activate it 8 to 12 times.

**Carpal Tunnel Syndrome:**

Stimulate the hand as shown in the photograph. Move the STIMULATOR and your finger slightly as you continue to activate the STIMULATOR to affect a larger area.

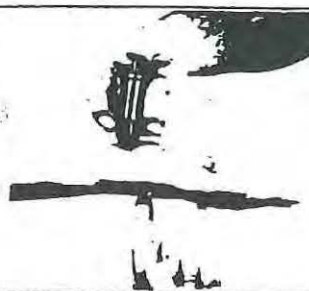
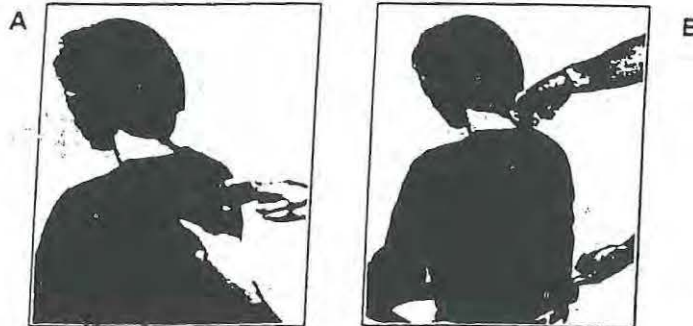


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Using the STIMULATOR with a Partner *(continued)***For Back Pain:**

You can place the STIMULATOR on one side of the painful area and a finger on the opposite side, then activate the STIMULATOR 8 to 12 times, while moving both the STIMULATOR and the opposite finger in a circular motion around the painful area as in picture A. You can also help relax the entire spinal area by placing the STIMULATOR at the base of the neck and placing the finger of the opposite hand near the small of the back as in picture B, then activate the STIMULATOR 8 to 12 times. Repeat this process on both sides of the spine to stimulate and relax the spinal muscles.

**Sciatica Problems:**

Place the STIMULATOR at the base of the spine as shown and a finger on the back of the achilles tendon, as shown, on the leg in which the problem occurs. Activate the STIMULATOR 8 to 12 times.

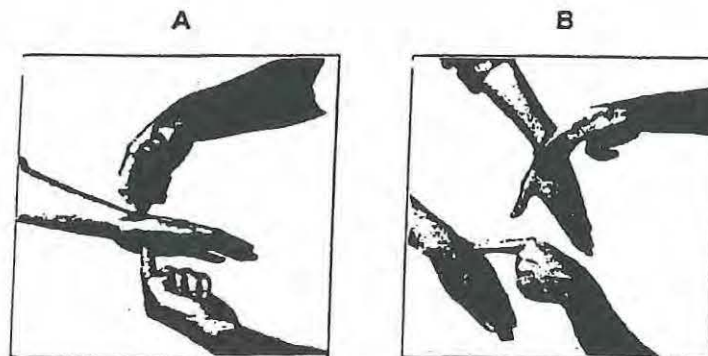


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EXHIBIT B

Using the STIMULATOR with a Partner *(continued)***Headaches and General Pain Relief:**

The webbing between the thumb and forefinger is one of the key area to stimulate for all headaches as well as general pain relief. This area may be stimulated as in either photograph. Experiment and determine which technique brings the best results for you personally. When using method "A", you must naturally do it on each hand individually. When using method "B", activate the STIMULATOR 8 to 12 times as shown and then switch the STIMULATOR to the opposite hand for an additional 8 to 12 times to provide complete stimulation of this area.

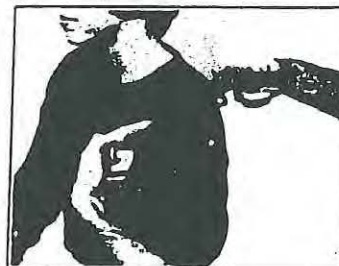


Many people get excellent results using these techniques immediately after stimulating the general area of pain.

EXHIBIT B

Using the STIMULATOR with a Partner (continued)**Painful, Stiff or Swollen Joints:**

When treating any joint problem, place the STIMULATOR on one side of the joint and a finger on the other side as shown. Activate the STIMULATOR 8 to 12 times as you move around the joint, always keeping the STIMULATOR opposite the other finger contact point as shown

**Joint Pain:**

For a painful condition in a joint, sometimes treatment is more effective if you stimulate the entire area to the next joint. The treatment shown could be used for painful elbow or wrist.

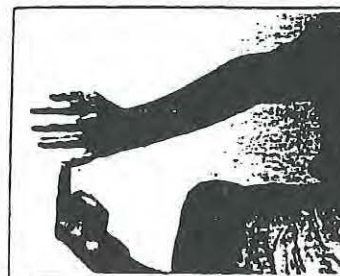
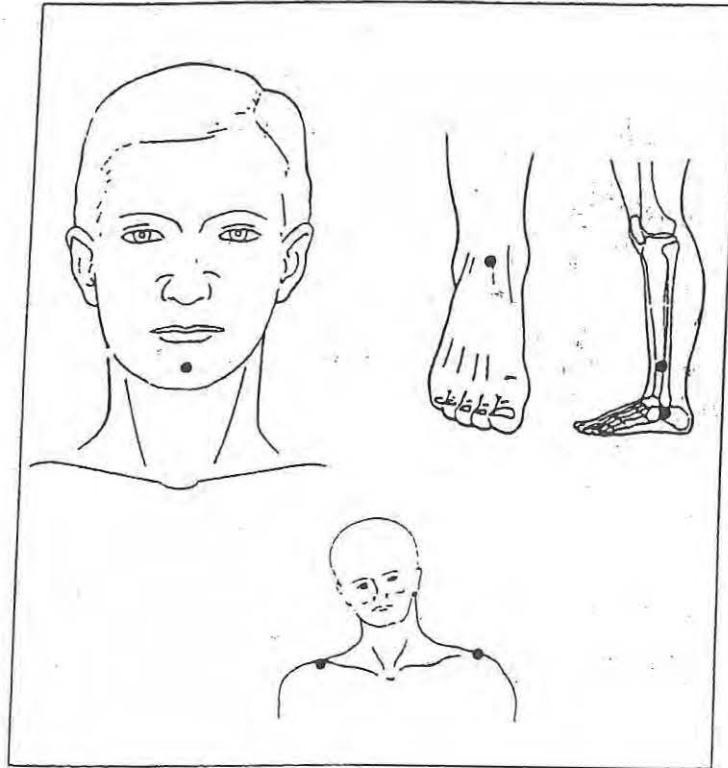


EXHIBIT B

The following pages contain a series of charts of acupuncture and acupressure points on the body which may be stimulated for specific problems in addition to stimulating the general area of pain.

Points of the Head and Face

• MIGRAINE

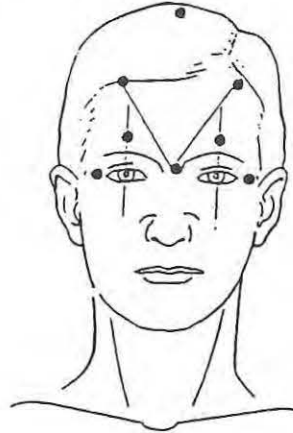


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Points of the Head and Face (continued)

• HEADACHE

- STUFFY NOSE**
- ALLERGIES**
- SINUS**
- SINUS HEADACHES**
- HAY FEVER**

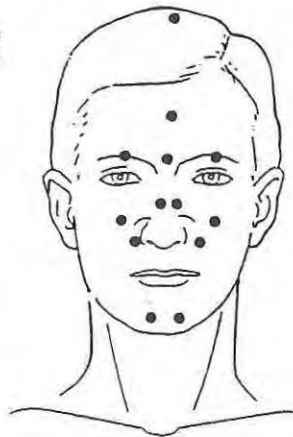
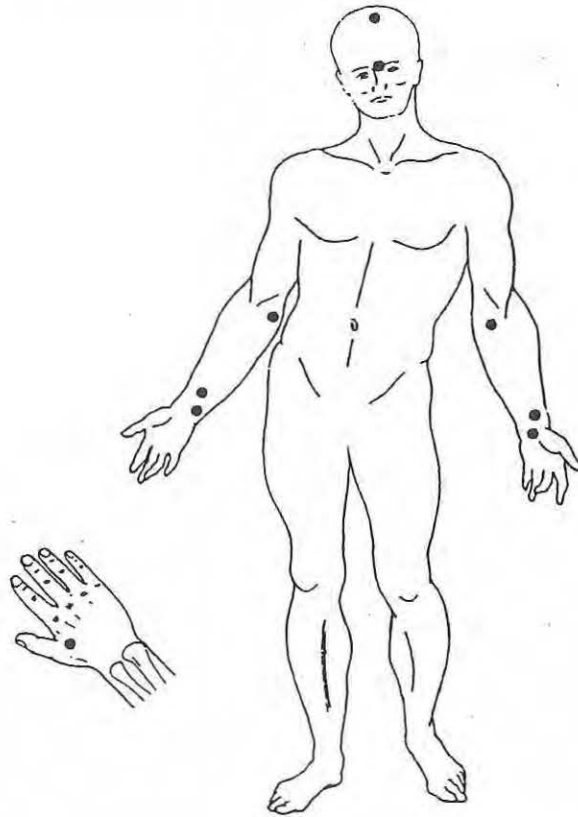


EXHIBIT B

• **STRESS, TENSION & ANXIETY**



If you have a problem which we have not addressed or wish more detailed information, a visit to your local health food store or library will yield a variety of reference books on acupuncture and acupressure.

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EXHIBIT B

CLIP & MAIL

GIVE TO A FRIEND

Please send me _____ STIMULATORS.
 I enclose \$79.80 ☐ Check ☐ Money Order
 Plus \$8.50 shipping and handling for each STIMULATOR

OR ... Bill My Credit Card

☐ VISA ☐ MasterCard ☐ American Express ☐ Discover
 Card # _____ Expires: _____
 Signature _____

☐ Bill my credit card in 4 equal installments of \$19.95 each, for each STIMULATOR ordered. (Shipping and Handling will be billed in the first installment)

☐ Bill by credit card in just one installment of \$79.80 plus \$8.50 Shipping and Handling.

☐ CHECK HERE FOR **RUSH DELIVERY**. For only \$10.00 you can receive your STIMULATOR within 7 days of receipt of your order. Simply add \$10.00 to your check amount for each STIMULATOR ordered, or we will bill your credit card.

FOR FAST SERVICE ...
CREDIT CARD ORDERS MAY CALL
 (MON. - SAT. 9AM - 6PM EASTERN STANDARD TIME)
1-800-728-0815

SHIP TO :
 NAME _____
 ADDRESS _____
 CITY/STATE/ZIP _____

Allow 3-4 weeks for normal delivery. Enclose this order form in an envelope and MAIL TO:

NATURAL INNOVATIONS, INC.
 Box 36700
 DEPT. R
 Canton, Ohio 44735

CLIP & MAIL

Please complete for our survey:
 Age _____
 Is STIMULATOR for:
☐ YOURSELF
☐ GIFT

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EXHIBIT B

**60 Day Money Back
Guarantee**

At any time within the first 60 days after receiving your STIMULATOR you may return it for a full no questions asked refund, *(less shipping & handling of course)*.

For Refund, complete this form in its entirety and send it along with ALL MATERIALS RECEIVED WITH THE STIMULATOR to:

NATURAL INNOVATIONS, INC.
RETURNS DEPT.
2717 South Arlington Rd., Suite E
Akron, Ohio 44312

Date _____

Purchasers Name _____

Address _____

City _____

State _____ Zip _____

Method of Payment

- ☐ Credit Card ☐ Check ☐ Money Order
☐ Cash ☐ Other

of STIMULATORS Purchased _____

of STIMULATORS Being returned for refund _____

Reason: _____

Signed _____



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WARRANTY

If at any time during the first 12 months after receiving your STIMULATOR it fails to function for any reason, Natural Innovations will replace it free of charge with only a small processing, shipping and handling fee of \$8.50.

**For replacement; send
your STIMULATOR and a brief
explanation to:**

NATURAL INNOVATIONS, INC.
CUSTOMER SERVICE
2717 South Arlington Rd., Suite E
Akron, Ohio 44312

FOR CUSTOMER SERVICE CALL:
1-800-728-0815 TOLL FREE
Mon. - Sat. 9:00 a.m. - 6:00 p.m. Eastern Standard Time

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EXHIBIT C

**Transcript of Stimulator Instructional Video
"Pain Free Today"**

Super : "Pain Free Today -- Using the Stimulator with Dr. William S. Gandee, D.C."

Dr. Gandee:

Hi, I'm Dr. Gandee, a chiropractor. Today, I'm going to show you how to use the Stimulator. For you to be watching me means that you purchased the Stimulator and I want to congratulate you on making probably the purchase of your life because the Stimulator really helps many problems. Many people in pain with different symptoms have really discussed how well the Stimulator works with them. Today I'm going to show you how to use the Stimulator.

Who needs the Stimulator? Basically, anyone can use the Stimulator because it's safe and effective. My grandmother is 96 years old and she uses the Stimulator every day. She's got leg cramps and feet problems and she uses it just to help her get through the day. Also, I have an eight-year-old son that I use the Stimulator on myself at home for certain problems and a five-year-old daughter that I've used the Stimulator on also for certain problems. So there is no age limit to the Stimulator. Many times a person will come into my office and they'll say, "Dr. Gandee, I'm getting old," trying to relate their age with their health and pain problems. And my belief is that we're getting older not old. Just because we're aging does not mean we have to hurt. And today we're going to show you how you can get relief.

Now, who should stay away from using the Stimulator or under what circumstances should you maybe not use the Stimulator? I don't think you should use the Stimulator over a pacemaker because it's an electrical apparatus and the Stimulator shoots out an electrical spark. I think you should stay away from the abdomen of a pregnant woman. I think also if you're on oxygen you should unplug or turn the oxygen off before using the Stimulator. Don't use the Stimulator over a flammable liquid because again of the spark that it transmits. So there are certain things that you should stay away from using the Stimulator for, yet the Stimulator has proven very effective and safe for everyone.

When should you use the Stimulator? Basically when you feel the coming of pain or tension or excitability, any time you just don't feel right, you can use the Stimulator. Often times it's good to get a problem before it actually gets going or started. But there is no best time to use the Stimulator. You can use it whenever you want to. That's what so great about it.

Where can you use the Stimulator? Personally, I've used the Stimulator while in the theater. I've used it in a restaurant while dining. There is such a good marketability with the Stimulator that you can use it anywhere you want to and no one is going to look at you and [wonder] why you're using it or what it is because the Stimulator is very effective wherever you are at the time.

Is the Stimulator 100% effective on everything? No. What is? Nothing that I'm aware of is effective all the time. Yet I'm sure that as you use the Stimulator and as I show you today how to use the Stimulator more effectively, you're going to find that

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you're going to be able to get relief most of the time. And if you've bought the Stimulator for one specific need, and you don't get 100% use of the Stimulator, I know that for something else down the road, you're going to find the Stimulator good for that, or you're going to have a relative that can use the Stimulator or a friend or a neighbor. You're going to see that pretty soon this is going to be your best friend. You're going to carry it with you all the time and often times people will say or call you "Doc." They'll say, "Hey Doc, come here and use that Stimulator thing, that little popper thing, on my shoulder. Come on over here, Doc, and use it on me." And you're going to be very happy with this purchase.

What we're going to do right now is I'm going to show you how to effectively use the Stimulator on yourself and also on someone else.

- Linda Anthony: The relief it gives me is worth more than any amount of money that somebody can give me for that.
- Unidentified Woman: It always -- every time I use it, it helps me. Every single time I've used it.
- Dr. Gandee: I'd like to share a story with you, a personal story, about the Stimulator and myself. Chiropractic is a very physical job. I use my hands continually all day long, and I see patients from eight in the morning until seven o'clock at night. So you can see that I'm constantly in motion and my hands receive a lot of physical abuse to the point I actually thought I was going to have to give up chiropractic because of severe pain I was having in the knuckle. A hundred percent of the time my knuckle hurt, all the time. And especially as the day progressed I had more and more pain. I started using the Stimulator on myself, as you can do with yourself. At first I really didn't see improvement. It felt a little bit better for a short period of time but then it would go back to what it was before. It took about a week until one day just out of the blue I noticed I had no more pain. It was like a gradual process. Now what I do is every once in a while, maybe every two weeks or three weeks, I need to use the Stimulator on myself about eight or ten repetitions just to keep the pain down.

Depiction: Dr. Gandee using the Stimulator on his forefinger.

This is what we're talking to you about. We're not saying that the Stimulator is going to completely eradicate all your aches and pains. Nothing does that. Yet what the Stimulator can do, and has done for me, is to help you to be able to live with what aches and pains that you have. It gives you a tremendous amount of relief. To the point for myself I no longer worry about if I can continue on in chiropractic because of this pain. I now can do anything I like to do.

With yourself, when you use the Stimulator on yourself, I want you to keep in mind that often times you'll see instantaneous relief. And that sometimes you need to use the Stimulator repetitiously over a period of time. For instance, let's say your shoulder started bothering you. Here's what you do. All you do is right around the area of pain you apply the Stimulator. Will it go through this sweater and shirt? Yes, it will. It will go right through it. You can feel it just as if it was on skin. So you don't have to take your clothes off or worry about that. You just apply the Stimulator right where the pain is and you just press the little knob and it shoots the spark of energy right into the shoulder area. And you just go right around that area about eight, ten, twelve times.

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Depiction: Dr. Gandee using the Stimulator on his shoulder.

And then you just leave it alone. Go about your business. You see how you feel. Five or ten minutes later, you want to do it again, go ahead and do it again. It won't hurt you. Go ahead. Again, you just apply it to the area of pain. You do it about eight or ten times.

Depiction: Dr. Gandee using the Stimulator on his shoulder.

And you see how you feel. It's so simple.

Now what happens if the pain doesn't go away? It means you have a little bit more of a problem. Is that unusual? No, that's the way life works, isn't it? So, for instance, let's take, for instance, an overweight person who goes on a diet. Are they going to be skinny tomorrow? Well, no, but over a period of time they're going to see changes, just like with the Stimulator. Just like with exercising. You can start exercising today, but will you be in shape tomorrow? No, but the more you use it, often times the better condition, the better shape you're going to be. So what happens with this shoulder? Sometimes with my patients, I'll say to them, "You need to use the Stimulator over a period of days. We're starting with Monday, say. Use the Stimulator every two or three hours, about eight or ten repetitions, maybe for five or six days in a row or whatever it takes for you to start seeing relief. You can't use the Stimulator too much." So that's how we work it. So on my fingers, I just did it right on the area of joint. I did it on top, on the sides, and on the bottom. That's all I did it about eight or ten times.

Depiction: Dr. Gandee using the Stimulator on his hand.

Whenever I thought about it again, I did it again. I only did about two or three times a day for three or four days and I started seeing changes. I was very happy with it, as you can imagine. So there is no limit to how often or what you need to do. You need to use the Stimulator on yourself because everyone's body is different. So let's say you have other symptoms going into your hand, maybe some tingling, use the Stimulator around your wrist. Very simple.

Depiction: Dr. Gandee using the Stimulator on his wrist.

Just go right around the areas of pain. This takes seconds. You can do it anywhere you want to do. It's very effective. It's very effective used correctly.

Glen Marz:

You can go to the counter and buy anything you want for pains and that. But some of us can't just take aspirin or some of us just can't take certain medications or anti-inflammatory drugs because they upset our stomachs. This, I can relieve the pain and I don't have to swallow anything. I don't have to worry about it upsetting my stomach or ruining my dinner or whatever, because it's outside my body, I apply it when I want it and it works.

Dr. Gandee:

Craig has been nice enough to help me on this next segment because I have found that when you have another person help you use the Stimulator, sometimes it is even more effective. Sometimes it's even a stronger stimulation. So today, right now, I'm going to show you how to use the Stimulator with a partner.

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There are over 20 million confirmed headache sufferers just in the United States alone. So I'm going to start off showing how to use the Stimulator if you have a headache. If you have a headache or sinuses or allergies, we basically use the Stimulator in the same way. So what I usually do with the Stimulator is, let's say he has a frontal headache, and it hurts right across his temple, across his forehead, and even into the sinus areas. That's what we're going to show you. If you have an occipital headache or it hurts in the back of the head on the base of the neck line, I'll show that in a minute how to do it. So what I usually do is I put the Stimulator on the forehead and just press the Stimulator.

Depiction: Dr. Gandee using the Stimulator on the subject's forehead, temple, and cheek.

And you can hear the sound and then I go down right above on either side of the eye. There's a little knot right there you can feel with your finger, and then I go down to the temple area on both sides, right in the cheekbone to the chin and back up. How did that feel?

Subject: Fine.

Dr. Gandee: Did that hurt at all?

Subject: No.

Dr. Gandee: Most people when they use the Stimulator don't feel any pain. I've had people tell me that what it feels like is if you take a little rubber band and you let go of it. That's what the Stimulator feels like to some people. Now I have to say that some people don't like the feel of the Stimulator, but there are ways I'm going to show you how you can lessen the effects of that so everyone can use the Stimulator.

(To subject) Now, why don't you turn your head to your left. Now I'm going to show if you have an occipital headache. What I do is I put the Stimulator right back on the base line of the head, the back of the head and the neck muscles. With my finger, I put it on the exact opposite side and just press the Stimulator about eight or ten times.

Depiction: Dr. Gandee using the Stimulator on the right side of the back of the subject's head while placing his forefinger on the other side of the subject's head.

That's all that it takes. Now, what do you do then? You wait. Very simple. You wait to see how you start feeling. Give yourself five or ten minutes. See how much pain has lessened. How much relief you've gotten. If you want to then, you can do it again. If you haven't gotten much relief or you want more relief, do it again. You can do this often without any side effects. Let's say that you don't get results the first time. Does that mean that it doesn't work? No. That mean you want to send it back? No. What does it mean? It means that what you want to do is you want to use it more repetitiously over a period of time. Now, also with headaches what I always do is I always stimulate the web of the fingers between the thumb and the first finger on both hands. And what I do, as you can see, I start putting my one finger -- this completes the circuit. You can feel the Stimulator go from the contact point right

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through because this helps buffer the area of stimulation -- about eight or ten times again.

Depiction: Dr. Gandee using the Stimulator on the back of the subject's hand while placing his forefinger on the subject's palm.

Just like that. You feel how that goes through right there? This is for headaches. This is for sinuses or allergies. After I do that hand, I do this hand the same way. I put the Stimulator right between the thumb and the forefinger and my finger on the other side.

Depiction: Dr. Gandee using the Stimulator on the back of the subject's hand while placing the tip of his forefinger on the subject's palm.

Now, do you see how only the tip of my finger is touching and only the tip of the Stimulator is touching? See how that? I'm not touching like this and my hand is not laying all over it because if you do that, then you're reducing the effects of the stimulation. So, watch how this. Can you feel that?

Subject:

It's less.

Dr. Gandee:

Quite a bit less, isn't it? Now, with one finger, see how much stronger it is.

Depiction: Dr. Gandee using the Stimulator on the subject's hand while placing the tip of his forefinger on the subject's palm.

That's the way the Stimulator works. So when you're working on someone else, you want to be careful how you're actually doing this. You don't want to put and just lay all over the person that you're stimulating.

Now what I'm going to do is I'm going to show how to use the Stimulator on lower back pain or pain down the leg. *(To subject)* So I'm going to have Mark, if you would stand up with your back to the camera. Okay, good. Now with the Stimulator, the application will be right in this area because this is where usually the area is involved when it goes down the leg.

Depiction: Dr. Gandee pointing to the subject's lower back.

So I'm going to get down like this because it's a little bit easier for me to work this way and show you. So what I would do is I would put the Stimulator on this area. With my other hand, I would put it on his leg just like this.

Depiction: Dr. Gandee using the Stimulator on the subject's lower back while placing his forefinger on the subject's calf.

And again, just press the applicator eight or ten or twelve times. Now if I want to get a little fancy here, I can come up his leg while I'm doing it, following the course of the pain. Can you feel that?

Subject:

Yes.

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Dr. Gandee:

You can feel that all the way up and down. If it's the other leg, we can do the same thing, just with the other leg, just like this.

Depiction: Dr. Gandee using the Stimulator on the same area while placing his left forefinger on the subject's right leg.

You can feel the Stimulator working up and down the leg. It's very, very simple how to do this. *(To subject)* Now if you would, I'd like for you just to have a seat again please. There are many, many people that have feet problems. The Stimulator works very well with feet problems. And if you would, think of the feet and the hands equally because we have the digits. So as I'm talking about the feet, it works very similarly with the hands. Now if a person has a foot problem, what I would do is I would come down and I would stimulate each one of the toes with the Stimulator and with my other hand I would put it on the ankle because this is a joint and this is a joint. I would go to the next joint up. So I would-- here, can you feel that here with my other finger?

Depiction: Dr. Gandee using the Stimulator on the subject's foot and ankle.

Subject:

[Inaudible]

Dr. Gandee:

You can feel it. Now you just go around just like this and stimulate it. You're right at the foot and the ankle on either side. Very simple. Many people have feet problems. That's why there are specific doctors for feet problems. My grandmother is 96 years old and she uses the Stimulator on her feet and on her calves nightly because of the problems that she has with circulation. And you can see with cramping, I'm just putting the Stimulator right on the areas where the cramp would be and getting the general area.

Depiction: Dr. Gandee using the Stimulator on the subject's calf and leg while placing his left forefinger on the opposite side of the subject's leg.

And then what happens is the body handles it from there. It's very simple on how to use the Stimulator. How does that feel?

Subject:

Fine.

Dr. Gandee:

It felt pretty good, didn't it? It's very simple.

Bill Ramsell:

Pain pills is what I've been taking for all these years and that's the only thing that's given me relief, you know. But it didn't give me total relief. Now that's why I tried the Stimulator. Well, it's amazing. It's almost hard to believe that it would do that, but it do it. It did the trick.

Dr. Gandee:

Many people have abdominal problems, pain and aches. *(To subject)* Craig, why don't you stand up please, and we'll show how to use the Stimulator on that. Most of the time when a person has abdominal problems they've already been to the doctor because sometimes it can be very serious. Other times we don't know what the cause really is. But with the Stimulator, we can help give you a lot of relief. Now, where would you apply the Stimulator? Wherever you hurt -- the area of pain. So let's just say the pain is right here. I'd put the Stimulator right on the shirt, right on the area.

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It goes right through the skin. With my other hand, I would put it on the middle part of his back so it creates a circuit.

Depiction: Dr. Gandee using the Stimulator on the subject's abdomen while placing his forefinger on the subject's back.

Then I would just stimulate the body about eight or ten repetitions. How does that feel?

Subject: Fine.

Dr. Gandee: Then again what you do is you just see the kind of results you get. You might want to do it again in a few minutes, or maybe in an hour, or maybe it will go away totally.

Now, stress and tension. People have talked often about how this is very relaxing for them, using the Stimulator on the shoulders from the neck down through gives them a lot of relief and it takes away a lot of tension. And you know tension and stress sometimes comes and causes headaches. So what you would do is you just put the Stimulator on the shoulder and your other finger on the neck and you just zap it right on the trapezius muscle and you can feel it going up and down. Or you can do it the opposite way with the Stimulator on the neck and your finger on the muscle.

Depiction: Dr. Gandee using the Stimulator on the subject's shoulder and neck while placing his forefinger on other parts of the subject's neck and shoulder.

And this is a very soothing, relaxing effect on the body. Pretty good?

Subject: Um-hmm. It's great.

Dr. Gandee: I appreciate you helping me with that.

James Larimore: One fellow in particular I worked on or zapped him [inaudible], he said, "Try that on me." So I did. And he had stiffness in his shoulder, like the previous interviewee. And he went to a ball game that night and all he did was talk about the Stimulator. He didn't even pay any attention to the ball game. He felt better than he had in years. So the next time I came back to this particular customer, he said, "You got that thing with you?" I said, "Yeah, but I going to charge you to use it." So he bought me a coffee. It worked for him again. So he said, "Where'd you buy it?" and I told him. I said, "If you go down there and purchase one, tell them who sent you." So that's the way it works. I use it in the evenings when I'm home after work. I use it on the balls of my feet, around my ankles, knees. And when I go to bed, I hit the lower back and I sleep like a baby.

Dr. Gandee: As I work with the Stimulator, it is very obvious to me that soon this product will be worldwide. I believe that every household in America very soon will own a Stimulator. It might even go to the point where each individual person in the household will own a Stimulator because they'll want to keep it with them all the time. I also sincerely believe that the Stimulator will help you lead a more active, productive, and pain-free life. And as you share the Stimulator with your family and friends, which I hope you do and soon, I know that your family and friends are going

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to be calling you "Doc" or they're going to be asking for you to use the Stimulator on them. I would like for you to share with me your testimonials of how the experience of using the Stimulator has helped you. I would like to know the kind of results that you've seen with the Stimulator. If you have any questions at all about how to use the Stimulator or different applications on using the Stimulator or different problems on using the Stimulator, don't hesitate to call me or don't hesitate to write to me. I would like and love to hear from you. In closing, I want to thank you for buying the Stimulator. I want to thank you for using the Stimulator and for sharing the Stimulator and I hope you have a wonderful, pain-free life.

Bill Walton:

Basketball is an incredibly physical game. You're smashing into people. You're falling on the ground. You're running on a hard wood surface. Everyone else is as big and as strong and has spent as much time in the weight room as you have. The collisions — I broke my nose thirteen times, eleven of them from people's elbows, two of them from people's knees. And they even called a foul on me one of those times. Can you believe that? I had my front teeth knocked out ten separate times. Broken both hands, both wrists. It is a very physical and very rough game. That's the way we like it. Until you get old like me and that pain just doesn't go away. Thank God, thank God for the Stimulator.

Super: "Please address your letters to:

*Natural Innovations, Inc.
P.O. Box 36700
Canton, OH 44735*

Or call 1-800-728-0815"

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, 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, and having duly considered the comments received, 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 Natural Innovations, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business at 2717 South Arlington Road, Akron, Ohio.

Respondent William S. Gandee is an officer, director, and sole shareholder of Natural Innovations, Inc. He formulates, directs, and controls the policies, acts and practices of said corporation, and his office and principal place of business is located at the above stated address.

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

ORDER

I.

It is ordered, That respondents, Natural Innovations, Inc., its successors and assigns, and its officers; and William S. Gandee, individually and as an officer and director of said corporation; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, offering for sale, sale, or distribution for sale of any device, as "device" is defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

A. That use of the device will significantly reduce, relieve, or eliminate musculoskeletal pain, including but not limited to pain in the back, feet, knees, wrists, knuckles, elbows, shoulders, ankles, joints, or calves; carpal tunnel syndrome; muscle spasms or strains; or sciatica;

B. That use of the device will significantly reduce, relieve, or eliminate abdominal pain or pain or discomfort caused by allergies, sinus conditions, diverticulosis, cramps, or menstrual cramps;

C. That use of the device will eliminate the pain caused by severe headaches, including but not limited to occipital, frontal, migraine, cluster, or stress headaches, or headaches caused by benign tumors;

D. That the pain relief or pain elimination provided by the device is immediate;

E. That use of the device provides long-term pain relief;

F. That, for the treatment of pain, the device is as effective as, or more effective than, prescription or over-the-counter medications, including but not limited to aspirin, acetaminophen, Darvon, Darvocet, or codeine;

G. That, for the treatment of pain, the device is as effective as, or more effective than, physical therapy, massage therapy, chiropractic treatment, acupuncture, acupressure, or reflexology; or

H. About the efficacy or relative efficacy of the product in reducing, relieving, or eliminating pain from any source;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this provision, "competent and reliable scientific evidence" shall mean adequate and well-controlled clinical testing conforming to acceptable designs and protocols and conducted by a person or persons qualified by training and experience to conduct such testing.

Provided that, for any representation that any device is effective for:

- (1) The temporary relief of minor aches and pains due to fatigue and overexertion, or
- (2) Easing and relaxing of tired muscles, or
- (3) The temporary increase of local blood circulation in the area where applied,

"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 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.

II.

It is further ordered, That respondents, Natural Innovations, Inc., its successors and assigns, and its officers; and William S. Gandee, individually and as an officer and director of said corporation; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, offering for sale, sale, or distribution for sale of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the health or medical benefits of any such product unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this provision, "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.

III.

It is further ordered, That respondents, Natural Innovations, Inc., its successors and assigns, and its officers; and William S. Gandee, individually and as an officer and director of said corporation; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, 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 representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation, or

B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

(1) What the generally expected results would be for users of such product, or

(2) The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this provision, "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.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such

drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

V.

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 and 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 for such representation, including but not limited to complaints from consumers and complaints or inquiries from governmental organizations.

VI.

It is further ordered, That respondent Natural Innovations, Inc. shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other change in the corporation that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That respondent Natural Innovations, Inc. shall:

A. Within thirty (30) days after service of this order, 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 or other materials covered by this order.

B. For a period of five (5) years from the date of entry of this order, provide a copy of this order to each of its future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with it or any subsidiary, successor, or assign, within ten (10) days after the person assumes his or her position.

VIII.

It is furthered ordered, That respondent William S. Gandee shall, for a period of seven (7) 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 shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business and his duties and responsibilities.

IX.

It is further ordered, That this order will terminate on February 25, 2017, 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 respondents 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.

X.

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

IN THE MATTER OF
COMTRAD INDUSTRIES, INC.

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

Docket C-3719. Complaint, Feb. 25, 1997--Decision, Feb. 25, 1997

This consent order prohibits, among other things, the Virginia-based company from misrepresenting the ability of food storage product to cool food items or maintain proper cold storage temperatures and to hold its cooling capacity after being unplugged, or misrepresenting the effect of operating such a product off a car battery when the car is not running, and requires the respondent to substantiate any claims regarding the safety or efficacy of food storage products.

Appearances

For the Commission: *John T. Dugan.*

For the respondent: *James E. Moore, Christian, Barton, Epps, Brent & Chappell, Richmond, VA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Comtrad Industries, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Comtrad Industries, Inc. is a Virginia corporation with its principal office or place of business at 2820 Waterford Lake Drive, Suite 106, Midlothian, Virginia.

2. Respondent has advertised, offered for sale, sold, and distributed products to the public through print advertisements and through the Internet's World Wide Web, including the Koolatron, a portable electronic food cooler and warmer also known as a thermo-electric cooler.

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

4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for the Koolatron, including but not necessarily limited to the attached Exhibits A and

B. These advertisements and promotional materials contain the following statements:

A. "500 miles from nowhere, it'll give you a cold drink or a warm burger . . . NASA space flights inspired this portable fridge that outperforms conventional fridges, replaces the ice chest and alternates as a food warmer.

Recognize the ice cooler in this picture? Surprisingly enough, there isn't one. What you see is a Koolatron, an invention that replaces the traditional ice cooler, and its many limitations, with a technology even more sophisticated than your home fridge. And far better suited to travel.

What's more, the innocent looking box before you is not only a refrigerator, it's also a food warmer.

NASA inspired portable refrigerator. Because of space travel demands, scientists had to find something more dependable and less bulky than traditional refrigeration coils and compressors. Their research led them to discover a miraculous solid-state component called the thermoelectric module."

"From satellites to station wagons. [T]hermoelectric temperature control has now been proven with more than 25 years of use in some of the most rigorous space and laboratory applications. And Koolatron is the first manufacturer to make this technology available to families, fishermen, boaters, campers and hunters -- in fact, anyone on the move.

Home refrigeration has come a long way since the days of the ice box and the block of ice. But when we travel, we go back to the sloppy ice cooler with its soggy and sometimes spoiled food. No more! Now . . . all the advantages of home cooling are available for you electronically and conveniently.

Think about your last trip. You just got away nicely on your long-awaited vacation. You're cruising comfortably in your car along a busy interstate with only a few rest stops or restaurants. You guessed it . . . the kids want to stop for a snack. But your Koolatron is stocked with fruit, sandwiches, cold drinks, fried chicken . . . fresh and cold."

....
"Hot or cold. With the switch of a plug, the Koolatron becomes a food warmer for a casserole, burger or baby's bottle. It can go up to 125 degrees."

....
"Just load it up and plug it in. On motor trips, plug your Koolatron into your cigarette lighter; it will use less power than a taillight. If you decide to carry it to a picnic place or a fishing hole, the Koolatron will hold its cooling capacity for 24 hours. If you leave it plugged into your battery with the engine off, it consumes only three amps of power."

....
(Exhibit A).

B. "Technology combines the dependable cooling power of a refrigerator with the convenience of a cooler . . . heats food too!

Remarkable new portable cooler/warmer reduces the outside temperature by up to 40 degrees and heat[s] up to 125 degrees!"

....
Imagine the versatility and convenience of a cooler that worked like a refrigerator. You could have ice-cold drinks at softball games, enjoy a picnic without soggy or spoiled food, even store insulin or other medicine that needs to be refrigerated. You

could take it along when traveling and avoid the long lines and high prices of rest areas and interstate restaurants.

Now, imagine that this cooler that worked like a refrigerator could also heat food. You could warm baby formula or enjoy warm drinks at football games, camping, hunting or anywhere else. Sound like a dream? It's not -- the Koolatron cooler/warmer does it all."

"Hot or cold. One of the most innovative things about Koolatron is that it works as well to heat food as to cool it. In the cool mode, Koolatron can reduce the outside temperature by as much as 40 degrees F. With the switch of a plug, Koolatron goes from a refrigerator to a food warmer, going up to 125 degrees.

Just plug it in. Koolatron plugs directly into your vehicle's cigarette lighter and uses less power than a taillight. If you leave it plugged in while the vehicle is off, it will consume only three amps of power. Unplugged, Koolatron will hold its cooling capacity for up to 24 hours."

"Modern solution. Home refrigeration has come a long way from the "ice box" of the 1920s. But when we travel, we revert to similar methods and sloppy or spoiled food. Now, . . . the advantages of home refrigeration are available to you electronically."

....

(Exhibit B).

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that:

A. The Koolatron is as effective at cooling food items and medicines as a home refrigerator.

B. The Koolatron will effectively cool down warm items and heat up cold items.

C. Once unplugged from a power source, the Koolatron will hold its cooling capacity for 24 hours.

D. Operating the Koolatron off a car battery when the car is not running will result in only a minimal power drain off the car's battery.

6. In truth and in fact:

A. The Koolatron is not as effective at cooling food items and medicines as a home refrigerator. Among other reasons, the Koolatron's internal cold storage temperature is highly dependent on outside air or room temperatures, and in many circumstances it will not maintain internal cold storage temperatures comparable to a home refrigerator.

B. The Koolatron will not effectively cool down warm items or heat up cold items. The Koolatron is primarily designed to maintain the cool or warm temperatures of items that were already cool or warm before being placed in the Koolatron. It may take up to twelve

hours or more for the Koolatron to cool down a warm item or heat up a cold item.

C. In most instances, once unplugged from a power source, the Koolatron will not hold its cooling capacity for 24 hours.

D. Operating the Koolatron off a car battery when the car is not running does not result in a minimal power drain off the car's battery. Use of the Koolatron in this manner may drain the car battery of all power in as little as three hours.

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

7. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made.

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

9. In its advertising and sale of the Koolatron, respondent has represented that the Koolatron is effective, useful, or appropriate for refrigerating or cooling food items, or for holding food items at a cool temperature, including in a wide variety of outdoor settings. Respondent has failed to disclose that the Koolatron may not keep perishable food items, such as meat, poultry, and fish, sufficiently cold to prevent the growth of bacteria when the surrounding outside temperature is greater than 80 degrees Fahrenheit, including when the Koolatron is used in hot weather, in direct sunlight, or in a hot car. Use of the Koolatron in such circumstances poses a risk of buildup of harmful or unsafe bacteria and could lead to food-borne illness. These facts would be material to consumers in their purchase or use of the product. The failure to disclose these facts, in light of the representations made, was, and is, a deceptive practice.

10. In its advertising and sale of the Koolatron, respondent has represented that the Koolatron is effective, useful, or appropriate for heating or warming food items, or for holding food items at a warm temperature. Respondent has failed to disclose that, because the Koolatron's maximum internal heating temperature of 125 degrees Fahrenheit is not high enough to kill or prevent the growth of certain bacteria in perishable food items such as meat, poultry, and fish,

holding perishable food in the Koolatron in its warming mode poses a risk of buildup of harmful or unsafe bacteria and could lead to food-borne illness. These facts would be material to consumers in their purchase or use of the product. The failure to disclose these facts, in light of the representations made, was, and is, a deceptive practice.

11. The acts and practices of respondent 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

500 miles from nowhere, it'll give you a cold drink or a warm burger...

NASA space flights inspired this portable fridge that outperforms conventional fridges, replaces the ice chest and alternates as a food warmer.



Recognize the ice cooler in this picture? Surprisingly enough, there isn't one. What you see instead is a Koolatron, an invention that replaces the traditional ice cooler, and its many limitations, with a technology even more sophisticated than your home fridge. And far better suited to travel. What's more, the innocent looking box before you is not only a refrigerator, it's also a food warmer.

NASA inspired portable refrigerator. Because of space travel's tough demands, scientists had to find something more dependable and less bulky than traditional refrigeration coils and compressors. Their research led them to discover a miraculous solid-state component called the thermoelectric module.

Aside from a small fan, this electronic fridge has no moving parts to wear out or break down. It's not affected by tilting, jarring or vibration (situations that cause home fridges to fail). The governing module, no bigger than a matchbook, actually delivers the cooling power of a 10-pound block of ice.

From satellites to station wagons, thermoelectric temperature control has now been proven with more than 15 years of use in some of the most rigorous space and laboratory applications. And Koolatron is the first manufacturer to make this technology available to families, fishermen, boaters, campers and hunters—in fact, anyone on the move.

Home refrigeration has come a long way since the days of the ice box and the block of ice. But when we travel, we go back to the stoppy ice cooler with its soggy and sometimes

spoiled food. No more! Now for the price of a good cooler and one or two seasons of buying ice (or about five family restaurant meals), all the advantages of home cooling are available for you electronically and conveniently.

Think about your last trip. You just got away nicely on your long-awaited vacation.

You're cruising comfortably in your car along a busy interstate with only a few rest stops or restaurants. You guessed it...the kids want to stop for a snack. But your Koolatron is stocked with fruit, sandwiches, cold drinks, fried chicken... fresh and cold. Everybody helps themselves and you have saved valuable vacation time and another expensive restaurant bill.

Hot or cold. With the switch of a plug, the Koolatron becomes a food warmer for a casserole, burger or baby's bottle. It can go up to 125 degrees.

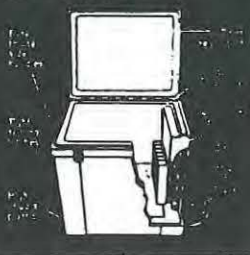
And because there are no temperamental compressors or gasses, the Koolatron works perfectly under all circumstances, even

upside down. Empty, the large model weighs only 12 pounds and the smaller one weighs just seven. Full, the large model holds up to 40 12-ounce cans and the smaller one holds six.

Just load it up and plug it in. On motor trips, plug your Koolatron into your cigarette lighter; it will use less power than a taillight. If you decide to carry it to a picnic place or a fishing hole, the Koolatron will hold its cooling capacity for 24 hours. If you leave it plugged into your battery with the engine off, it consumes only three amps of power.

The refrigerator from outer space.

The secret of the Koolatron Kooler is its solid-state thermoelectric module. This module is a solid-state electronic device that can be switched to cool or heat. It's the only device of its kind that can be switched to cool or heat. It's the only device of its kind that can be switched to cool or heat.



Limited-time offer.

Because Contrad is bringing this offer to you directly, you save the cost of middlemen and retail mark-ups. For a limited time only, you can get this advanced, portable Koolatron refrigerator at the introductory price of \$99. Call today to take advantage of this special promotional pricing. Most orders are processed within 72 hours and shipped UPS in 10 to 15 days.

Try it risk-free.

We guarantee your satisfaction with any product from Contrad Industries. With the Koolatron you get our complete "No Questions Asked" 90-day money-back guarantee. Plus you get a full one-year manufacturer's limited warranty. If you are not satisfied for any reason, just return the product for a complete refund.

Koolatron (P24x) holds 30 quarts...\$99 \$32 S&H
Koolatron (P9) holds 7 quarts...\$79 \$16 S&H
Optional AC Adapter (AC 10)...\$49 \$12 S&H
All amounts in U.S. dollars

Please mention promotional code 735-TM7107. For fastest service call toll-free 24 hours a day.

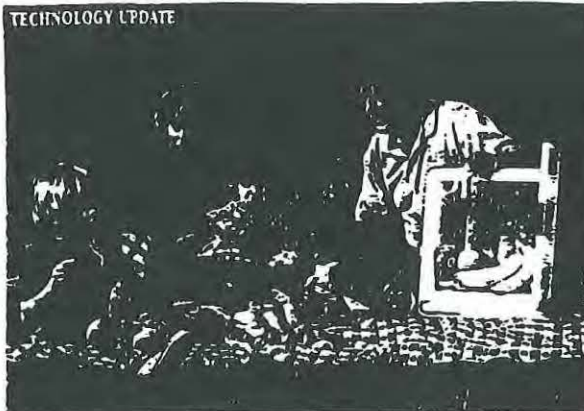
800-704-1210

To order by mail send check or money order for the total amount including S&H (VA residents add 4.5% sales tax). On charge to your credit card by enclosing your account number and credit card.

CONTRAD INDUSTRIES

2820 Waterford Lake Drive, Suite 106
Midlothian, Virginia 22113

EXHIBIT B



Technology combines the dependable cooling power of a refrigerator with the convenience of a cooler... heats food too!

Remarkable new portable cooler/warmer reduces the outside temperature by up to 40 degrees and heat up to 125 degrees!

by Ellen C. Burns

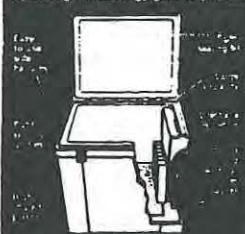
Imagine the versatility and convenience of a cooler that worked like a refrigerator. You could have ice-cold drinks at softball games, enjoy a picnic without soggy or spoiled food, even store insulin or other medicine that needs to be refrigerated. You could take it along when travelling and avoid the long lines and high prices at rest areas and interstate restaurants.

Now, imagine that this cooler that worked like a refrigerator could also heat food. You could warm baby formula or enjoy warm drinks at football games, camping, hunting, or anywhere else. Sound like a dream? It's not—the Koolatron cooler/warmer does it all.

MASA-inspired portable refrigerator. When man first attempted to explore the "final frontier," scientists were forced to develop many new ways to deal with the demanding new environment. Standard refrigeration technology and equipment were not suited for use in space. Scientists had to develop equipment that was more dependable and less bulky than traditional refrigeration coils and compressors. Their research led to the discovery of a miraculous solid-state component called the thermoelectric module.

With more than 25 years of use in the most rigorous space and laboratory applications, thermoelectric temperature control has proven itself. Now, this technology is available to you in this amazing new product.

Space-age technology goes anywhere.



Koolatron's secret is a mini-thermoelectric module which effectively replaces the bulky piping coils, loud motors and temperamental compressors used in conventional refrigeration. In the cool mode, the Koolatron reduces the outside temperature by 40° F. With the switch of a plug, it becomes a food warmer, going up to 125°.

Hot or cold. One of the most innovative things about Koolatron is that it works as well to heat food as it does to cool it. In the cool mode, Koolatron can reduce the outside temperature by as much as 40 degrees F. With the switch of a plug, Koolatron goes from a refrigerator to a food warmer, going up to 125 degrees.

Just plug it in. Koolatron plugs directly into your vehicle's cigarette lighter and uses less power than a taillight. If you leave it plugged in while the vehicle is off, it will consume only three amps of power. Unplugged, Koolatron will hold its cooling capacity for up to 24 hours.

Koolatron is also extremely lightweight, so picnickers can carry it to the picnic site. The large model weighs only 12 pounds and the smaller one weighs only seven. Since there's no ice to weigh it down or take up room, the large model holds up to 40 12-ounce cans. The smaller one will hold six.

Modern solution. Home refrigeration has come a long way from the "ice box" of the 1920s. But when we travel, we revert to similar methods and sloppy or spoiled food. Now, for the price of a good cooler and a season or two of buying ice for the price of about five family restaurant meals, the advantages of home refrigeration are available to you electronically.

Aside from a small built-in fan, Koolatron has no moving parts to wear out or break. It isn't affected by tilting, jarring or vibration. Koolatron works perfectly under all circumstances...even upside down! No bigger than a matchbox, the module has the cooling power of a 10-pound block of ice.

Not just for travel. With the optional adapter, you can plug Koolatron into any electrical outlet. Enjoy cold or warm meals in your hotel room without room service! Use it at your home as an extra fridge. Koolatron is even compact enough for college dorm rooms and makes a great gift for any college student.

Try it risk-free. Koolatron is backed by Comtrad's exclusive risk-free home trial. Try it and if you are not totally satisfied, return it within 30 days for a full refund. "No Questions Asked." It is also backed by a one-year manufacturer's limited warranty. Most orders are processed within 72 hours and shipped UPS.

Factory-direct offer. If you were to find this product in stores, you might expect to pay as much as \$149. But for a limited time only, you can get Koolatron directly through Comtrad Industries for the introductory price of just \$99. Call now to take advantage of this special promotional pricing!

Koolatron has two convenient sizes; one holds seven quarts and the other holds 30 quarts.

30-quart Koolatron	\$99 \$16 S&H
7-quart Koolatron	\$79 \$8 S&H
Optional AC Adapter	\$49 \$8 S&H

Please mention promotional code 732-225001.

For fastest service, call toll-free 24 hours a day

800-704-1211



To place your mail order, check or money order for the amount including S&H/VAT/fees, add 13% sales tax. Do not pay by cash, credit card, or check drawn on a business or government bank.

COMTRAD INDUSTRIES

2820 Waterford Lake Drive, Suite 106
Midlothian, Virginia 23113

DECISION AND ORDER

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

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 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 Comtrad Industries, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its offices and principal place of business located at 2820 Waterford Lake Drive, Suite 106, Midlothian, Virginia.

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

DEFINITIONS

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

1. "*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 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. "*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 are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multi-page documents, the disclosure shall appear on the cover or first page.

D. In an advertisement on any electronic media received by consumers via computer, such as the Internet's World Wide Web or commercial on-line computer services, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multi-screen documents, the disclosure shall appear on the first screen and on any screen containing ordering information.

E. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that are 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.

3. Unless otherwise specified, "*respondent*" shall mean Comtrad Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees.

4. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

5. "*Substantially similar product*" shall mean any portable device that operates off a thermo-electric unit and is intended to store or hold food at cool or warm temperatures.

I.

It is ordered, That respondent, 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 product for use in the storage of food in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. The comparative or absolute ability of such product to refrigerate or cool food items or medicines or to maintain proper cold storage temperatures;

B. The comparative or absolute ability of such product to heat or warm food items;

C. The comparative or absolute ability of such product to hold its cooling capacity after being unplugged from a power source; or

D. The effect of operating such product off a car battery when the car is not running, including the amount of power used by the product in such circumstances or the potential for such use to drain the car battery of power.

II.

It is further ordered, That respondent, 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 product for use in the storage of food, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy, or safety of such product, unless, at the time the representation is made, respondent possesses and relies upon

competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

III.

It is further ordered, That respondent, 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 the Koolatron or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the cooling capacity of such product, or about the effectiveness, usefulness, or appropriateness of such product for refrigerating or cooling food items, or for holding food items at a cool temperature, unless it discloses, clearly and prominently, and in close proximity to the representation, that such product may not keep perishable food items, such as meat, poultry, and fish, sufficiently cold to prevent the growth of bacteria when the surrounding outside temperature is greater than 80 degrees Fahrenheit, including when such product is used in hot weather, in direct sunlight, or in a hot car, and that use of such product in these circumstances poses a risk of buildup of harmful or unsafe bacteria and could lead to food-borne illness.

IV.

It is further ordered, That respondent, 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 the Koolatron or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the effectiveness, usefulness, or appropriateness of such product for heating or warming food items, or for holding food items at a warm temperature, unless it discloses, clearly and prominently, and in close proximity to the representation, that heating, warming, or holding perishable food items such as meat, poultry, and fish in such product in its warming mode may pose a risk of buildup of harmful or unsafe bacteria and could lead to food-borne illness.

V.

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

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

It is further ordered, That respondent Comtrad Industries, Inc. and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

It is further ordered, That respondent Comtrad Industries, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a

bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VIII.

It is further ordered, That respondent Comtrad Industries, Inc. and its successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

IX.

This order will terminate on February 25, 2017, 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 Part 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 Part.

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 Part as though the complaint had never been 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.

Complaint

123 F.T.C.

IN THE MATTER OF

PREMIER PRODUCTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3720. Complaint, Feb. 26, 1997--Decision, Feb. 26, 1997*

This consent order prohibits, among other things, the New Jersey-based corporations, that advertise "Miracle Thaw" food thawing trays, and their officers from misrepresenting, with respect to any product involving the storage or preparation of food, the risk of buildup of harmful or unsafe levels of bacteria on food items defrosted, thawed, prepared, or stored using the product; the amount of time it may take to defrost, thaw, or prepare food items using the product; the process by which the product achieves any claimed defrosting, thawing, or preparation times; or the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Appearances

For the Commission: *John T. Dugan.*

For the respondents: *Jeffrey Edelstein, Hall, Dickler, Kent, Friedman & Wood, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, corporations, and Michael Sander and Issie Kroll, individually and as officers of the corporations ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Premier Products, Inc. is a New Jersey corporation with its principal office or place of business at 23 Vreeland Road, Florham Park, New Jersey.

2. Respondent T.V. Products, Inc. is a New Jersey corporation with its principal office or place of business at 23 Vreeland Road, Florham Park, New Jersey.

3. Respondent T.V.P. Corporation is a New Jersey corporation with its principal office or place of business at 23 Vreeland Road, Florham Park, New Jersey.

4. Respondent Michael Sander is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations,

including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporations.

5. Respondent Issie Kroll is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporations.

6. Respondents have advertised, labeled, offered for sale, sold, and distributed products to the public, including Miracle Thaw, a food defrosting or thawing tray.

7. 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.

8. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Miracle Thaw, including but not necessarily limited to the attached Exhibits A and B. These advertisements and promotional materials contain the following statements and depictions:

A. "After a hard day at work, it's time for a nice juicy steak. Oh, no! You forgot to defrost.

You need MIRACLE THAW, the incredible new defrosting tray that perfectly thaws any frozen food like magic in just minutes.

No chemicals. No batteries. No wires. No microwave rays. Just a space-age metal from Mother Nature that thaws frozen food faster and better than anything in the world.

Look! This thick frozen steak could take all day to defrost! But watch! Simply place it on Miracle Thaw and incredibly, in just 30 minutes, it's butcher block fresh. [Super: Thaws Food in Minutes.]

These rock hard chicken breasts are perfectly tender in only 13 minutes!

That's frozen fish. 12 minutes later, it's the catch of the day.

Frozen pork chops are thawed, cool and juicy in just 14 minutes.

The secret is in the superconductive metal tray. It absorbs the natural heat energy in the air and then releases it directly into the frozen food.

[Super: Natural Heat Conductor. Absorbs Heat From Air.]

Now, you can defrost any frozen food, just minutes before cooking. Just watch this ice cube demonstration. The tray is cool to the touch, but the ice cube melts away like it was on a hot griddle. The Miracle Thaw defrosting tray simply speeds up the natural thawing process. Incredibly, the ice cube has melted down in just seconds. Amazing!

All day thawing could cause bacteria burgers. But with Miracle Thaw, burgers are safely defrosted in just 10 minutes.

[Visual: Six spoiled thawed hamburger patties on a plate; Six unspoiled thawed hamburger patties on Miracle Thaw.]

[Super: No Dangerous Bacteria.]

Most important, it's lab tested for product and food safety.

Complaint

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[Super: Miracle Thaw . . . Laboratory Tested . . . 100% Safe.]

Microwave defrosting could ruin your food. You get dry cooked edges, causing poor stale flavor. But Miracle Thaw defrosts perfectly every time. Food retains the natural juices for the best flavor.

[Super: Thaws evenly and safely.]

Miracle Thaw. Instant defrosting."

....

(Exhibit A, television commercial transcript).

B. "Amazing Tray Thaws Food In Minutes!"

....

"Laboratory SAFETY Tested."

....

"Space-age metal thaws frozen foods safely, evenly, perfectly . . . EVERY TIME!"

....

"Before . . . Rock-hard frozen chicken breasts [depiction of two frozen boneless chicken breasts being placed on tray]. . . After . . . Perfectly thawed . . . moist and tender in as little as 7 MINUTES! [depiction of two fully thawed boneless chicken breasts being removed from tray]."

....

"Up until now you really only had two choices for defrosting or thawing foods. Either in the microwave or on the counter top. . . . So what about defrosting food by leaving it on the counter top all day? This option is not highly recommended or very safe due to bacterias found in most foods which is why safe handling guidelines recommend that you keep raw meat, poultry and fish refrigerated or frozen until you're ready to cook it. The safest, most convenient choice is Miracle Thaw . . ."

....

(Exhibit B, product package).

9. Through the means described in paragraph eight, respondents have represented, expressly or by implication, that laboratory testing proves that food items defrosted or thawed on Miracle Thaw will not develop harmful or unsafe levels of bacteria.

10. In truth and in fact, laboratory testing does not prove that food items defrosted or thawed on Miracle Thaw will not develop harmful or unsafe levels of bacteria. At the time respondents made the representations set forth in paragraph nine, no tests relating to bacteria buildup on food had been conducted on Miracle Thaw. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. Through the means described in paragraph eight, respondents have represented, expressly or by implication, that:

A. There is no risk of buildup of harmful or unsafe levels of bacteria on perishable frozen food items defrosted or thawed on Miracle Thaw.

B. Miracle Thaw will defrost or thaw frozen food items in the following times: steak in 30 minutes; chicken breasts in 7 to 13 minutes; fish fillets in 12 minutes; pork chops in 14 minutes; and hamburgers in 10 minutes.

C. Miracle Thaw achieves the accelerated defrosting or thawing depicted in the advertisements referred to in paragraph eight because it is a superconductive metal tray that transfers heat energy from the air into frozen food items, thereby speeding up the natural defrosting or thawing process.

12 In truth and in fact:

A. There is a potential risk of buildup of harmful or unsafe levels of bacteria on perishable frozen food items defrosted or thawed on Miracle Thaw. Miracle Thaw operates at room temperature, and defrosting or thawing perishable food at room temperature, even for relatively short periods of time, increases the risk of harmful or unsafe bacteria buildup.

B. In many cases, Miracle Thaw will not defrost or thaw frozen food items in the claimed time periods. Defrosting or thawing times will vary depending on several factors, including the size, shape, and thickness of the food item, the number of items placed on the tray at one time, the number of times the tray is reheated during defrosting or thawing, and room temperature. In some cases actual defrosting or thawing times may be three or more times longer than the claimed defrosting or thawing times.

C. Miracle Thaw does not achieve the accelerated defrosting or thawing depicted in the advertisements referred to in paragraph eight by superconducting or transferring heat energy from the air into frozen food items. Miracle Thaw is a Teflon-coated aluminum tray that can only achieve the accelerated defrosting or thawing depicted in the advertisements referred to in paragraph eight if it is preheated before use and reheated during use. Similar results could be achieved with any aluminum pan.

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

13. Through the means described in paragraph eight, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations

set forth in paragraph eleven, at the time the representations were made.

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

15. In their advertising and sale of Miracle Thaw, respondents have represented that Miracle Thaw is effective, useful, or appropriate for defrosting or thawing frozen food items. Respondents have failed to disclose that defrosting or thawing perishable food on Miracle Thaw may pose a risk of buildup of harmful or unsafe bacteria on the food. These facts would be material to consumers in their purchase or use of the product. Respondents' failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

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

Miracle Thaw TV Commercial, 120 Second, Original Version

Super: [Copyright] 1994. T.V.P. Corp. All Rights Reserved [small print].

Audio: After a hard day at work, it's time for a nice juicy steak. Oh, no! You forgot to defrost.

Super: Miracle Thaw.

Audio: You need MIRACLE THAW, the incredible new defrosting tray that perfectly thaws any frozen food like magic in just minutes.

Visual: 1 steak on tray, before and after.

Audio: No chemicals. No batteries. No wires. No microwave rays. Just a space-age metal from Mother Nature that thaws frozen food faster and better than anything in the world.

Visual: 1 whole chicken on tray, before and after.

Super: No breakable Parts. Natural Thawing Method.

Audio: Look! This thick frozen steak could take all day to defrost! But watch! Simply place it on Miracle Thaw and incredibly, in just 30 minutes, its butcher block fresh.

Visual: 1 steak on tray, before and after.

Super: Thaws Food in Minutes.

Audio: These rock hard chicken breasts are perfectly tender in only 13 minutes!

Visual: 3 breasts on tray at once, before and after.

Audio: That's frozen fish. 12 minutes later, it's the catch of the day.

Visual: 1 fish fillet on tray, before and after.

Audio: Frozen pork chops are thawed, cool and juicy in just 14 minutes.

Visual: 6 chops on tray at once, before and after.

Audio: The secret is in the superconductive metal tray. It absorbs the natural heat energy in the air and then releases it directly into the frozen food.

Super: Natural Heat Conductor. Absorbs Heat From Air.

Audio: Now, you can defrost any frozen food, just minutes before cooking. Just watch this ice cube demonstration. The tray is cool to the touch, but the ice cube melts away like it was on a hot griddle. The Miracle Thaw Defrosting Tray simply speeds up the natural thawing process. Incredibly, the cube has melted down in just seconds. Amazing!

Super: Ice Cube Demonstration.

Audio: All day thawing could cause bacteria burgers. But with Miracle Thaw, burgers are safely defrosted in just 10 minutes.

Visual: 6 spoiled thawed hamburger patties on a plate; 6 unspoiled hamburger patties on tray at once, before and after.

Super: No Dangerous Bacteria.

Audio: Most important, it's lab tested for product and food safety.

Super: Miracle Thaw . . . Laboratory Tested . . . 100% Safe.

Audio: Microwave defrosting could ruin your food. You get dry cooked edges, causing poor stale flavor. But Miracle Thaw defrosts perfectly every time. Food retains the natural juices for the best flavor.

Visual: 5 assorted cuts on tray at once, before and after.

Super: Thaws evenly and safely.

Audio: Miracle Thaw. Instant defrosting. Quick clean-up. Easy storage. Now, only \$19.95.

Visual: 6 hamburger patties on tray at once, before and after.

Audio: Designed to last a lifetime, it's the incredible kitchen miracle you'll use every day.

Visual: 1 whole chicken on tray, before and after.

Super: Miracle Thaw. Only \$19.95. Risk-Free Money Back Guarantee.

Audio and Super: [ordering information].

Complaint

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EXHIBIT B

THE JAW
DEFROSTING MACHINE

ROCK-HARD FROZEN CHICKEN

Before

After
Thawed perfectly...
fresh in minutes!

- NO ELECTRICITY
- NO CHEMICALS
- NO BATTERIES
- NO MICROWAVE

TV DEMO! **TV** AS SEEN ON

EXHIBIT B

EXHIBIT B

ON EL

Before
Rock hard frozen
chicken breasts.

Space-age metal thaws frozen foods
safely, evenly, perfectly... EVERY TIME!

After
Perfectly thawed...
moist and tender in as little as 7 MINUTES!

When you use the Gene DeLuxe you'll see the difference in the way your food thaws. It's a space-age, safe, and delicious miracle.

Defrosting is the simple, quick way to thaw frozen foods. It's a space-age miracle that's been perfected by Gene DeLuxe. It's a space-age, safe, and delicious miracle.

When you use the Gene DeLuxe you'll see the difference in the way your food thaws. It's a space-age, safe, and delicious miracle.

THAW
DEFROSTING TRAY

AS SEEN ON
TV

3 Solid Reasons Why
You'll Love Miracle Thaw Jr.:
Instant Defrosting!
Quick Clean Up!
Easy Storage!

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 Boston 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 Premier Products, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 23 Vreeland Road, Florham Park, New Jersey.

Respondent T.V. Products, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 23 Vreeland Road, Florham Park, New Jersey.

Respondent T.V.P. Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 23 Vreeland Road, Florham Park, New Jersey.

Respondent Michael Sander is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his office or principal place of business is located at the above stated address.

Respondent Issie Kroll is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his office or principal place of business is located at the above stated address.

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

ORDER

DEFINITIONS

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

1. *"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 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. *"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 are 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 are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

E. On a product insert, the disclosure shall be in a type size 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, and it shall appear before all written text, other than the name of the product or product slogans.

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

3. Unless otherwise specified, "*respondents*" shall mean Premier Products, Inc., T.V. Products, Inc., T.V.P. Corporation, corporations, their successors and assigns and their officers; Michael Sander and Issie Kroll, individually and as officers of the corporations; and each of the above's agents, representatives and employees.

4. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, 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 product involving the preparation or storage of food in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. The existence, contents, validity, results, conclusions or interpretations of any test, study, or research;

B. The risk of buildup of harmful or unsafe levels of bacteria on food items defrosted, thawed, prepared, or stored using such product;

C. The amount of time it may take to defrost, thaw, or prepare food items using such product; or

D. The process by which such product achieves any claimed defrosting, thawing, or preparation times.

II.

It is further ordered, That respondents, 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 product for use in the preparation or storage of food in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy or safety of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

III.

It is further ordered, That respondent, 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 Miracle Thaw or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the effectiveness, usefulness, or appropriateness of such product for defrosting or thawing frozen food items, unless it discloses, clearly and prominently:

A. In any advertisement, promotional material, and product label for Miracle Thaw or any substantially similar product:

"SEE INSTRUCTIONS FOR IMPORTANT INFORMATION ABOUT POTENTIAL FOOD SAFETY RISKS ASSOCIATED WITH THAWING FOOD AT ROOM TEMPERATURE"; and

B. In a product insert enclosed in each product package for Miracle Thaw or any substantially similar product:

"CAUTION: THERE IS A POTENTIAL RISK OF HARMFUL OR UNSAFE BACTERIA BUILDUP ON PERISHABLE FOOD THAWED AT ROOM TEMPERATURE. For more information about thawing food safely, please contact the U.S. Dept. of Agriculture's Meat and Poultry Hotline at 1-800-535-4555, or the FDA's Seafood Hotline at 1-800-332-4010."

IV.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, and their successors and assigns, and respondents Michael Sander and Issie Kroll shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

V.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, and their successors and assigns, and respondents Michael Sander and Issie Kroll shall:

A. Send a copy of this order by first class mail, return receipt requested to:

1. Each purchaser for resale of Miracle Thaw or any substantially similar product who purchased from respondents since January 1, 1992, and each licensee who sells Miracle Thaw or any substantially similar product under any licensing agreement with respondents entered into prior to the date of service of this order. Such copy shall be sent within thirty (30) days after the date of service of this order; and

2. For a period of three (3) years following service of this order, each purchaser for resale of Miracle Thaw or any substantially similar product who purchases from respondents after the date of service of this order and who has not already received a copy of this order, and each licensee who sells Miracle Thaw or any substantially similar product under any licensing agreement with respondents entered into

after the date of service of this order and who has not already received a copy of this order. Such copy shall be sent within thirty (30) days of the initiation of any business transaction with the purchaser for resale or licensee;

B. In the event respondents receive any evidence that subsequent to its receipt of a copy of this order any purchaser for resale or licensee is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order or that fails to disclose any information required by this order, respondents shall immediately notify the purchaser for resale or licensee that respondents will terminate their business arrangement with said purchaser for resale or licensee if it continues to use such advertisements or promotional materials; and

C. Terminate their business arrangement with any purchaser for resale or licensee if respondents receive any evidence that such purchaser for resale or licensee has continued to use advertisements or promotional materials that contain any representation prohibited by this order or that fail to disclose any information required by this order after receipt of the notice required by subparagraph B of this part.

VI.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, and their successors and assigns, and respondents Michael Sander and Issie Kroll shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation and their successors and assigns shall notify the Commission at least thirty (30) days prior to

any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VIII.

It is further ordered, That respondents Michael Sander and Issie Kroll, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, and their successors and assigns, and respondents Michael Sander and Issie Kroll shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

X.

This order will terminate on February 26, 2017, 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 Part 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 Part.

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 Part as though the complaint had never been 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.

Complaint

123 F.T.C.

IN THE MATTER OF

J.C. PENNEY COMPANY, 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-3721. Complaint, Feb. 28, 1997--Decision, Feb. 28, 1997

This consent order requires, among other things, J.C. Penney and Thrift Drugs, its wholly-owned subsidiary, to divest by March 21, 1997, to a Commission-approved acquirer, a total of 161 drug stores in North and South Carolina. The consent order settles allegations that J.C. Penney's proposed acquisition of Eckerd Corporation, and 190 Rite Aid drug stores in these two states, violated antitrust laws by substantially reducing drug store competition.

Appearances

For the Commission: *George S. Cary, Michael Moiseyev, Ann Malester and William Baer.*

For the respondents: *Peter Standish, Weil, Gotshal & Manges, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that J.C. Penney Company, Inc., through two wholly-owned subsidiaries, Omega Acquisition Corporation and Thrift Drug, Inc., all subject to the jurisdiction of the Commission, has agreed to acquire Eckerd Corporation and certain assets of Rite Aid Corporation, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; 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:

I. DEFINITION

1. For the purposes of this complaint, "MSA" means Metropolitan Statistical Area as defined by the United States Department of Commerce, Bureau of the Census.

II. RESPONDENTS

2. Respondent J.C. Penney Company, Inc. ("J.C. Penney") 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 6501 Legacy Drive, Plano, Texas.

3. Respondent Thrift Drug, Inc. ("Thrift Drug") 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 615 Alpha Drive, Pittsburgh, Pennsylvania.

4. For purposes of this proceeding, respondents 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 affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUIRED COMPANIES

5. Eckerd Corporation ("Eckerd") 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 8333 Bryan Dairy Road, Largo, Florida.

6. Rite Aid Corporation ("Rite Aid") 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 30 Hunter Lane, Camp Hill, Pennsylvania.

7. For purposes of this proceeding, Eckerd and Rite Aid 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 affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITIONS

8. On October 11, 1996, J.C. Penney's wholly-owned subsidiary, Thrift Drug, entered into an Asset Purchase Agreement to acquire certain assets of Rite Aid, and on November 2, 1996, J.C. Penney's wholly-owned subsidiary, Omega Acquisition Corporation, entered

into an Amended and Restated Agreement and Plan of Merger to acquire Eckerd (collectively "the Acquisitions").

V. THE RELEVANT MARKETS

9. For purposes of this complaint, the relevant line of commerce in which to analyze the effect of the Acquisitions is the retail sale of pharmacy services to third-party payors.

10. For purposes of this complaint, the relevant sections of the country in which to analyze the effect of the Acquisitions are:

- a. The state of North Carolina;
- b. The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA;
- c. The Greensboro-Winston Salem-High Point, North Carolina MSA;
- d. The Raleigh-Durham-Chapel Hill, North Carolina MSA; and
- e. The Charleston-North Charleston, South Carolina MSA.

11. The relevant markets set forth in paragraphs nine and ten are highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

12. Entry into the relevant markets is difficult or unlikely to occur at a sufficient scale to deter or counteract the effect of the Acquisitions described in paragraph fourteen.

13. Thrift Drug, Eckerd and Rite Aid are actual competitors in the relevant markets.

VI. EFFECT OF THE ACQUISITIONS

14. The effect of the Acquisitions may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct actual competition between Thrift Drug, Eckerd and Rite Aid;
- b. By increasing the likelihood that Thrift Drug will unilaterally exercise market power; and
- c. By increasing the likelihood of collusion in the relevant markets.

15. All of the above increase the likelihood that firms in the relevant markets will increase prices and restrict output both in the near future and in the long term.

VII. VIOLATIONS CHARGED

16. The acquisition agreements described in paragraph eight constitute violations of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

17. The Acquisitions described in paragraph eight, if consummated, would constitute violations 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.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of Eckerd Corporation ("Eckerd") and of certain assets of Rite Aid Corporation ("Rite Aid") by J.C. Penney Company, Inc. ("J.C. Penney") and Thrift Drug, Inc. ("Thrift Drug"), and the respondents 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 respondents 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

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, 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 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 J.C. Penney Company, 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 located at 6501 Legacy Drive, Plano, Texas.

2. Respondent Thrift Drug, 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 located at 615 Alpha Drive, Pittsburgh, Pennsylvania.

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

A. "*J.C. Penney*" means J.C. Penney Company, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by J.C. Penney Company, Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Thrift Drug*" means Thrift Drug, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries (including Kerr Drug, Inc.), divisions, groups, and affiliates controlled, directly or indirectly, by Thrift Drug, Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Rite Aid*" means Rite Aid Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by Rite Aid Corporation and the

respective directors, officers, employees, agents and representatives, successors, and assigns of each.

D. "*Respondents*" means J.C. Penney and Thrift Drug.

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

F. "*Acquisitions*" means the acquisitions of Eckerd by Omega Acquisition Corporation, a wholly-owned subsidiary of J.C. Penney, and of certain assets of Rite Aid by Thrift Drug, an indirect, wholly-owned subsidiary of J.C. Penney, pursuant to an agreement dated November 2, 1996 and an agreement dated October 11, 1996, respectively.

G. "*Retail drug store*" means a full-line retail store that carries a wide variety of prescription and nonprescription medicines and miscellaneous items, including, but not limited to, drugs, pharmaceuticals, patent medicines, sundries, tobacco products, and other merchandise.

H. "*MSA*" means Metropolitan Statistical Area as defined by the United States Department of Commerce, Bureau of the Census.

I. "*Rite Aid Retail Business*" means Rite Aid's retail drug store business located in the states of North Carolina and South Carolina.

J. "*Rite Aid Retail Assets*" means all assets constituting the Rite Aid Retail Business, excluding those assets pertaining to the Rite Aid trade name, trade dress, trade marks and service marks, and including, but not limited to:

1. Leases and properties;
2. Zoning approvals and registrations, at the Acquirer's option;
3. Books, records, reports, dockets and lists relating to the Rite Aid Retail Business;
4. Retail drug store inventory and storage capacity;
5. Lists of stock keeping units ("SKUs"), *e.g.*, all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales;
6. Lists of all customers, including, but not limited to, third party insurers, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;
7. All pharmacy files, documents, instruments, papers, books, computer files and records and all other records in any media relating to the Rite Aid Retail Business;

8. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and all names of prescription drug manufacturers and distributors under contract with Rite Aid;

9. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property; and

10. Goodwill, tangible and intangible, utilized in retail drug stores.

Provided, however, that Rite Aid Retail Assets shall include only such assets as are being acquired in the Acquisitions.

K. "*Rite Aid North Carolina/Charleston Retail Assets*" means Rite Aid's Retail Assets located in the state of North Carolina and in the Charleston-North Charleston, South Carolina MSA.

L. "*Thrift Retail Business*" means Thrift Drug's retail drug store business located in the Charlotte-Gastonia-Rock Hill, North Carolina MSA, and Thrift Drug's retail drug store business identified in Schedule A of this Agreement.

M. "*Thrift Retail Assets*" means all assets constituting the Thrift Retail Business, excluding those assets pertaining to the Thrift Drug or Kerr trade name, trade dress, trade marks and service marks, and including, but not limited to:

1. Leases and properties;
2. Zoning approvals and registrations, at the Acquirer's option;
3. Books, records, reports, dockets and lists relating to the Thrift Retail Business;
4. Retail drug store inventory and storage capacity;
5. Lists of stock keeping units ("SKUs"), e.g., all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales;
6. Lists of all customers, including, but not limited to, third party insurers, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;
7. All pharmacy files, documents, instruments, papers, books, computer files and records and all other records in any media relating to the Thrift Retail Business;

8. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and all names of prescription drug manufacturers and distributors under contract with Thrift Drug;

9. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property; and

10. Goodwill, tangible and intangible, utilized in retail drug stores.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission, within four (4) months of the date the Agreement Containing Consent Order in this matter was signed by respondents; provided, however, that respondents shall not acquire any of the Rite Aid North Carolina/Charleston Retail Assets until respondents have entered into an agreement that has received the prior approval of the Commission to divest the Rite Aid North Carolina/Charleston Retail Assets.

B. If respondents do not divest the Thrift Retail Assets pursuant to paragraph II.A, respondents shall divest the Thrift Retail Assets to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission, within five (5) months of the date the Agreement Containing Consent Order in this matter was signed by the respondents.

C. The purpose of the divestiture of the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets is to ensure the continuation of the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets as ongoing viable enterprises engaged in the retail drug store business providing retail pharmacy services to third-party payors and to remedy any lessening of competition resulting from the Acquisitions as alleged in the Commission's complaint.

III.

It is further ordered, That:

A. If respondents have not divested absolutely and in good faith the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets pursuant to paragraph II.A of this order, the Commission may appoint a trustee to divest the Rite Aid Retail Assets and the Thrift Retail Assets; or if the respondents have not divested absolutely and in good faith the Thrift Retail Assets pursuant to paragraph II.B of this order, the Commission may appoint a trustee to divest the Thrift Retail Assets. In the event that the Commission brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents 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 from seeking civil penalties or any other relief available to it, including a court-appointed trustee pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by respondents 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, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents 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 serve as an agent of the Commission and shall have the exclusive power and authority to divest the Rite Aid Retail Assets and the Thrift Retail Assets.

3. Within ten (10) days after appointment of the trustee, respondents 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 (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved 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, the Commission may extend this period only two (2) times for up to twelve (12) months each time.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Rite Aid Retail Assets and the Thrift Retail Assets or to any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents 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, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the trustee's fiduciary duty to the Commission and to respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that the trustee receives *bona fide* offers from more than one acquiring entity, the trustee shall submit all such bids to the Commission, and if the Commission determines to approve more than one such acquiring entity for the Rite Aid Retail Assets and the Thrift Retail Assets, the trustee shall divest to the

acquiring entity selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are 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 the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Rite Aid Retail Assets and the Thrift Retail Assets.

8. Respondents 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, 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 reasonably necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the Rite Aid Retail Assets and the Thrift Retail Assets.

12. The trustee shall have no obligation or authority to operate or maintain the Rite Aid Retail Assets and the Thrift Retail Assets.

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

IV.

It is further ordered, That:

A. Pending divestiture of the Rite Aid Retail Assets and the Thrift Retail Assets, respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Rite Aid Retail Assets and the Thrift Retail Assets consistent with paragraphs II and III of this order and to prevent the destruction, removal, wasting, deterioration, or impairment of the Rite Aid Retail Assets and the Thrift Retail Assets except in the ordinary course of business and except for ordinary wear and tear.

B. Respondents shall comply with all the terms of the Asset Maintenance Agreement attached to this order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as respondents have complied with the divestiture requirements of the order.

V.

It is further ordered, That within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraphs II and III of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraphs II and III. Respondents shall include in their 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 proposals for divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties concerning divestiture.

VI.

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

VII.

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

A. Upon five days' written notice to respondents, access, during office hours 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 days' written notice to respondents and without restraint or interference from respondents, to interview respondents or officers, directors, or employees of respondents in the presence of counsel.

SCHEDULE A

Kerr Store Number 8549
Lakewood Shopping Center
2000 Chapel Hill Road
Durham, NC 27704

Kerr Store Number 8556
Erwin Square
737 Ninth Street
Durham, NC 27705

Kerr Store Number 8566
University Mall
201-10 Estes Drive
Chapel Hill, NC 27514

Kerr Store Number 8550
North Duke Mall
3600 North Duke Street
Durham, NC 27704

Kerr Store Number 8935
Cary Village Mall
1105 Walnut Street
Cary, NC 27511

Kerr Store Number 8933
South Square Shopping Center
4001 Chapel Hill Boulevard
Durham, NC 27707

Kerr Store Number 8531
Northridge Shopping Center
8140 Falls of the Neuse Road
Raleigh, NC 27689

Kerr Store Number 8943
Harvest Plaza
9650 Strickland Road
Raleigh, NC 27615

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Kerr Store Number 8541
Longview Shopping Center
2116 East New Bern Avenue
Raleigh, NC 27610

Kerr Store Number 8537
Eastgate Shopping Center
4025 Old Wake Forest Road
Raleigh, NC 27609

Kerr Store Number 8553
Loehman's Plaza
1821 Hilandale Road
Durham, NC 27705

Kerr Store Number 8929
Crabtree Valley Mall
4325 Glenwood Avenue
Raleigh, NC 27612

Kerr Store Number 8538
South Hills Mall
1255 Buck Jones Road
Raleigh, NC 27606

Kerr Store Number 8595
North Hills Mall
Six Forks Road
Raleigh, NC 27609

Kerr Store Number 8539
Mission Valley Shopping Center
2233-113 Avant Ferry Road
Raleigh, NC 27605

Kerr Store Number 8534
Tower Shopping Center
Newbern Avenue
Raleigh, NC 27610

Kerr Store Number 8602
Triangle East Centre
134 Wakelon Street
Zebulon, NC 27597

Kerr Store Number 8530
Towne North Plaza
8385 Creedmoor Road
Raleigh, NC 27612

Kerr Store Number 8904
Preston Corners Shopping Center
920 High House Road
Cary, NC 27513

Kerr Store Number 8547
The Village Shopping Center
613 Wellons Village
Durham, NC 27703

APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between J.C. Penney Company, Inc. ("J.C. Penney"), 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 6501 Legacy Drive, Plano, Texas; Thrift Drug, Inc. ("Thrift Drug"), 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 615 Alpha Drive, Pittsburgh, Pennsylvania; and the Federal Trade Commission ("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.* (collectively "the Parties").

PREMISES

Whereas, J.C. Penney (through a wholly-owned subsidiary, Omega Acquisition Corporation) agreed to acquire Eckerd Corporation ("the Eckerd Acquisition"), pursuant to an agreement dated November 2, 1996, and J.C. Penney (through a wholly-owned subsidiary, Thrift Drug, Inc.) agreed to acquire certain assets of the Rite Aid Corporation ("the Rite Aid Acquisition"), pursuant to an agreement dated October 11, 1996, respectively (collectively "the Acquisitions"); and

Whereas, the Commission is now investigating the Acquisitions to determine if they would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment 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 agreement is not reached preserving the *status quo ante* of the Rite Aid Retail Assets and the Thrift Retail Assets as described in the Agreement Containing Consent Order ("Assets") during the period prior to their divestiture, any divestiture resulting from any administrative proceeding challenging the legality of the Acquisitions might not be possible, or might produce a less than effective remedy; and

Whereas, if the Commission accepts the consent order or a modified consent order, and J.C. Penney and Thrift Drug have not divested the Assets or such other assets as are specified in the consent order or in a modified consent order, in accordance with the consent order or modified order respectively, the Commission may appoint a trustee to divest the Assets and such additional assets as are identified in the consent order or in a modified consent order; and

Whereas, the Commission is concerned that prior to divestiture to an acquirer approved by the Commission, it may be necessary to

preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the consent order is to preserve the Assets pending the divestiture to an acquirer approved by the Commission under the terms of the order, in order to remedy any anticompetitive effects of the Acquisitions; and

Whereas, J.C. Penney and Thrift Drug entering into this Agreement shall in no way be construed as an admission by J.C. Penney or Thrift Drug that the Acquisitions are illegal; and

Whereas, J.C. Penney and Thrift Drug understand that no act or transaction contemplated by this 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 Agreement.

Now, therefore, in consideration of the Commission's agreement that at the time it accepts the consent order for public comment it will grant early termination of the Hart-Scott-Rodino waiting periods, the Parties agree as follows:

TERMS OF AGREEMENT

1. J.C. Penney and Thrift Drug agree to execute, and upon its issuance to be bound by, the attached consent order. The Parties further agree that each term defined in the attached consent order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Rite Aid Acquisition or the proposed Eckerd Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Rite Aid Acquisition or the proposed Eckerd Acquisition, J.C. Penney and Thrift Drug will be free to close the Rite Aid Acquisition after December 8, 1996, subject to the terms of the order, and the Eckerd Acquisition after December 6, 1996.

3. J.C. Penney and Thrift Drug agree that from the date this Agreement is signed until the earlier of the dates listed in subparagraphs 3.a - 3.b, they will comply with the provisions of this Agreement:

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

b. On the day the divestitures set out in the consent order have been completed.

4. J.C. Penney and Thrift Drug shall maintain the competitiveness of the Assets. This includes, but is not limited to, the maintaining of promotions and discount policies as well as the continuation of specific store services (*i.e.*, hours of operation and operation of specific departments).

5. Until J.C. Penney and Thrift Drug have divested the Assets or other assets pursuant to paragraphs II and III of the consent order or such assets as are specified pursuant to a modified consent order, J.C. Penney and Thrift Drug shall continue to offer those Thrift Drug customers who receive third-party pharmacy services at Thrift Drug the same type of pharmacy service at any retail drug store that constitutes a part of the Thrift Retail Assets.

6. Should the Commission seek in any proceeding to compel J.C. Penney and Thrift Drug to divest themselves of the Assets or such other assets as specified in the consent order or in a modified consent order or to seek any other injunctive or equitable relief, J.C. Penney and Thrift Drug 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 not sought to enjoin the Acquisitions. J.C. Penney and Thrift Drug also waive all rights to contest the validity of this Agreement.

7. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with five (5) days' notice to J.C. Penney or Thrift Drug and to their principal offices, J.C. Penney and Thrift Drug shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of J.C. Penney or Thrift Drug, 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 J.C. Penney or Thrift Drug relating to compliance with this Agreement; and

b. To interview officers or employees of J.C. Penney or Thrift Drug, who may have counsel present, regarding any such matters.

8. This Agreement shall not be binding until approved by the Commission.

IN THE MATTER OF

J.C. PENNEY COMPANY, 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-3722. Complaint, Feb. 28, 1997--Decision, Feb. 28, 1997*

This consent order requires, among other things, J.C. Penney and Thrift Drugs, its wholly-owned subsidiary, to divest by March 21, 1997, to a Commission-approved acquirer, a total of 161 drug stores in North and South Carolina. The consent order settles allegations that J.C. Penney's proposed acquisition of 190 Rite Aid drug stores in these two states and Eckerd Corporation, violated antitrust laws by substantially reducing drug store competition.

Appearances

For the Commission: *George S. Cary, Michael Moiseyev, Ann Malester and William Baer.*

For the respondents: *Peter Standish, Weil, Gotshal & Manges, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that J.C. Penney Company, Inc., through two wholly-owned subsidiaries, Omega Acquisition Corporation and Thrift Drug, Inc., all subject to the jurisdiction of the Commission, has agreed to acquire Eckerd Corporation and certain assets of Rite Aid Corporation, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; 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:

I. DEFINITION

1. For the purposes of this complaint, "MSA" means Metropolitan Statistical Area as defined by the United States Department of Commerce, Bureau of the Census.

II. RESPONDENTS

2. Respondent J.C. Penney Company, Inc. ("J.C. Penney") 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 6501 Legacy Drive, Plano, Texas.

3. Respondent Thrift Drug, Inc. ("Thrift Drug") 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 615 Alpha Drive, Pittsburgh, Pennsylvania.

4. For purposes of this proceeding, respondents 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 affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUIRED COMPANIES

5. Eckerd Corporation ("Eckerd") 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 8333 Bryan Dairy Road, Largo, Florida.

6. Rite Aid Corporation ("Rite Aid") 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 30 Hunter Lane, Camp Hill, Pennsylvania.

7. For purposes of this proceeding, Eckerd and Rite Aid 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 affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITIONS

8. On October 11, 1996, J.C. Penney's wholly-owned subsidiary, Thrift Drug, entered into an Asset Purchase Agreement to acquire certain assets of Rite Aid, and on November 2, 1996, J.C. Penney's wholly-owned subsidiary, Omega Acquisition Corporation, entered

into an Amended and Restated Agreement and Plan of Merger to acquire Eckerd (collectively "the Acquisitions").

V. THE RELEVANT MARKETS

9. For purposes of this complaint, the relevant line of commerce in which to analyze the effect of the Acquisitions is the retail sale of pharmacy services to third-party payors.

10. For purposes of this complaint, the relevant sections of the country in which to analyze the effect of the Acquisitions are:

- a. The state of North Carolina;
- b. The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA;
- c. The Greensboro-Winston Salem-High Point, North Carolina MSA;
- d. The Raleigh-Durham-Chapel Hill, North Carolina MSA; and
- e. The Charleston-North Charleston, South Carolina MSA.

11. The relevant markets set forth in paragraphs nine and ten are highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

12. Entry into the relevant markets is difficult or unlikely to occur at a sufficient scale to deter or counteract the effect of the Acquisitions described in paragraph fourteen..

13. Thrift Drug, Eckerd and Rite Aid are actual competitors in the relevant markets.

VI. EFFECT OF THE ACQUISITIONS

14. The effect of the Acquisitions may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct actual competition between Thrift Drug, Eckerd and Rite Aid;
- b. By increasing the likelihood that Thrift Drug will unilaterally exercise market power; and
- c. By increasing the likelihood of collusion in the relevant markets.

15. All of the above increase the likelihood that firms in the relevant markets will increase prices and restrict output both in the near future and in the long term.

VII. VIOLATIONS CHARGED

16. The acquisition agreements described in paragraph eight constitute violations of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

17. The Acquisitions described in paragraph eight, if consummated, would constitute violations 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.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of Eckerd Corporation ("Eckerd") and of certain assets of Rite Aid Corporation ("Rite Aid") by J.C. Penney Company, Inc. ("J.C. Penney") and Thrift Drug, Inc. ("Thrift Drug"), and the respondents 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 respondents 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

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, 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 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 J.C. Penney Company, 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 located at 6501 Legacy Drive, Plano, Texas.

2. Respondent Thrift Drug, 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 located at 615 Alpha Drive, Pittsburgh, Pennsylvania.

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

A. "*J.C. Penney*" means J.C. Penney Company, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by J.C. Penney Company, Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Thrift Drug*" means Thrift Drug, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries (including Kerr Drug, Inc.), divisions, groups, and affiliates controlled, directly or indirectly, by Thrift Drug, Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Rite Aid*" means Rite Aid Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by Rite Aid Corporation and the

respective directors, officers, employees, agents and representatives, successors, and assigns of each.

D. "*Respondents*" means J.C. Penney and Thrift Drug.

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

F. "*Acquisitions*" means the acquisitions of Eckerd by Omega Acquisition Corporation, a wholly-owned subsidiary of J.C. Penney, and of certain assets of Rite Aid by Thrift Drug, an indirect, wholly-owned subsidiary of J.C. Penney, pursuant to an agreement dated November 2, 1996 and an agreement dated October 11, 1996, respectively.

G. "*Retail drug store*" means a full-line retail store that carries a wide variety of prescription and nonprescription medicines and miscellaneous items, including, but not limited to, drugs, pharmaceuticals, patent medicines, sundries, tobacco products, and other merchandise.

H. "*MSA*" means Metropolitan Statistical Area as defined by the United States Department of Commerce, Bureau of the Census.

I. "*Rite Aid Retail Business*" means Rite Aid's retail drug store business located in the states of North Carolina and South Carolina.

J. "*Rite Aid Retail Assets*" means all assets constituting the Rite Aid Retail Business, excluding those assets pertaining to the Rite Aid trade name, trade dress, trade marks and service marks, and including, but not limited to:

1. Leases and properties;
2. Zoning approvals and registrations, at the Acquirer's option;
3. Books, records, reports, dockets and lists relating to the Rite Aid Retail Business;
4. Retail drug store inventory and storage capacity;
5. Lists of stock keeping units ("SKUs"), e.g., all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales;
6. Lists of all customers, including, but not limited to, third party insurers, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;
7. All pharmacy files, documents, instruments, papers, books, computer files and records and all other records in any media relating to the Rite Aid Retail Business;

8. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and all names of prescription drug manufacturers and distributors under contract with Rite Aid;

9. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property; and

10. Goodwill, tangible and intangible, utilized in retail drug stores.

Provided, however, that Rite Aid Retail Assets shall include only such assets as are being acquired in the Acquisitions.

K. *"Rite Aid North Carolina/Charleston Retail Assets"* means Rite Aid's Retail Assets located in the state of North Carolina and in the Charleston-North Charleston, South Carolina MSA.

L. *"Thrift Retail Business"* means Thrift Drug's retail drug store business located in the Charlotte-Gastonia-Rock Hill, North Carolina MSA, and Thrift Drug's retail drug store business identified in Schedule A of this Agreement.

M. *"Thrift Retail Assets"* means all assets constituting the Thrift Retail Business, excluding those assets pertaining to the Thrift Drug or Kerr trade name, trade dress, trade marks and service marks, and including, but not limited to:

1. Leases and properties;
2. Zoning approvals and registrations, at the Acquirer's option;
3. Books, records, reports, dockets and lists relating to the Thrift Retail Business;
4. Retail drug store inventory and storage capacity;
5. Lists of stock keeping units ("SKUs"), e.g., all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales;
6. Lists of all customers, including, but not limited to, third party insurers, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;
7. All pharmacy files, documents, instruments, papers, books, computer files and records and all other records in any media relating to the Thrift Retail Business;

8. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and all names of prescription drug manufacturers and distributors under contract with Thrift Drug;

9. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property; and

10. Goodwill, tangible and intangible, utilized in retail drug stores.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission, within four (4) months of the date the Agreement Containing Consent Order in this matter was signed by respondents; provided, however, that respondents shall not acquire any of the Rite Aid North Carolina/Charleston Retail Assets until respondents have entered into an agreement that has received the prior approval of the Commission to divest the Rite Aid North Carolina/Charleston Retail Assets.

B. If respondents do not divest the Thrift Retail Assets pursuant to paragraph II.A, respondents shall divest the Thrift Retail Assets to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission, within five (5) months of the date the Agreement Containing Consent Order in this matter was signed by the respondents.

C. The purpose of the divestiture of the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets is to ensure the continuation of the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets as ongoing viable enterprises engaged in the retail drug store business providing retail pharmacy services to third-party payors and to remedy any lessening of competition resulting from the Acquisitions as alleged in the Commission's complaint.

III.

It is further ordered, That:

A. If respondents have not divested absolutely and in good faith the Rite Aid North Carolina/Charleston Retail Assets and the Thrift Retail Assets pursuant to paragraph II.A of this order, the Commission may appoint a trustee to divest the Rite Aid Retail Assets and the Thrift Retail Assets; or if the respondents have not divested absolutely and in good faith the Thrift Retail Assets pursuant to paragraph II.B of this order, the Commission may appoint a trustee to divest the Thrift Retail Assets. In the event that the Commission brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents 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 from seeking civil penalties or any other relief available to it, including a court-appointed trustee pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by respondents 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, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents 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 serve as an agent of the Commission and shall have the exclusive power and authority to divest the Rite Aid Retail Assets and the Thrift Retail Assets.

3. Within ten (10) days after appointment of the trustee, respondents 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 (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved 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, the Commission may extend this period only two (2) times for up to twelve (12) months each time.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Rite Aid Retail Assets and the Thrift Retail Assets or to any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents 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, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the trustee's fiduciary duty to the Commission and to respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that the trustee receives *bona fide* offers from more than one acquiring entity, the trustee shall submit all such bids to the Commission, and if the Commission determines to approve more than one such acquiring entity for the Rite Aid Retail Assets and the Thrift Retail Assets, the trustee shall divest to the

acquiring entity selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are 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 the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Rite Aid Retail Assets and the Thrift Retail Assets.

8. Respondents 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, 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 reasonably necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the Rite Aid Retail Assets and the Thrift Retail Assets.

12. The trustee shall have no obligation or authority to operate or maintain the Rite Aid Retail Assets and the Thrift Retail Assets.

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

IV.

It is further ordered, That:

A. Pending divestiture of the Rite Aid Retail Assets and the Thrift Retail Assets, respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Rite Aid Retail Assets and the Thrift Retail Assets consistent with paragraphs II and III of this order and to prevent the destruction, removal, wasting, deterioration, or impairment of the Rite Aid Retail Assets and the Thrift Retail Assets except in the ordinary course of business and except for ordinary wear and tear.

B. Respondents shall comply with all the terms of the Asset Maintenance Agreement attached to this order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as respondents have complied with the divestiture requirements of the order.

V.

It is further ordered, That within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraphs II and III of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraphs II and III. Respondents shall include in their 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 proposals for divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties concerning divestiture.

VI.

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

VII.

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

A. Upon five days' written notice to respondents, access, during office hours 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 days' written notice to respondents and without restraint or interference from respondents, to interview respondents or officers, directors, or employees of respondents in the presence of counsel.

SCHEDULE A

Kerr Store Number 8549
Lakewood Shopping Center
2000 Chapel Hill Road
Durham, NC 27704

Kerr Store Number 8556
Erwin Square
737 Ninth Street
Durham, NC 27705

Kerr Store Number 8566
University Mall
201-10 Estes Drive
Chapel Hill, NC 27514

Kerr Store Number 8550
North Duke Mall
3600 North Duke Street
Durham, NC 27704

Kerr Store Number 8935
Cary Village Mall
1105 Walnut Street
Cary, NC 27511

Kerr Store Number 8933
South Square Shopping Center
4001 Chapel Hill Boulevard
Durham, NC 27707

Kerr Store Number 8531
Northridge Shopping Center
8140 Falls of the Neuse Road
Raleigh, NC 27689

Kerr Store Number 8943
Harvest Plaza
9650 Strickland Road
Raleigh, NC 27615

Kerr Store Number 8541
Longview Shopping Center
2116 East New Bern Avenue
Raleigh, NC 27610

Kerr Store Number 8537
Eastgate Shopping Center
4025 Old Wake Forest Road
Raleigh, NC 27609

Kerr Store Number 8553
Loehman's Plaza
1821 Hilandale Road
Durham, NC 27705

Kerr Store Number 8929
Crabtree Valley Mall
4325 Glenwood Avenue
Raleigh, NC 27612

Kerr Store Number 8538
South Hills Mall
1255 Buck Jones Road
Raleigh, NC 27606

Kerr Store Number 8595
North Hills Mall
Six Forks Road
Raleigh, NC 27609

Kerr Store Number 8539
Mission Valley Shopping Center
2233-113 Avant Ferry Road
Raleigh, NC 27605

Kerr Store Number 8534
Tower Shopping Center
Newbern Avenue
Raleigh, NC 27610

Kerr Store Number 8602
Triangle East Centre
134 Wakelon Street
Zebulon, NC 27597

Kerr Store Number 8530
Towne North Plaza
8385 Creedmoor Road
Raleigh, NC 27612

Kerr Store Number 8904
Preston Corners Shopping Center
920 High House Road
Cary, NC 27513

Kerr Store Number 8547
The Village Shopping Center
613 Wellons Village
Durham, NC 27703

APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between J.C. Penney Company, Inc. ("J.C. Penney"), 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 6501 Legacy Drive, Plano, Texas; Thrift Drug, Inc. ("Thrift Drug"), 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 615 Alpha Drive, Pittsburgh, Pennsylvania; and the Federal Trade Commission ("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.* (collectively "the Parties").

PREMISES

Whereas, J.C. Penney (through a wholly-owned subsidiary, Omega Acquisition Corporation) agreed to acquire Eckerd Corporation ("the Eckerd Acquisition"), pursuant to an agreement dated November 2, 1996, and J.C. Penney (through a wholly-owned subsidiary, Thrift Drug, Inc.) agreed to acquire certain assets of the Rite Aid Corporation ("the Rite Aid Acquisition"), pursuant to an agreement dated October 11, 1996, respectively (collectively "the Acquisitions"); and

Whereas, the Commission is now investigating the Acquisitions to determine if they would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment 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 agreement is not reached preserving the *status quo ante* of the Rite Aid Retail Assets and the Thrift Retail Assets as described in the Agreement Containing Consent Order ("Assets") during the period prior to their divestiture, any divestiture resulting from any administrative proceeding challenging the legality of the Acquisitions might not be possible, or might produce a less than effective remedy; and

Whereas, if the Commission accepts the consent order or a modified consent order, and J.C. Penney and Thrift Drug have not divested the Assets or such other assets as are specified in the consent order or in a modified consent order, in accordance with the consent order or modified order respectively, the Commission may appoint a trustee to divest the Assets and such additional assets as are identified in the consent order or in a modified consent order; and

Whereas, the Commission is concerned that prior to divestiture to an acquirer approved by the Commission, it may be necessary to

preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the consent order is to preserve the Assets pending the divestiture to an acquirer approved by the Commission under the terms of the order, in order to remedy any anticompetitive effects of the Acquisitions; and

Whereas, J.C. Penney and Thrift Drug entering into this Agreement shall in no way be construed as an admission by J.C. Penney or Thrift Drug that the Acquisitions are illegal; and

Whereas, J.C. Penney and Thrift Drug understand that no act or transaction contemplated by this 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 Agreement.

Now, therefore, in consideration of the Commission's agreement that at the time it accepts the consent order for public comment it will grant early termination of the Hart-Scott-Rodino waiting periods, the Parties agree as follows:

TERMS OF AGREEMENT

1. J.C. Penney and Thrift Drug agree to execute, and upon its issuance to be bound by, the attached consent order. The Parties further agree that each term defined in the attached consent order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Rite Aid Acquisition or the proposed Eckerd Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Rite Aid Acquisition or the proposed Eckerd Acquisition, J.C. Penney and Thrift Drug will be free to close the Rite Aid Acquisition after December 8, 1996, subject to the terms of the order, and the Eckerd Acquisition after December 6, 1996.

3. J.C. Penney and Thrift Drug agree that from the date this Agreement is signed until the earlier of the dates listed in subparagraphs 3.a - 3.b, they will comply with the provisions of this Agreement:

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

b. On the day the divestitures set out in the consent order have been completed.

4. J.C. Penney and Thrift Drug shall maintain the competitiveness of the Assets. This includes, but is not limited to, the maintaining of promotions and discount policies as well as the continuation of specific store services (*i.e.*, hours of operation and operation of specific departments).

5. Until J.C. Penney and Thrift Drug have divested the Assets or other assets pursuant to paragraphs II and III of the consent order or such assets as are specified pursuant to a modified consent order, J.C. Penney and Thrift Drug shall continue to offer those Thrift Drug customers who receive third-party pharmacy services at Thrift Drug the same type of pharmacy service at any retail drug store that constitutes a part of the Thrift Retail Assets.

6. Should the Commission seek in any proceeding to compel J.C. Penney and Thrift Drug to divest themselves of the Assets or such other assets as specified in the consent order or in a modified consent order or to seek any other injunctive or equitable relief, J.C. Penney and Thrift Drug 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 not sought to enjoin the Acquisitions. J.C. Penney and Thrift Drug also waive all rights to contest the validity of this Agreement.

7. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with five (5) days' notice to J.C. Penney or Thrift Drug and to their principal offices, J.C. Penney and Thrift Drug shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of J.C. Penney or Thrift Drug, 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 J.C. Penney or Thrift Drug relating to compliance with this Agreement; and

b. To interview officers or employees of J.C. Penney or Thrift Drug, who may have counsel present, regarding any such matters.

8. This Agreement shall not be binding until approved by the Commission.

Complaint

123 F.T.C.

IN THE MATTER OF

THE BOEING COMPANY

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-3723. Complaint, March 5, 1997--Decision, March 5, 1997

This consent order involves the Boeing Company's acquisition of Rockwell International Corporation's aerospace and defense business and the competition in the markets for high altitude endurance unmanned air vehicles ("UAVs") and space launch vehicles. The consent order, among other things, gives Teledyne Ryan, the prime contractor of one team, the opportunity to replace Boeing on that team, thereby protecting competition in the UAVs market. The consent order also establishes a "firewall" to prevent the flow of competitively sensitive information between Boeing's team and a division of Rockwell International Corporation's aerospace and defense business that is currently providing wings to the other teams, establishes a firewall that prevents Boeing from making any space launch vehicle manufacturer's non-public information available to its launch vehicle division, and allows Boeing to use such information only in its capacity as a propulsion system provider.

Appearances

For the Commission: *George S. Cary, Ann Malester and Steven Bernstein.*

For the respondent: *Benjamin S. Sharp and Susan E. Foster,* Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, The Boeing Company ("Boeing"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the Aerospace and Defense Business of Rockwell International Corporation ("Rockwell"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such an acquisition, if consummated, would 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; 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:

I. DEFINITIONS

1. *"High Altitude Endurance Unmanned Air Vehicle"* means any unmanned aircraft designed to perform high-altitude, broad-area reconnaissance missions and manufactured for sale to the United States Department of Defense.

2. *"Tier II Plus"* or *"Global Hawk"* means the Tier II Plus High Altitude Endurance Unmanned Air Vehicle currently being developed for the Department of Defense's Advanced Research Projects Agency.

3. *"Tier III Minus"* or *"DarkStar"* means the Tier III Minus High Altitude Endurance Unmanned Air Vehicle currently being developed for the Department of Defense's Advanced Research Projects Agency.

4. *"Tier II Plus Team"* means Teledyne Ryan Aeronautical and the group of subcontractors, including Rockwell Aerospace and Defense, which are currently developing Tier II Plus.

5. *"Tier III Minus Team"* means the team comprised of Boeing and Lockheed Martin Corporation which is currently developing Tier III Minus.

6. *"Space Launch Vehicle"* means any vehicle designed to launch satellites or persons into space.

7. *"Space Launch Vehicle Propulsion System"* means any device that is used to provide propulsion to a Space Launch Vehicle.

8. *"Respondent"* means Boeing.

II. RESPONDENT

9. Respondent is a corporation organized and existing under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 7755 East Marginal Way South, Seattle, Washington.

10. Respondent is engaged in, among other things, the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles and Space Launch Vehicles.

11. For purposes of this proceeding, respondent 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 affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. ACQUIRED COMPANY

12. Rockwell Aerospace and Defense Business ("Rockwell Aerospace and Defense") is a division of Rockwell, a corporation organized and existing under and by virtue of the laws of the state of Delaware, with its principal office and place of business located at 2201 Seal Beach Boulevard, Seal Beach, California.

13. Rockwell Aerospace and Defense is engaged in, among other things, the research, development, manufacture and sale of wings for High Altitude Endurance Unmanned Air Vehicles, and Space Launch Vehicle Propulsion Systems.

14. Rockwell Aerospace and Defense 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 affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

15. On or about July 31, 1996, Boeing entered into an Agreement and Plan of Merger, whereby Boeing would acquire Rockwell Aerospace and Defense for approximately \$3.025 billion ("Acquisition").

V. THE RELEVANT MARKETS

16. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

- a. The research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles;
- b. The research, development, manufacture and sale of Space Launch Vehicles; and
- c. The research, development, manufacture and sale of Space Launch Vehicle Propulsion Systems.

17. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in all relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

18. The market for the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios"). Respondent and Rockwell are members of the only two teams which produce High Altitude Endurance Unmanned Air Vehicles.

19. Respondent, through the Acquisition, would be a member of both the Tier II Plus Team and the Tier III Minus Team.

20. The market for Space Launch Vehicle Propulsion Systems is highly concentrated as measured by the HHI or concentration ratios.

21. Respondent, through the proposed Acquisition, would be engaged in the research, development, manufacture and sale of a wide range of Space Launch Vehicles and Space Launch Vehicle Propulsion Systems.

VII. BARRIERS TO ENTRY

22. Entry into the market for the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph twenty-six because of, among other things, the difficulty involved in developing the technology and expertise necessary to produce High Altitude Endurance Unmanned Air Vehicles.

23. Entry into the market for the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles is not likely to occur to deter or counteract the adverse competitive effects described in paragraph twenty-six because of, among other things, the expense required to develop the technology and expertise necessary to produce High Altitude Endurance Unmanned Air Vehicles.

24. Entry into the market for the research, development, manufacture and sale of Space Launch Vehicle Propulsion Systems would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph twenty-six because of, among other things, the difficulty involved in developing the technology and expertise necessary to produce Space Launch Vehicle Propulsion Systems.

25. Entry into the market for the research, development, manufacture and sale of Space Launch Vehicle Propulsion Systems is not likely to occur to deter or counteract the adverse competitive effects described in paragraph twenty-six because of, among other things, the expense required to develop the technology and expertise necessary to produce Space Launch Vehicle Propulsion Systems.

VIII. EFFECTS OF THE ACQUISITION

26. The effects of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the United States markets for High Altitude Endurance Unmanned Air Vehicles and Space Launch Vehicles in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

a. By reducing actual, direct and substantial competition between the Tier II Plus Team and the Tier III Minus Team in the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles;

b. By increasing the likelihood that the Department of Defense would be forced to pay higher prices for High Altitude Endurance Unmanned Air Vehicles;

c. By increasing the likelihood that quality and technological innovation in the High Altitude Endurance Unmanned Air Vehicle market would be reduced;

d. By allowing respondent to gain access to competitively sensitive non-public information concerning the Tier II Plus team, whereby:

(1) Actual, direct and substantial competition between the Tier II Plus Team and the Tier III Minus Team in the High Altitude Endurance Unmanned Air Vehicle market would be reduced;

(2) The likelihood that the Department of Defense would be forced to pay higher prices for High Altitude Endurance Unmanned Air Vehicles would be increased; and

(3) Quality and technical innovation in the High Altitude Endurance Unmanned Air Vehicle market would be reduced; and

e. By allowing respondent to gain access to competitively sensitive non-public information concerning other Space Launch Vehicle manufacturers, whereby:

(1) Actual competition between respondent and other Space Launch Vehicle manufacturers would be reduced; and

(2) Quality and technical innovation in the Space Launch Vehicle market would be reduced.

IX. VIOLATIONS CHARGED

27. The Acquisition described in paragraph fifteen constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

28. The Acquisition described in paragraph fifteen, if consummated, would constitute a 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of Rockwell International Corporation's Aerospace and Defense business, 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, and having duly considered the comment filed thereafter by the respondent pursuant to Section 2.34 of its Rules, and having modified the Decision and Order in certain respects, 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 The Boeing Company ("Boeing") 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 7755 East Marginal Way South, Seattle, Washington.

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. "*Respondent*" or "*Boeing*" means The Boeing Company, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by The Boeing Company, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. Boeing also includes Rockwell Aerospace and Defense.

B. "*Rockwell*" means Rockwell International Corporation, a corporation organized, existing and doing business under the laws of the state of Delaware, with its office and principal place of business located at 2201 Seal Beach Boulevard, Seal Beach, California, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rockwell International

Corporation, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. "*Rockwell Aerospace and Defense*" means Rockwell's Aerospace and Defense businesses, including the Autonetics and Missiles Systems Division, North American Aircraft Division, North American Aircraft Modification Division, Rocketdyne Division, Space Systems Division and Rockwell's interest in United Space Alliance, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rockwell Aerospace and Defense, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. Rockwell Aerospace and Defense does not include any of the assets that are not included in the Acquisition and that will remain part of Rockwell after the Acquisition.

D. "*Acquisition*" means the acquisition of Rockwell Aerospace and Defense by Boeing.

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

F. "*Allegheny Teledyne*" means Allegheny Teledyne Incorporated, a corporation organized, existing and doing business under and by virtue of the laws of the state of Massachusetts, with its office and principal place of business located at 1000 Six PPG Place, Pittsburgh, Pennsylvania, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Allegheny Teledyne Incorporated, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

G. "*Teledyne Ryan*" means Teledyne Ryan Aeronautical, a division of Allegheny Teledyne, with its office and principal place of business located at 2701 Harbor Drive, San Diego, California, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Teledyne Ryan Aeronautical, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

H. "*Person*" means any natural person, corporate entity, partnership, association, joint venture, government entity, trust or other business or legal entity.

I. *"Tier II Plus" or "Global Hawk"* means the Tier II Plus high altitude endurance unmanned air vehicle currently being developed for the United States Advanced Research Projects Agency.

J. *"Tier II Plus Wings"* means the completed and integrated wing assemblies used for Tier II Plus.

K. *"Tier II Plus Wings Special Tooling and Special Test Equipment"* means all of the special tooling and special test equipment, as the terms special tooling and special test equipment are defined in Federal Acquisition Regulations, 48 CFR ("FAR") 45.101, used in the design, development and manufacture of Tier II Plus Wings.

L. *"Tier II Plus Wings Engineering and Design Data"* means all of the engineering and design data, in both electronic and hard copy, used in the design, development and manufacture of Tier II Plus Wings.

M. *"Tier II Plus Prime Agreement"* means Agreement No. MDA972-95-3-0013 between Teledyne Ryan and the Defense Advanced Research Projects Agency and any amendments to such agreement.

N. *"Phase II Flight & System Performance Test"* means all of the flights and tests of Tier II Plus associated with Phase II of the United States Advanced Research Projects Agency's Tier II Plus program.

O. *"Tier III Minus" or "DarkStar"* means the Tier III Minus high altitude endurance unmanned air vehicle currently being developed for the United States Advanced Research Projects Agency.

P. *"Space Launch Vehicle"* means any vehicle designed to launch satellites or persons into space.

Q. *"Space Launch Vehicle Propulsion System"* means any device designed, developed, manufactured or sold by Rocketdyne that is used to provide propulsion to a Space Launch Vehicle.

R. *"Rockwell NAAD"* means Rockwell International Corporation's North American Aircraft Division, an entity included within Rockwell Aerospace and Defense and as part of the Acquisition, with its principal place of business at 2201 Seal Beach Boulevard, Seal Beach, California, or any other entity within or controlled by Boeing engaged in, among other things, the research, development, manufacture or sale of Tier II Plus Wings, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rockwell NAAD, and the respective

directors, officers, employees, agents, representatives, successors and assigns of each.

S. *"Rockwell NAAD Tulsa"* means Rockwell North American Aircraft Division, Tulsa, a Rockwell NAAD facility located at 2000 North Memorial Drive, P.O. Box 582808, Tulsa, Oklahoma, or any other facility within or controlled by Boeing engaged in, among other things, the research, development, manufacture or sale of Tier II Plus Wings, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rockwell NAAD Tulsa, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

T. *"Rocketdyne"* means Rockwell International Corporation's Rocketdyne Division, an entity included within Rockwell Aerospace and Defense and as part of the Acquisition, with its principal place of business at 6633 Canoga Avenue, Canoga Park, California, or any other entity within or controlled by Boeing engaged in, among other things, the research, development, manufacture or sale of Space Launch Vehicle Propulsion Systems, and its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rocketdyne, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

U. *"Boeing Tier III Minus Business"* means any entity within or controlled by Boeing that is engaged in, among other things, the research, development, manufacture or sale of Tier III Minus, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Boeing Tier III Minus Business, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

V. *"Boeing Space Launch Vehicle Business"* means any entity within or controlled by Boeing that is engaged in, among other things, the research, development, manufacture or sale of Space Launch Vehicles, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Boeing Space Launch Vehicle Business, and the respective

directors, officers, employees, agents, representatives, successors and assigns of each.

W. *"Non-Public Tier II Plus Information"* means any information not in the public domain received or developed by Rockwell in its capacity as a provider of Tier II Plus Wings. Non-Public Tier II Plus Information shall not include: (1) information known or disclosed to respondent, excluding Rockwell Aerospace and Defense, at the time respondent signs the agreement containing consent order in this matter, (2) information that, subsequent to the time respondent signs the agreement containing consent order in this matter, falls within the public domain through no violation of this order by respondent, (3) information that, subsequent to the time respondent signs the agreement containing consent order in this matter, becomes known to respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Rockwell or otherwise obtained as a result of the Acquisition shall not be considered information known to respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Tier II Plus Information to respondent, or such other period as agreed to in writing by respondent and the provider of the information.

X. *"Non-Public Tier III Minus Information"* means any information not in the public domain received by Boeing in its capacity as a designer, developer or manufacturer of Tier III Minus. Non-Public Tier III Minus Information shall not include: (1) information known or disclosed to Rockwell NAAD at the time respondent signs the agreement containing consent order in this matter, (2) information that, subsequent to the time respondent signs the agreement containing consent order in this matter, falls within the public domain through no violation of this order by respondent, (3) information that, subsequent to the time respondent signs the agreement containing consent order in this matter, becomes known to Rockwell NAAD from a third party not in breach of a confidential disclosure agreement, or (4) information after six (6) years from the date of disclosure of such Non-Public Tier III Minus Information to respondent, or such other period as agreed to in writing by respondent and the provider of the information.

Y. *"Boeing Non-Public Tier III Minus Information"* means any information not in the public domain developed by Boeing in its capacity as a designer, developer or manufacturer of Tier III Minus.

Boeing Non-Public Tier III Minus information shall not include: (1) information known or disclosed to Rockwell NAAD Tulsa at the time respondent signs the agreement containing consent order in this matter, (2) information that, subsequent to the time respondent signs the agreement containing consent order in this matter, falls within the public domain through no violation of this order by respondent, (3) information that, subsequent to the time respondent signs the agreement containing consent order in this matter, becomes known to Rockwell NAAD Tulsa from a third party not in breach of a confidential disclosure agreement, or (4) information after six (6) years from the date of development of such Boeing Non-Public Tier III Minus Information by respondent.

Z. *"Non-Public Space Launch Vehicle Information"* means (1) any information not in the public domain disclosed by any Space Launch Vehicle manufacturer, other than Boeing, to Rocketdyne in its capacity as a provider of Space Launch Vehicle Propulsion Systems and (a) if written information, designated in writing by the Space Launch Vehicle manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Space Launch Vehicle manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Space Launch Vehicle manufacturer to Rocketdyne in its capacity as a provider of Space Launch Vehicle Propulsion Systems prior to the Acquisition. Non-Public Space Launch Vehicle Information shall not include: (1) information known or disclosed to respondent, excluding Rockwell Aerospace and Defense, at the time respondent signed the agreement containing consent order in this matter, (2) information that, subsequent to the time respondent signs the agreement containing consent order in this matter, falls within the public domain through no violation of this order by respondent, (3) information that, subsequent to the time respondent signs the agreement containing consent order in this matter, becomes known to respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Rockwell or otherwise obtained as a result of the Acquisition shall not be considered information known to respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Space Launch Vehicle Information to respondent, or such

other period as agreed to in writing by respondent and the provider of the information.

II.

It is further ordered, That respondent shall not hold Teledyne Ryan liable for any damages or costs resulting from the replacement of respondent as the supplier of Tier II Plus Wings.

III.

It is further ordered, That:

A. At any time prior to six (6) months of the date this order becomes final, and if respondent and Teledyne Ryan have not reached an agreement on a new contract for respondent to provide Tier II Plus Wings to Teledyne Ryan, respondent shall, upon request from Teledyne Ryan, deliver to business locations in the United States designated by Teledyne Ryan, and assemble, the Tier II Plus Wings Special Tooling and Special Test Equipment. Respondent shall perform its obligations under this paragraph III.A as soon as practicable after receiving such request from Teledyne Ryan, but in a timeframe not to exceed ninety (90) days from the receipt of such request, or such other time period as agreed to in writing by Teledyne Ryan. Respondent shall not charge Teledyne Ryan for any costs associated with carrying out respondent's obligations under this paragraph III.A that would not be considered allowable, as the term allowable is defined in FAR Section 52.216-7, under the Tier II Plus Prime Agreement. Nothing in this paragraph shall alter respondent's or Teledyne Ryan's rights and obligations pursuant to FAR Section 52.249-6, as incorporated in any current or future Tier II Plus Wings contract between respondent and Teledyne Ryan.

B. At any time prior to six (6) months of the date this order becomes final, and if respondent and Teledyne Ryan have not reached an agreement on a new contract for respondent to provide Tier II Plus Wings to Teledyne Ryan, respondent shall, upon request from Teledyne Ryan, deliver to business locations in the United States designated by Teledyne Ryan the Tier II Plus Wings Engineering and Design Data. Respondent shall perform its obligations under this paragraph III.B as soon as practicable after receiving such request from Teledyne Ryan, but in a timeframe not to exceed fifteen (15)

days from the receipt of such request, or such other time period as agreed to in writing by Teledyne Ryan. Respondent shall not charge Teledyne Ryan for any costs associated with carrying out respondent's obligations under this paragraph III.B that would not be considered allowable, as the term allowable is defined in FAR Section 52.216-7, under the Tier II Plus Prime Agreement.

IV.

It is further ordered, That respondent shall not assert or enforce any proprietary rights in any Tier II Plus Wings Special Tooling and Special Test Equipment or Tier II Plus Wings Engineering and Design Data delivered pursuant to paragraph III of this order.

V.

It is further ordered, That:

A. At any time prior to six (6) months of the date this order becomes final, and if respondent and Teledyne Ryan have not reached an agreement on a new contract for respondent to provide Tier II Plus Wings to Teledyne Ryan, respondent shall provide, upon request from Teledyne Ryan, such assistance to personnel designated by Teledyne Ryan as is reasonably necessary to such personnel to design and manufacture Tier II Plus Wings. Such assistance shall include, but not be limited to, consultation with employees of respondent knowledgeable in the design and manufacture of Tier II Plus Wings, and training at facilities designated by Teledyne Ryan for a period of time and in a manner sufficient to satisfy Teledyne Ryan's management that the designated personnel are appropriately trained in the design and manufacture of Tier II Plus Wings. Respondent shall convey to personnel designated by Teledyne Ryan all know-how necessary to design and manufacture Tier II Plus Wings. However, respondent shall not be required to continue providing such assistance for more than one (1) year from the date respondent begins providing such assistance, and shall not be required to provide personnel for more than the equivalent of four (4) man-years during this one (1) year period. Respondent shall not charge Teledyne Ryan for any costs associated with carrying out respondent's obligations under this paragraph V.A that would not be considered allowable, as the term

allowable is defined in FAR Section 52.216-7, under the Tier II Plus Prime Agreement.

B. Upon reasonable request from Teledyne Ryan, respondent shall provide such additional technical assistance relating to the Tier II Plus Wings to personnel designated by Teledyne Ryan as is reasonably necessary to enable personnel designated by Teledyne Ryan to complete the Phase II Flight & System Performance Test. Such assistance shall include, but not be limited to, consultation with employees of respondent knowledgeable in the design and manufacture of Tier II Plus Wings, and training at facilities designated by Teledyne Ryan for a period of time and in a manner sufficient to satisfy Teledyne Ryan's management that the designated personnel have sufficient knowledge relating to Tier II Plus Wings to be able to support fully Teledyne Ryan's efforts to complete the Phase II Flight & System Performance Test requirements. However, respondent shall not be required to continue providing such assistance after the completion of the Phase II Flight & System Performance Test. Respondent shall charge Teledyne Ryan at a rate of no more than \$90 per hour for providing such technical assistance.

VI.

It is further ordered, That:

A. Respondent shall not provide, disclose or otherwise make available to the Boeing Tier III Minus Business any Non-Public Tier II Plus Information.

B. Respondent shall use any Non-Public Tier II Plus Information only in respondent's capacity as a provider of Tier II Plus Wings or technical assistance, pursuant to paragraph V of this order.

VII.

It is further ordered, That:

A. Respondent shall not provide, disclose or otherwise make available to Rockwell NAAD any Non-Public Tier III Minus Information.

B. Respondent shall use any Non-Public Tier III Minus Information only in its capacity as a designer, developer or manufacturer of Tier III Minus.

VIII.

It is further ordered, That respondent shall not provide, disclose or otherwise make available to Rockwell NAAD Tulsa any Boeing Non-Public Tier III Minus Information.

IX.

It is further ordered, That:

A. Rocketdyne shall not, absent the prior written consent of the proprietor of Non-Public Space Launch Vehicle Information, provide, disclose or otherwise make available to Boeing Space Launch Vehicle Business any Non-Public Space Launch Vehicle Information.

B. Rocketdyne shall use any Non-Public Space Launch Vehicle Information only in its capacity as a provider of Space Launch Vehicle Propulsion Systems, absent the prior written consent of the proprietor of the Non-Public Space Launch Vehicle Information.

X.

It is further ordered, That respondent shall deliver a copy of this order to any Space Launch Vehicle manufacturer prior to obtaining, either from the Space Launch Vehicle manufacturer or through the Acquisition, any information outside the public domain relating to that manufacturer's Space Launch Vehicle.

XI.

It is further ordered, That respondent shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I.

XII.

It is further ordered, That within sixty (60) days of the date this order becomes final and annually for the next ten (10) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondent 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

II through X of this order. Respondent shall include in its reports information sufficient to identify all Space Launch Vehicle Manufacturers with whom respondent has entered into an agreement for the research, development, manufacture or sale of Space Launch Vehicle Propulsion Systems.

XIII.

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

XIV.

It is further ordered, That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege and applicable United States Government national security requirements, upon written request, and on reasonable notice, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours 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 respondent relating to any matters contained in this order; and

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

XV.

It is further ordered, That this order shall terminate on March 5, 2017, except as otherwise provided in this order.