

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS AND ORDERS
JANUARY 1, 1999 TO JUNE 30, 1999

PUBLISHED BY THE COMMISSION

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MEMBERS OF THE FEDERAL TRADE COMMISSION

DURING THE PERIOD JANUARY 1, 1999 TO JUNE 30, 1999

ROBERT PITOFISKY, *Chairman*

Took oath of office April 12, 1995.

SHEILA F. ANTHONY, *Commissioner*

Took oath of office September 30, 1997.

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Took oath of office December 17, 1997.

ORSON SWINDLE, *Commissioner*

Took oath of office December 18, 1997.

DONALD S. CLARK, *Secretary*

Appointed August 28, 1988.

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FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF BOZELL WORLDWIDE, INC.

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

Docket C-3845. Complaint, Jan. 4, 1999--Decision, Jan. 4, 1999

This consent order, among other things, prohibits Bozell Worldwide, Inc., the national advertising agency for Chrysler Corporation, from disseminating deceptive lease and/or credit advertising and requires the disclosure of cost information in advertisements mandated by the Consumer Leasing Act.

Participants

For the Commission: *Rolando Berrelez, Sally F. Pitofsky, David Medine, and Mark Hertzendorf.*

For the respondent: *Merton Simons, Southfield, MI.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Bozell Worldwide, Inc., a corporation ("respondent" or "Bozell"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, and the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Bozell Worldwide, Inc. is a Delaware corporation with its principal office or place of business at 40 West 23rd Street, New York, New York.

2. Respondent, at all times relevant to this complaint, has provided advertising services to Chrysler Corporation ("Chrysler") and to dealer marketing groups that promote Chrysler and Jeep vehicles ("Chrysler vehicles"). Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

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, 15 U.S.C. 44.

4. Respondent has prepared and disseminated or has caused to be prepared and disseminated consumer lease advertisements ("lease advertisements") for Chrysler vehicles, including but not necessarily limited to the attached Bozell Exhibit A. Bozell Exhibit A is a television lease advertisement (attached in video and storyboard format). The advertisement contains the following statements:

A. [Video:][Footage of two cars, exterior and interior shots]

"Sebring JX Convertible
\$299/mo. 30 mos."

[The advertisement contains the following disclosure at the bottom of the screen in white fine print superimposed on a black background for approximately 3 seconds:

"\$1,619 Due at signing (plus tax, title & license) Limited model shown, higher. Call 1-888-CHRYSLER for lease example details."

[Audio:] "Some decisions are harder than others. The Chrysler Sebring LXI Coupe or the Sebring Limited Convertible. For the passionate side. Fully independent suspension, speed sensitive steering, multi-valve V6, and a luxurious leather-trimmed interior. The practical side -- lease the convertible for just two ninety-nine a month and on the coupe get one thousand cash back and luxurious leather at no extra charge. Some decisions are easier than others. Chrysler -- engineered to be great cars."

[Super:] "\$1000 Cash Back
Chrysler Sebring Coupe"
[Chrysler logo]

ENGINEERED TO BE GREAT CARS" (Bozell Exhibit A).

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT I: FAILURE TO DISCLOSE ADEQUATELY IN LEASE ADVERTISING

5. In lease advertisements, including but not necessarily limited to Bozell Exhibit A, respondent has represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount. These advertisements do not adequately disclose additional terms pertaining to the lease offer, such as the total amount of any payments due at

1

Complaint

lease inception. The existence of these additional terms would be material to consumers in deciding whether to lease a Chrysler vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

6. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in paragraph five was, and is, deceptive.

7. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT II: MISREPRESENTATION OF MODEL AVAILABILITY

8. In lease advertisements, including but not necessarily limited to Bozell Exhibit A, respondent has represented, expressly or by implication, that consumers can lease the Chrysler vehicles featured in respondent's advertisements at the lease terms prominently stated in the advertisements.

9. In truth and in fact, consumers cannot lease the Chrysler vehicles featured in the advertisements at the terms prominently stated in the advertisements. The prominently stated lease terms in respondent's advertisements apply to Chrysler models of lesser value than the Chrysler vehicles featured in the advertisements. The fine print disclosures in respondent's lease advertisements, including but not necessarily limited to "Limited model shown, higher" in Bozell Exhibit A, are inadequate to disclaim or modify the representation as alleged in paragraph eight. Therefore, respondent's representation as alleged in paragraph eight, was, and is, false or misleading.

10. Respondent knew or should have known that the representation set forth in paragraph eight was, and is, false and misleading.

11. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT III: CONSUMER LEASING ACT AND REGULATION M VIOLATIONS

12. Respondent's lease advertisements, including but not necessarily limited to Bozell Exhibit A, state a monthly payment amount but fail to disclose clearly and conspicuously certain additional terms required by the Consumer Leasing Act and

Regulation M, including one or more of the following terms: that the transaction advertised is a lease; the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation, and that such amount: 1) excludes third-party fees, such as taxes, licenses, and registration fees, and discloses that fact or 2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality are disclosed; whether or not a security deposit is required; and the number, amount, and timing of scheduled payments.

13. The lease disclosures in respondent's television lease advertisements, including but not necessarily limited to Bozell Exhibit A, are not clear and conspicuous because they appear on the screen in very small type, for a very short duration, and/or accompanied by background sounds and images.

14. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, as amended, and Section 213.7 of Regulation M, 12 CFR 213.7, as amended.

BOZELL EXHIBIT A

[Audio:] "Some decisions are harder than others. The Chrysler Sebring LXI Coupe or the Sebring Limited Convertible. For the passionate side. Fully independent suspension, speed sensitive steering, multi-valve V6, and a luxurious leather-trimmed interior. The practical side -- lease the convertible for just two ninety-nine a month and on the coupe get a thousand cash back and luxurious leather at no extra charge. Some decisions are easier than others. Chrysler -- engineered to be great cars."

[Video:] [Footage of two cars, exterior and interior shots]

[Super: white letters on black background]

"Sebring JX Convertible
\$299/mo. 30 mos."

[The advertisement contains the following disclosure at the bottom of the screen in white fine print superimposed on a black background for approximately 3 seconds:

"\$1,619 Due at signing (plus tax, title & license) Limited model shown, higher. Call 1-888-CHRYSLER for lease example details."]

[Footage of two cars]

[Super:]

"\$1000 Cash Back
Chrysler Sebring Coupe"
"CHRYSLER
[Chrysler logo]

ENGINEERED TO BE GREAT CARS"

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

The respondent, its attorneys, 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 the 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 Bozell Worldwide, Inc. is a Delaware corporation with its principal office or place of business at 40 West 23rd Street, New York, New York.

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

ORDER

DEFINITIONS

1. "*Clearly and conspicuously*" as used herein shall mean: 1) video or written disclosures must be made in a manner that is readable and understandable to a reasonable consumer and 2) audio or oral disclosures must be made in a manner that is audible and understandable to a reasonable consumer.

2. "*Total amount due at lease signing or delivery*" as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later, as required by Regulation M, 12 CFR 213, as amended. The total amount due at lease signing or delivery may: 1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact, or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed. (Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

3. Unless otherwise specified, "*respondent*" as used herein shall mean Bozell Worldwide, Inc., its successors and assigns, and its officers, agents, representatives, and employees.

4. "*Commerce*" as used herein shall mean as defined in Section 4 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any consumer lease involving motor vehicles in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the vehicle model(s) available to consumers in connection with any advertised lease offer;

B. Misrepresent the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required);

C. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease signing or delivery;

D. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows:

1. That the transaction advertised is a lease;
2. The total amount due at lease signing or delivery;
3. Whether or not a security deposit is required;
4. The number, amount, and timing of scheduled payments; and
5. That an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

(Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667c(a), as amended, and Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

For radio advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. 1667c(C), and Section 213.7(f) of Regulation M, 12 CFR 213.7(f), as amended. For television advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

II.

It is further ordered, That respondent Bozell Worldwide, Inc., and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

III.

It is further ordered, That respondent Bozell Worldwide, Inc., and its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, distribute a copy of this order to all current principals, officers, directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease advertising; and

B. For a period of ten (10) years from the date of service of this order, distribute a copy of this order to all future principals, officers, directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease advertising, within thirty (30) days after the person or entity assumes such position or responsibilities.

IV.

It is further ordered, That respondent Bozell Worldwide, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not necessarily limited to 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.

V.

It is further ordered, That respondent Bozell Worldwide, Inc., and its successors and assigns, shall within one hundred and twenty (120) 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.

VI.

This order will terminate on January 4, 2019, 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 deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

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127 F.T.C.

IN THE MATTER OF
MARTIN ADVERTISING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
CONSUMER LEASING ACT, TRUTH IN LENDING ACT
AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3846. Complaint, Jan. 4, 1999--Decision, Jan. 4, 1999

This consent order, among other things, prohibits Martin Advertising, Inc., a regional advertising agency for General Motors' dealerships and associations, from disseminating deceptive lease and/or credit advertising and requires the disclosure of cost information in advertisements mandated by the Consumer Leasing Act and/or the Truth in Lending Act.

Participants

For the Commission: *Rolando Berrelez, Sally F. Pitofsky, David Medine, and Mark Hertzendorf.*

For the respondent: *Jonathan Waller, Campbell & Waller, Birmingham, AL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Martin Advertising, Inc., a corporation ("respondent" or "Martin"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and the Truth in Lending Act, 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Martin Advertising, Inc. is a Delaware corporation with its principal office or place of business at 2801 University Boulevard, Suite 200, Birmingham, Alabama.

2. Respondent, at all times relevant to this complaint, has provided advertising services to automobile dealers and dealer marketing groups, including but not limited to dealer marketing groups that promote General Motors Corporation ("GM") vehicles. Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and

"consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

3. Respondent has disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 CFR 226.2, as amended.

4. 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, 15 U.S.C. 44.

FEDERAL TRADE COMMISSION ACT VIOLATIONS
LEASE ADVERTISING

5. Respondent has prepared and disseminated or has caused to be prepared and disseminated consumer lease advertisements for motor vehicles, including but not necessarily limited to the attached Martin Exhibits A through D. Exhibits A and B are representative examples of respondent's radio advertisements and are attached hereto in storyboard format. Exhibits C and D are representative examples of respondent's television advertisements and are attached hereto in video and storyboard format.

A. [Audio:] "Lincolns, Mercurys, Jeeps, Eagles, or Hyundais just 96 cents over factory invoice! It's Capital Motor Company's 96-hour countdown. Now through Monday buy any new Lincoln, Mercury, Jeep, Eagle, or Hyundai in stock and pay just 96 cents over factory invoice. Capital is out to break all sales records. Cash in with up to \$2,000 cash back, discounts up to \$5,500 and financing as low as 1.9%. Plus, act now and drive away in a new '97 Jeep Grand Cherokee for just 3-29 a month. Now is the best time to save on every new car in stock at Capital Motor Company. Everything must go - nothing will be held back. Plus, Capital guarantees to have the best price on any new car or they'll pay you \$1,000 cash. Don't let time run out - take advantage of huge year-end savings during the 96 Hour Capital Countdown - only at Capital Motor Company - home of the \$1,000 price guarantee. See our ad in Saturday's Tallahassee Democrat for details." (Martin Exhibit A).

B. [Audio:] "Choose the way you want to save this holiday season at Mid South Nissan. See Mid South Nissan before the New Year and drive a loaded '97 Nissan pickup for only 99 dollars a month with zero down payment! You get air, stereo cassette, alloy wheels, chrome package, sliding rear window and more. Drive it for 99 dollars a month with zero down! Or buy the same loaded '97 Nissan pickup for only 10-8-88. That's a total savings of over 4500 dollars. Plus when you buy, Mid South Nissan writes you a check for 1000 dollars. One

thousand dollars holiday cash to use any way you choose. A fun new '97 pickup, thousands in savings, plus a thousand bucks. Choose the way you want to save this holiday at Mid South Nissan. Drive a new '97 Nissan pickup for 99 dollars a month with zero down. Or buy it for just 10-8-88 and get 1000 dollars holiday cash. Hurry to Mid South Nissan, 966 South Gloster, Tupelo."

[The following disclosure is rapidly stated at the end of the advertisement, over background sound: "Sale prices plus tax, tag, and fees. 24 month lease with approved credit. Acquisition fee, security deposit and first month's payment at inception. See dealer for details."] (Martin Exhibit B).

C. [Audio:] "Premier Pontiac Nissan's Final Four Year-end clearance! You'll score big on every car in stock, get financing as low as 3.9%, and no payments up to 6 months... Plus, drive away in a '97 Nissan pick-up for just \$99 a month or Altima for just 1-29 a month."

[Video:] "FINANCING AS LOW AS 3.9%*
NO PAYMENT UP TO 6 MONTHS
97 VTP NISSAN PICK-UP
\$99 A MONTH**
97 NISSAN ALTIMA
\$129 A MONTH***"

[The advertisement contains the following disclosure at the bottom of the screen in light-colored fine print superimposed on moving background:

"*You must take retail delivery from dealer stock by 1/2/97. Dealer financial participation may affect consumer cost. Length of finance contract is limited. See dealer for details.

**36-month NMAC lease. Stock #8501; MSRP \$13,868. Sale price \$11,525. Residual \$9,085.12. 36 payments of \$99.43 with \$1675 cash or trade plus tax, title, tag and security deposit. See dealer for details.

***36-month NMAC lease. Stock #8328; MSRP \$20,597. Sale price \$18,095. Residual \$13,799.99. 36 payments of \$129.15 with \$1,999 cash or trade plus tax, title, tag and security deposit. See dealer for details."]

(Martin Exhibit C).

D. [Audio] "Right now drive a new '97 GMC Sierra extended cab 4 by 4 for only 2-89 a month. Or how about a new '97 Pontiac Sunfire for just 1-99 a month."

[Video:] "'97 GMC SIERRA EXTENDED CAB 4X4
\$289 MONTH/36 MONTH LEASE*
\$2200 CASH OR TRADE DOWN
4 SPEED AUTOMATIC
CAST ALUMINUM WHEELS"
"'97 PONTIAC SUNFIRE
\$199 MONTH/48 MONTH LEASE**
\$1500 CASH OR TRADE DOWN"

[The advertisement contains the following lease disclosure at the bottom of the screen in light-colored fine print superimposed on moving background:

"* 289 per month/36 month lease. \$2200 cash or trade down payment.
\$2789 due at lease signing (first's month payment of \$289, \$300

refundable security deposit plus downpayment). Customer has option to purchase vehicle at lease end. See dealer for details.

**\$199 per month/48 month lease. \$1500 cash or trade down payment. \$1899 due at lease signing (first month's payment of \$199, \$200 refundable security deposit plus down payment). Customer has option to purchase vehicle at lease end. See dealer for details."]

(Martin Exhibit D).

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT I: MISREPRESENTATION OF ADVERTISED TRANSACTION

6. In lease advertisements, including but not necessarily limited to Martin Exhibits A through C, respondent has represented, expressly or by implication, that consumers can purchase the advertised vehicles by financing the vehicles through credit for the monthly payment amounts prominently stated in the advertisements.

7. In truth and in fact, consumers cannot purchase the advertised vehicles by financing the vehicles through credit at the monthly payment prominently amounts stated in the advertisements. Each monthly payment amount prominently stated in Martin Exhibits A through C is a component of a lease offer and not a credit offer. Therefore, respondent's representation as alleged in paragraph six was, and is, false or misleading.

8. Respondent knew or should have known that the representation set forth in paragraph six was, and is, false and misleading.

9. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT II: MISREPRESENTATION OF INCEPTION FEES

10. In lease advertisements, including but not necessarily limited to Martin Exhibits B and D, respondent has represented, expressly or by implication, that the amount stated as "down" or "cash or trade down" in respondent's lease advertisements is the total amount consumers must pay at lease inception to lease the advertised vehicles.

11. In truth and in fact, the amount stated as "down" or "cash or trade down" in respondent's lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers must also pay additional fees beyond the amount stated as "down" or "cash or trade down," such as the first month's

payment, security deposit, and acquisition fee at lease inception. Therefore, respondent's representation as alleged in paragraph ten was, and is, false or misleading.

12. Respondent knew or should have known that the representation set forth in paragraph ten was, and is, false and misleading.

13. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT III: FAILURE TO DISCLOSE ADEQUATELY THAT
TRANSACTION ADVERTISED IS A LEASE

14. In lease advertisements, including but not necessarily limited to Exhibits A through C, respondent has represented, expressly or by implication, that consumers can purchase the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. These advertisements do not adequately disclose that each advertised monthly payment amount is a component of a lease offer.

15. The existence of this additional information would be material to consumers in deciding whether to visit the dealership named in the advertisement and/or whether to lease or purchase an automobile from the dealership. The failure to disclose adequately this additional information, in light of the representation made, was, and is, a deceptive practice.

16. Respondent knew or should have known that the failure to disclose adequately that the advertised monthly payment amount was a component of a lease offer as set forth in paragraph fourteen was, and is, deceptive.

17. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT IV: FAILURE TO DISCLOSE ADEQUATELY INCEPTION FEES

18. In its lease advertisements, including but not limited to Martin Exhibits A - D, respondent has represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." These lease advertisements do not adequately disclose additional terms pertaining to the lease offer, including but

not necessarily limited to one or more of the following charges: a required security deposit, first month's payment, and/or acquisition fee.

19. These additional terms would be material to consumers in deciding whether to visit a dealership named in respondent's advertisement and/or whether to lease an automobile from the dealership. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

20. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in paragraph eighteen was, and is, deceptive.

21. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT V: CONSUMER LEASING ACT AND REGULATION M VIOLATIONS

22. Respondent's lease advertisements, including but not necessarily limited to Martin Exhibits A through D, state a monthly payment amount, the number of required payments, and/or an amount "down." Respondent's advertisements omit or fail to clearly and conspicuously disclose certain additional terms required by the Consumer Leasing Act and Regulation M, including one or more of the following terms: that the transaction advertised is a lease; the total amount of any payments such as a capitalized cost reduction required at lease inception; that a security deposit is required; and the number, amount, and timing of scheduled payments.

23. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, as amended, and Section 213.7 of Regulation M, 12 CFR 213.7, as amended.

CREDIT ADVERTISING

24. Respondent has prepared and disseminated or has caused to be prepared and disseminated credit sale advertisements ("credit advertisements") for motor vehicles, including but not necessarily limited to the attached Martin Exhibits A, C, and E. Martin Exhibit E, a television credit advertisement (attached in video and storyboard format), contains the following statements:

[Audio:][Announcer]: "Then we told them that Jimmy was only \$299 a month with a GMAC SmartBuy. [Consumer #6:] \$299 a month? [Consumer #7:] \$299 a month -- that's great. [Consumer #8:] A Jimmy like this for \$299 a month would be fantastic."

[Video:]"\$299 a month 36-month GMAC SmartBuy"

[The advertisement contains the following credit disclosure in white print superimposed on a light-colored background and accompanied by background sound and images: "Example based on Jimmy MSRP of \$20,498. 6.9% APR GMAC SMARTBUY FINANCING. For 36 months, 35 months at \$299.38 per month and final payment of \$9441.94. \$3350 down, actual down payment may vary. Tax, license, title fees and insurance extra. Purchaser may refinance the final payment, or with 30 days advance written notice sell the vehicle to GMAC at end of term and pay \$250 disposal fee plus any excess mileage and wear charges. Dealer financial participation may affect consumer cost. See your participating dealer for qualification details. You must take retail delivery out of dealer stock by 9/22/93."] (Martin Exhibit E).

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT VI: MISREPRESENTATION IN CREDIT ADVERTISING

25. In credit advertisements, including but not necessarily limited to Martin Exhibit E, respondent has represented, expressly or by implication, that consumers can buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount.

26. In truth and in fact, consumers cannot buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount. Consumers are also responsible for a final balloon payment of several thousand dollars to purchase the advertised vehicles. Therefore, respondent's representation as alleged in paragraph twenty-five was, and is, false or misleading.

27. Respondent knew or should have known that the representation set forth in paragraph twenty-five was, and is, false and misleading.

28. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT VII: FAILURE TO DISCLOSE ADEQUATELY
IN CREDIT ADVERTISING

29. In credit advertisements, including but not necessarily limited to Martin Exhibit E, respondent has represented, expressly or by

implication, that consumers can buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or number of required monthly payments. These advertisements do not adequately disclose additional terms pertaining to the credit offer, including but not necessarily limited to a final balloon payment of several thousand dollars, the amount of the downpayment, and the annual percentage rate. The existence of these additional terms would be material to consumers in deciding whether to buy the advertised vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

30. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in paragraph twenty-nine was, and is, deceptive.

31. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

TRUTH IN LENDING ACT AND REGULATION Z VIOLATIONS
COUNT VIII: FAILURE TO STATE RATE OF FINANCE CHARGE
AS ANNUAL PERCENTAGE RATE

32. In credit advertisements, including but not necessarily limited to Martin Exhibits A and C, respondent has stated a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR."

33. Respondent's aforesaid practice constitutes a violation of Section 144 and 107 of the TILA, 15 U.S.C. 1664 and 1606, respectively, and Sections 226.24(b) and 226.22 of Regulation Z, 12 CFR 226.24(b) and 226.22, respectively.

COUNT IX: FAILURE TO DISCLOSE REQUIRED INFORMATION
CLEARLY AND CONSPICUOUSLY

34. In credit advertisements, including but not necessarily limited to Martin Exhibit E, respondent has stated a rate of finance charge, monthly payment amount, and/or an amount "down" as terms for financing the purchase of the advertised vehicles.

35. These credit advertisements have omitted or failed to disclose clearly and conspicuously all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms

of repayment, and the annual percentage rate, using that term or the abbreviation "APR."

36. Respondent's aforesaid practice violates Section 144 of the Truth in Lending Act, 15 U.S.C. 1664, as amended, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), as amended.

Complaint

EXHIBIT A

CAP-20

RADIO

MARTIN ADVERTISING, INC.

Specialist in Automotive Advertising

2801 University Boulevard • Suite 200 • Birmingham, Alabama 35233 • Phone 205-930-9200 • Fax 205-933-6949



CLIENT : Capital Motor Company

TALENT: KO

TITLE : 96-Hour Countdown

MUSIC :

DATE : 12/16/96

TIME: 60

NOTES :

COPYWRITER: jb

DISCL. END:

1 Lincolns, Mercurys, Jeeps, Eagles, or Hyundais just 96 cents over factory invoice! It's Capital Motor
2 Company's 96-hour countdown. Now through Monday buy any new Lincoln, Mercury, Jeep, Eagle, or
3 Hyundai in stock and pay just 96 cents over factory invoice. Capital is out to break all sales records. Cash in
4 with up to \$2,000 cash back, discounts up to \$5,500 and financing as low as 1.9%. Plus, act now and drive
5 away in a new '97 Jeep Grand Cherokee for just 3-29 a month. Now is the best time to save on every new
6 car in stock at Capital Motor Company. Everything must go - nothing will be held back. Plus, Capital
7 guarantees to have the best price on any new car or they'll pay you \$1,000 cash. Don't let time run out - take
8 advantage of huge year-end savings during the 96-Hour Capital Countdown - only at Capital Motor Company
9 - home of the \$1,000 price guarantee. See our ad in Saturday's Tallahassee Democrat for details.

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EXHIBIT B

Martin Exhibit B

[Audio:] "Choose the way you want to save this holiday season at Mid South Nissan. See Mid South Nissan before the New Year and drive a loaded '97 Nissan pickup for only 99 dollars a month with zero down payment! You get air, stereo cassette, alloy wheels, chrome package, sliding rear window and more. Drive it for 99 dollars a month with zero down! Or buy the same loaded '97 Nissan pickup for only 10-8-88. That's a total savings of over 4500 dollars. Plus when you buy, Mid South Nissan writes you a check for 1000 dollars. One thousand dollars holiday cash to use any way you choose. A fun new '97 pickup, thousands in savings, plus a thousand bucks. Choose the way you want to save this holiday at Mid South Nissan. Drive a new '97 Nissan pickup for 99 dollars a month with zero down. Or buy it for just 10-8-88 and get 1000 dollars holiday cash. Hurry to Mid South Nissan, 966 South Gloster, Tupelo."

[The following disclosure is rapidly stated at the end of the advertisement, over background sound: "Sale prices plus tax, tag, and fees. 24 month lease with approved credit. Acquisition fee, security deposit and first month's payment at inception. See dealer for details."]

EXHIBIT C

TELEVISION

PRE-196

MARTIN ADVERTISING, INC.

Specialist in Automotive Advertising

2801 University Boulevard • Suite 200 • Birmingham, Alabama 35233 • Phone 205-930-9200 • Fax 205-933-6949



CLIENT : Premier Pontiac Nissan
 TITLE : Final Four
 DATE : 12/18/96 TIME: 30
 COPYWRITER: jb DISCL END:

TALENT: RF / JF
 MUSIC :
 NOTES :

VIDEO	AUDIO
<p>open with spot light effect as if before a show super: THE FINAL FOUR</p>	<p><i>(Announcer voice with game sound effects in bg)</i> RF: Get ready Arkansas - it's that time of year again... The Final Four is Here!</p>
<p>supers dissolve and words come on to screen one at a time super: PREMIER'S FINAL FOUR YEAR-END CLEARANCE!</p>	<p>(JF:) Not <u>that</u> final four... Premier Pontiac Nissan's Final Four Year-end clearance!</p>
<p>Cut to montage of Pontiac (show GA and SF) super: FINANCING AS LOW AS 3.9% * NO PAYMENT UP TO 6 MONTHS</p>	<p>You'll score big on every car in stock, get financing as low as 3.9%, and no payments up to 6 months....</p>
<p>cut to running footage of '97 VTP Pick-up and 4-door Altima super: '97 VTP NISSAN PICK-UP \$99 A MONTH ** '97 NISSAN ALTIMA \$129 A MONTH ***</p>	<p>Plus, drive away in a '97 Nissan pick-up for just \$99 a month or Altima for just 1-29 a month.</p>
<p>Return to opening treatment super: PREMIER'S FINAL FOUR YEAR-END CLEARANCE!</p>	<p>RF: Don't pass up the best savings of the year during Premier Pontiac Nissan's Final Four Year-End Clearance!</p>
<p>Add Dealer logo and address: PREMIER PONTIAC NISSAN SHACKLEFORD ROAD WEST LITTLE ROCK</p>	
<p>* You must take retail delivery from dealer stock by 1/2/97. Dealer financial participation may affect consumer cost. Length of finance contract is limited. See dealer for details. ** 36-month NMAC lease. Stock #8501; MSRP \$13,868. Sale price \$11,525. Residual \$9,085.12. 36 payments of \$99.43 with \$1,675 cash or trade plus tax, title, tag and security deposit. See dealer for details. *** 36-month NMAC lease. Stock #8328; MSRP \$20,597. Sale price \$18,095. Residual \$13,799.99. 36 payments of \$129.15 with \$1,999 cash or trade plus tax, title, tag and security deposit. See dealer for details.</p>	

Complaint

127 F.T.C.

EXHIBIT D

TELEVISION

BIL-209 R8

MARTIN ADVERTISING, INC.

Specialist in Automotive Advertising

2801 University Boulevard • Suite 200 • Birmingham, Alabama 35233 • Phone 205-930-9200 • Fax 205-933-6949



CLIENT : Bill DeLord Auto Center

TALENT : KO

TITLE : Sierra/Sunfire

MUSIC :

DATE : 5/8/97

TIME : :11.5 bridge

NOTES : Uses BIL-209 donut.

COPYWRITER: cb

DISCL. END:

VIDEO

AUDIO

Sierra ext cab 4x4 (no 3rd door)
 '97 GMC SIERRA EXTENDED CAB 4X4
 \$289 MONTH / 36 MONTH LEASE *
 \$2200 CASH OR TRADE DOWN
 4 SPEED AUTOMATIC
 CAST ALUMINUM WHEELS

Right now drive a new '97 GMC Sierra extended cab
 4 by 4 for only 2-89 a month.

Cut to Sunfire coupe action
 '97 PONTIAC SUNFIRE
 \$199 MONTH / 48 MONTH LEASE **
 \$1500 CASH OR TRADE DOWN

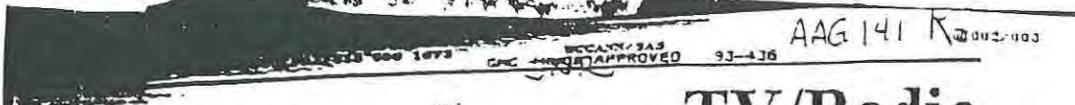
Or how about a new '97 Pontiac Sunfire for just 1-99 a
 month.

* \$289 per month / 36 month lease. \$2200 cash or trade down
 payment. \$2789 due at lease signing (first month's payment of
 \$289, \$300 refundable security deposit plus down payment).
 Customer has option to purchase vehicle at lease end. See
 dealer for details.

** \$199 per month / 48 month lease. \$1500 cash or trade down
 payment. \$1899 due at lease signing (first month's payment of
 \$199, \$200 refundable security deposit plus down payment).
 Customer has option to purchase vehicle at lease end. See
 dealer for details.

MARTIN EXHIBIT D

EXHIBIT E



AAG 141 R 002/003

McCANN/SAS

TV/Radio

Client: GMC TRUCK SUPPORT/AIKEN-AUGUSTA Product: JNR

Title: "JIMMY TESTIMONIAL \$299" Job no: 299

TVX Radio ☐ Length: 30 Code: GMCTS Date: 8/09/93

VIDEO

AUDIO

Super: GMC JIMMY

ANNCR: WE ASKED FOLKS WHY THEY LIKED THE 1993 GMC JIMMY. THIS IS A QUALITY TRUCK. JIMMY'S VERY COMFORTABLE THE JIMMY HAS A REAL SPORTY LOOK.

Super: 3 year 36,000 mile no deductible limited warranty disc #1

ANNCR: WE TOLD THEM ABOUT THE JIMMY'S 3 YEAR NO DEDUCTIBLE LIMITED WARRANTY. A THREE YEAR NO DEDUCTIBLE WARRANTY? NO DEDUCTIBLE WARRANTY. YOU CAN'T BEAT THAT.

\$299 mo. 36 month GMAC smartbuy disc #2

ANNCR: THEN WE TOLD THEM THE JIMMY WAS ONLY 2-99 A MONTH WITH A GMAC SMARTBUY. 299 A MONTH? 299 A MONTH THAT'S GREAT. A JIMMY LIKE THIS AT 299 A MONTH WOULD BE FANTASTIC.

ANNCR: SEE (DEALER TAGS)

DISCLAIMERS:

Add

(1) SEE YOUR GMC TRUCK DEALER FOR TERMS OF THIS LIMITED WARRANTY.

(2) EXAMPLE BASED ON JIMMY MSRP 20,498. 6.9% APR GMAC SMARTBUY FINANCING FOR 36 MONTHS. 35 MONTHS AT 299.38 PER MONTH AND FINAL PAYMENT OF \$9441.94. \$3350 DOWN. ACTUAL DOWN PAYMENT MAY VARY. TAX, LICENSE, TITLE FEES AND INSURANCE EXTRA. PURCHASER MAY REFINANCE THE FINAL PAYMENT. OR WITH 30 DAYS

Complaint

127 F.T.C.

EXHIBIT E

08/09/93 14:53 FAX 313 680 1873

MCCANN SAS

2003.103

ADVANCE WRITTEN NOTICE SELL
THE VEHICLE TO GMAC AT END OF
TERM AND PAY \$250 DISPOSAL FEE
PLUS ANY EXCESS MILEAGE AND
WEAR CHARGES. DEALER
FINANCIAL PARTICIPATION MAY
AFFECT CONSUMER COST. SEE YOUR
PARTICIPATING DEALER FOR
QUALIFICATION DETAILS. YOU
MUST TAKE RETAIL DELIVERY OUT
OF DEALER STOCK BY SEPTEMBER
22, 1993.

Add: —————

Decision and Order

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, in 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 the 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 Martin Advertising, Inc. is a Delaware corporation with its principal office or place of business at 2801 University Boulevard, Suite 200, Birmingham, Alabama.

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

1. "*Clearly and conspicuously*" as used herein shall mean: 1) video or written disclosures must be made in a manner that is readable and understandable to a reasonable consumer and 2) audio

or oral disclosures must be made in a manner that is audible and understandable to a reasonable consumer.

2. "*Total amount due at lease signing or delivery*" as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later, as required by Regulation M, 12 CFR 213, as amended. The total amount due at lease signing or delivery may: 1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact, or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed. (Sections 213.2 and 213.7 of Regulation M, 12 CFR 213.2 and 213.7, as amended.)

3. "*Balloon payment*" as used herein shall mean any scheduled payment with respect to a consumer credit transaction that is at least twice as large as the average of earlier scheduled payments.

4. Unless otherwise specified, "*respondent*" as used herein shall mean Martin Advertising, Inc., its successors and assigns, and its officers, agents, representatives, and employees.

5. "*Commerce*" as used herein shall mean as defined in Section 4 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any consumer lease involving motor vehicles in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent that any advertised lease terms, including but not limited to a monthly payment amount or downpayment, pertain to a cash or credit offer;

B. Misrepresent the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required);

C. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is

required, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease signing or delivery;

D. State the amount of any payment or any capitalized cost reduction or other payment required prior to or at consummation or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows:

1. That the transaction advertised is a lease;
2. The total amount due at lease signing or delivery;
3. Whether or not a security deposit is required;
4. The number, amount, and timing of scheduled payments; and
5. That an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

(Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667c(a), as amended, and Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

For radio advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. 1667c(C), and Section 213.7(f) of Regulation M, 12 CFR 213.7(f), as amended. For television advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended; and

E. Fail to comply in any other respect with Section 184 of the CLA and Section 213.7 of Regulation M.

(CLA, 15 U.S.C. 1667-1667e, as amended, and Regulation M, 12 CFR 213, as amended).

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of closed-end credit involving motor vehicles in or affecting commerce, as "advertisement" and "closed-end credit" are defined in Section 226.2 of Regulation Z, 12 CFR

226.2, as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the existence and amount of any balloon payment or the annual percentage rate;

B. State the amount of any payment, including but not limited to any monthly payment, in any advertisement unless the amount of any balloon payment is disclosed prominently and in close proximity to the most prominent of the above statements;

C. State a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term;

D. State the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by Regulation Z, as follows:

1. The amount or percentage of the downpayment;
2. The terms of repayment, including but not limited to the amount of any balloon payment; and
3. The correct annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Sections 107 and 144(d) of the TILA, 15 U.S.C. 1606 and 1664(d), as amended, and Sections 226.22 and 226.24(c) of Regulation Z, 12 CFR 226.22 and 226.24(c), as amended.); and

E. Fail to comply in any other respect with Section 144 of the TILA and Section 226.24 of Regulation Z.

(TILA, 15 U.S.C. 1601-1667, as amended, and Regulation Z, 12 CFR 226, as amended).

III.

It is further ordered, That respondent Martin Advertising, Inc., and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

IV.

It is further ordered, That respondent Martin Advertising, Inc., and its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, distribute a copy of this order to all current principals, officers, directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease and/or motor vehicle closed-end credit advertising; and

B. For a period of ten (10) years from the date of service of this order, distribute a copy of this order to all future principals, officers, directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease and/or motor vehicle closed-end credit advertising, within thirty (30) days after the person or entity assumes such position or responsibilities.

V.

It is further ordered, That respondent Martin Advertising, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not necessarily limited to 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.

VI.

It is further ordered, That respondent Martin Advertising, Inc., and its successors and assigns, shall within one hundred and twenty (120) 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.

VII.

This order will terminate on January 4, 2019, 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 deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF
CHRYSLER CORPORATION

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

Docket C-3847. Complaint, Jan. 4, 1999--Decision, Jan. 4, 1999

This consent order, among other things, prohibits Chrysler Corporation from disseminating deceptive lease advertising and requires the disclosure of cost information in advertisements mandated by the Consumer Leasing Act.

Participants

For the Commission: *Rolando Berrelez, Sally F. Pitofsky, David Medine, and Mark Hertzendorf.*

For the respondent: *Judith Shumaker-Holland*, in-house counsel, Auburn Hills, MI.

COMPLAINT

The Federal Trade Commission, having reason to believe that Chrysler Corporation, a corporation ("respondent" or "Chrysler"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, and the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Chrysler Corporation is a Delaware corporation with its principal office or place of business at 1000 Chrysler Drive, Auburn Hills, Michigan. Respondent offers Chrysler, Jeep, Plymouth, Dodge, and Eagle brand vehicles (hereinafter collectively referred to as "Chrysler vehicles") for sale or lease to consumers.

2. Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

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, 15 U.S.C. 44.

4. Respondent has disseminated or has caused to be disseminated consumer lease advertisements ("lease advertisements") for

Chrysler vehicles, including but not necessarily limited to the attached Chrysler Exhibit A. Chrysler Exhibit A is a television lease advertisement (attached in video and storyboard format). The advertisement contains the following statements:

A. [Video:][Footage of two cars, exterior and interior shots]

"Sebring JX Convertible
\$299/mo. 30 mos."

[The advertisement contains the following disclosure at the bottom of the screen in white fine print superimposed on a black background for approximately 3 seconds:

"\$1,619 Due at signing (plus tax, title & license) Limited model shown, higher.
Call 1-888-CHRYSLER for lease example details."

[Audio:] "Some decisions are harder than others. The Chrysler Sebring LXI Coupe or the Sebring Limited Convertible. For the passionate side. Fully independent suspension, speed sensitive steering, multi-valve V6, and a luxurious leather-trimmed interior. The practical side -- lease the convertible for just two ninety-nine a month and on the coupe get one thousand cash back and luxurious leather at no extra charge. Some decisions are easier than others. Chrysler -- engineered to be great cars."

[Super:] "\$1000 Cash Back
Chrysler Sebring Coupe"
[Chrysler logo]

ENGINEERED TO BE GREAT CARS" (Chrysler Exhibit A).

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT I: FAILURE TO DISCLOSE ADEQUATELY IN LEASE ADVERTISING

5. In lease advertisements, including but not necessarily limited to Chrysler Exhibit A, respondent has represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount. These advertisements do not adequately disclose additional terms pertaining to the lease offer, such as the total amount of any payments due at lease inception. The existence of these additional terms would be material to consumers in deciding whether to lease a Chrysler vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

6. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT II: MISREPRESENTATION OF MODEL AVAILABILITY

7. In lease advertisements, including but not necessarily limited to Chrysler Exhibit A, respondent has represented, expressly or by implication, that consumers can lease the Chrysler vehicles featured in respondent's advertisements at the lease terms prominently stated in the advertisements.

8. In truth and in fact, consumers cannot lease the Chrysler vehicles featured in the advertisements at the terms prominently stated in the advertisements. The prominently stated lease terms in respondent's advertisements apply to Chrysler models of lesser value than the Chrysler vehicles featured in the advertisements. The fine print disclosures in respondent's lease advertisements, including but not necessarily limited to "Limited model shown, higher" in Chrysler Exhibit A, are inadequate to disclaim or modify the representation as alleged in paragraph seven. Therefore, respondent's representation as alleged in paragraph seven, was, and is, false or misleading.

9. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT III: CONSUMER LEASING ACT AND REGULATION M VIOLATIONS

10. Respondent's lease advertisements, including but not necessarily limited to Chrysler Exhibit A, state a monthly payment amount but fail to disclose clearly and conspicuously certain additional terms required by the Consumer Leasing Act and Regulation M, including one or more of the following terms: that the transaction advertised is a lease; the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation, and that such amount: 1) excludes third-party fees, such as taxes, licenses, and registration fees, and discloses that fact or 2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality are disclosed; whether or not a security deposit is required; and the number, amount, and timing of scheduled payments.

11. The lease disclosures in respondent's television lease advertisements, including but not necessarily limited to Chrysler Exhibit A, are not clear and conspicuous because they appear on the

screen in very small type, for a very short duration, and/or accompanied by background sounds and images.

12. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, as amended, and Sections 213.2 and 213.7 of Regulation M, 12 CFR 213.2 and 213.7, as amended.

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Complaint

EXHIBIT A

Chrysler Exhibit A

[Audio:] "Some decisions are harder than others. The Chrysler Sebring LXI Coupe or the Sebring Limited Convertible. For the passionate side. Fully independent suspension, speed sensitive steering, multi-valve V6, and a luxurious leather-trimmed interior. The practical side -- lease the convertible for just two ninety-nine a month and on the coupe get a thousand cash back and luxurious leather at no extra charge. Some decisions are easier than others. Chrysler -- engineered to be great cars."

[Video:] [Footage of two cars, exterior and interior shots]

[Super: white letters on black background]

"Sebring JX Convertible
\$299/mo. 30 mos."

[The advertisement contains the following disclosure at the bottom of the screen in white fine print superimposed on a black background for approximately 3 seconds:

"\$1,619 Due at signing (plus tax, title & license) Limited model shown, higher. Call 1-888-CHRYSLER for lease example details."]

[Footage of two cars]

[Super:]

"\$1000 Cash Back
Chrysler Sebring Coupe"

"CHRYSLER

[Chrysler logo]

ENGINEERED TO BE GREAT CARS"

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

The respondent, its attorneys, 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 the 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 Chrysler Corporation is a Delaware corporation with its principal office or place of business at 1000 Chrysler Drive, Auburn Hills, Michigan.
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

1. "*Clearly and conspicuously*" as used herein shall mean: 1) video or written disclosures must be made in a manner that is

readable and understandable to a reasonable consumer and 2) audio or oral disclosures must be made in a manner that is audible and understandable to a reasonable consumer.

2. "*Total amount due at lease signing or delivery*" as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later, as required by Regulation M, 12 CFR 213, as amended. The total amount due at lease signing or delivery may: 1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact, or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed. (Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

3. Unless otherwise specified, "*respondent*" as used herein shall mean Chrysler Corporation, its successors and assigns, and its officers, agents, representatives, and employees.

4. "*Commerce*" as used herein shall mean as defined in Section 4 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the vehicle model(s) available to consumers in connection with any advertised lease offer;

B. Misrepresent the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required).

C. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease signing or delivery.

D. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows:

1. That the transaction advertised is a lease;
2. The total amount due at lease signing or delivery;
3. Whether or not a security deposit is required;
4. The number, amount, and timing of scheduled payments; and
5. That an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

(Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667c(a), as amended, and Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

For radio advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. 1667c(C), and Section 213.7(f) of Regulation M, 12 CFR 213.7(f), as amended. For television advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

II.

It is further ordered, That respondent Chrysler Corporation, and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

III.

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

personnel or entities within thirty (30) days after the person or entity assumes such position or responsibilities.

IV.

It is further ordered, That respondent Chrysler Corporation, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not necessarily limited to 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.

V.

It is further ordered, That respondent Chrysler Corporation, and its successors and assigns, shall within one hundred and twenty (120) 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.

VI.

This order will terminate on January 4, 2019, 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 deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF
THE MAY DEPARTMENT STORES COMPANY

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

Docket C-3848. Complaint, Jan. 20, 1999--Decision, Jan. 20, 1999

This consent order, among other things, prohibits the respondent, a consumer retail business, from: misrepresenting that reaffirmation agreements will be filed in bankruptcy court; misrepresenting that any reaffirmation agreement is legally binding on the consumer; or taking any action to collect any debt that has been legally discharged in bankruptcy proceedings and that respondent is not permitted by law to collect.

Participants

For the Commission: *John Dugan, Paul Block, and Andrew Caverly.*

For the respondent: *George Skelly, Skadden, Arps, Slate, Meagher & Flom, Boston, MA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The May Department Stores Company, a corporation, also doing business as Lord & Taylor, Hecht's, Strawbridge's, Foley's, Robinsons-May, Kaufmann's, Filene's, Famous Barr, L.S. Ayres, and Meier & Frank ("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 The May Department Stores Company is a New York corporation with its principal office or place of business at 611 Olive Street, St. Louis, Missouri. Respondent is engaged in, among other things, the consumer retail business. In the course and conduct of its business, respondent has regularly extended credit for the purpose of facilitating consumers' purchase of respondent's products and services (hereinafter referred to as "consumer credit accounts").

2. 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.

THE UNITED STATES BANKRUPTCY CODE

3. Under the United States Bankruptcy Code (11 U.S.C. 1-1330), a debtor may be granted a discharge in a Chapter 7 bankruptcy proceeding from debts that have arisen prior to the filing of the bankruptcy petition (hereinafter referred to as "pre-petition debts"), meaning that the debtor is no longer individually liable for these debts. The granting of a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived. . . ." 11 U.S.C. 524(a)(2). The purpose of the injunction is to protect the debtor's "fresh start" by ensuring that no debt collection efforts are taken against the debtor personally for pre-petition debts.

4. The United States Bankruptcy Code provides, however, that a debtor may agree with a creditor that the creditor can enforce what would otherwise be a discharged debt. In other words, a debtor may reaffirm his or her pre-petition debts, as long as certain requirements are met. These so-called "reaffirmation agreements" are enforceable only if, among other things, the agreement is filed with the bankruptcy court. If the debtor is not represented by an attorney, the bankruptcy court must hold a hearing to determine that the reaffirmation agreement would not impose an undue hardship on the debtor and is in the best interest of the debtor, and must approve the reaffirmation agreement before it becomes enforceable. 11 U.S.C. 524(c) and (d).

5. If the requirements of 11 U.S.C. 524(c) and (d) are not met, an agreement to reaffirm a debt is not binding and a creditor violates the bankruptcy code if it attempts to collect that debt. 11 U.S.C. 524(a).

VIOLATIONS OF SECTION 5(a) OF THE FEDERAL TRADE COMMISSION ACT

6. From at least 1986 to 1997, respondent regularly induced consumers who had filed for protection under Chapter 7 of the United States Bankruptcy Code to enter into agreements reaffirming some or all of their pre-petition consumer credit account debts that would otherwise be discharged through bankruptcy proceedings.

7. In numerous instances, respondent represented, expressly or by implication, to consumers that their reaffirmation agreements

would be filed with the bankruptcy courts, as required by the United States Bankruptcy Code.

8. In truth and in fact, in many cases respondent did not intend to file, and in fact did not file, the reaffirmation agreements with the bankruptcy courts. Therefore, the representation made in paragraph seven was, and is, false or misleading.

9. In numerous instances, respondent represented, expressly or by implication, to consumers that their reaffirmation agreements were legally binding on the consumers and that the consumers were legally required to pay their pre-petition debts.

10. In truth and in fact, in many cases, the reaffirmation agreements were not legally binding on the consumers and the consumers were not legally required to pay their pre-petition debts for reasons including, but not necessarily limited to, the following: (a) respondent did not file the reaffirmation agreements with the bankruptcy courts; or (b) respondent filed the reaffirmation agreements, but the agreements were then not approved by the bankruptcy courts. Therefore, the representation made in paragraph nine was, and is, false or misleading.

11. In the course and conduct of its business, respondent regularly collected from consumers debts that had been legally discharged in bankruptcy proceedings and that respondent was not permitted by law to collect. Respondent's actions have caused or were likely to cause substantial injury to consumers that is not offset by any countervailing benefits and is not reasonably avoidable by these consumers. 15 U.S.C. 5(n). Therefore, respondent's collection of debts that it was not permitted by law to collect was, and is, unfair.

12. 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.

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 that the Boston Regional Office proposed to present to the Commission for its consideration and which, if

issued by the Commission, would charge the respondent with violations of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 the respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, 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 The May Department Stores Company is a New York corporation with its principal office or place of business at 611 Olive Street, St. Louis, Missouri.

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

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

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "*respondent*" shall mean The May Department Stores Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees.

2. "*Debt*" shall mean any obligation or alleged obligation of a consumer to pay money arising out of any transaction.

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Decision and Order

3. "*Reaffirmation Agreement*" shall mean any agreement between a creditor and debtor in bankruptcy whereby a debt that is otherwise dischargeable with respect to the personal liability of the debtor is reaffirmed by the debtor.

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

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of any debt, shall not:

A. Misrepresent, expressly or by implication, to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that reaffirmation agreements will be filed in bankruptcy court;

B. Misrepresent, expressly or by implication, to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that any reaffirmation agreement is legally binding on the consumer; or

C. Take any action to collect any debt (including any interest, fee, charge, or expense incidental to the principal obligation) that has been legally discharged in bankruptcy proceedings and that respondent is not permitted by law to collect.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, shall not make any material misrepresentation, expressly or by implication, in the collection of any debt subject to a pending bankruptcy proceeding.

III.

It is further ordered, That respondent The May Department Stores Company, and its successors and assigns, for five (5) years after the date of issuance of this order, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating their compliance with the terms and provisions of this order, including but not limited to all reaffirmation agreements signed by consumers and records sufficient to show that such reaffirmation

agreements were filed in bankruptcy courts and were subsequently approved by bankruptcy courts as part of the underlying bankruptcy proceedings, if required by the United States Bankruptcy Code.

IV.

It is further ordered, That respondent The May Department Stores Company, and its successors and assigns, for five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, managerial employees, and bankruptcy court representatives having debt collection responsibilities with respect to the subject matter of this order (collectively, "bankruptcy personnel"), and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall, for five (5) years after each such statement acknowledging receipt of the order is signed and dated, maintain and upon request make available to the Federal Trade Commission for inspection and copying such statements. Respondent shall deliver this order to current bankruptcy personnel within thirty (30) days after the date of service of this order, and to future bankruptcy personnel within ninety (90) days after the person assumes such position or responsibilities.

V.

It is further ordered, That respondent The May Department Stores Company, 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.

VI.

It is further ordered, That respondent, and its successors and assigns, shall provide notification of all proposed settlement terms relating to allegations made by the Attorneys General of various states and any other currently pending legal actions by government entities not cited herein, and all currently pending class action lawsuits, against respondent or any of its predecessors or affiliates, that challenge conduct similar to that challenged by the Commission in this proceeding, to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, in writing, at least ten (10) days before any such proposed settlement is submitted to a court for final approval.

VII.

It is further ordered, That respondent The May Department Stores Company, 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.

VIII.

This order will terminate on January 20, 2019, 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.

IN THE MATTER OF
R.J. REYNOLDS TOBACCO COMPANY

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

Docket 9285. Complaint, May 28, 1997—Final Order, Jan. 26, 1999

This final order, among other things, dismisses the complaint against the respondent, for its Joe Camel cigarette advertising campaign, on the grounds that the relief sought in the proceeding has now been achieved through a multistate tobacco settlement and revisions of the U.S. Dept. of Health and Human Services' data collection protocol.

Participants

For the Commission: *Rosemary Rosso, David Shonka, C. Lee Peeler, Gerard Butters, Joseph Mulholland, Russ Porter and Genevieve Fu.*

For the respondent: *Guy Blynn*, in-house counsel, Winston-Salem, N.C. and *Judith Oldham, Collier, Shannon, Rill & Scott*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that R.J. Reynolds Tobacco Company, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

1. Respondent R.J. Reynolds Tobacco Company is a New Jersey corporation, with its office and principal place of business located at 401 North Main Street, P.O.B. 2959, Winston-Salem, North Carolina.

2. Respondent has advertised, promoted, offered for sale, sold, and distributed cigarettes and other tobacco products.

3. The acts or 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. Beginning sometime before 1987, Reynolds identified the need to attract "first usual brand" and/or "presmokers" and/or "learning" smokers to its brands in order to maintain or increase its market share. By 1984, some Reynolds employees recommended that the company establish a formal program to attract "first usual brand" smokers.

5. Beginning in or around 1987, respondent disseminated or caused to be disseminated advertisements and promotions for its Camel brand cigarettes, including, but not necessarily limited to, the attached Exhibits A through F. The ads and promotions have as their central theme a cartoon camel sometimes referred to as "Old Joe," "Smooth Character" or as "Joe Camel" (hereinafter "Joe Camel"), and other similar cartoon characters.

6. The purpose of the Joe Camel campaign was to reposition the Camel brand to make it attractive to younger smokers. At least one of the targets of the campaign was "first usual brand" smokers.

7. The Joe Camel campaign was successful in repositioning the Camel brand to make it attractive to younger smokers. In fact, the campaign was successful in appealing to many children and adolescents under the age of 18, or under the age at which cigarettes may lawfully be sold to consumers.

8. The Joe Camel campaign induced many of these children and adolescents under the age of 18 to smoke Camel cigarettes or increased the risk that they would do so. For many of these children and adolescents, the decision to smoke Camel cigarettes was a decision to begin smoking; for others, the decision to smoke Camel cigarettes was a decision to continue smoking. As a result, the Joe Camel campaign caused or was likely to have caused these children and adolescents to initiate or continue smoking cigarettes.

9. In fact, after the initiation of the Joe Camel campaign, the percentage of smokers under the age of 18 who smoked Camel cigarettes became larger than the percentage of all adult smokers aged 18 and older who smoked Camel cigarettes.

10. Reynolds knew or should have known:

a. That because of the themes and techniques it used in the Joe Camel advertising and promotional campaign, that campaign would have a substantial appeal to children and adolescents below the age of 18, as well as to smokers over the age of 18; or

b. That many smokers initiate smoking and become regular smokers before the age of 18, and that by targeting "first usual brand" and/or "presmokers" and/or "learning" smokers, the Joe Camel campaign would cause many children and adolescents below the age of 18 to smoke Camel cigarettes.

11. Consumers who smoke cigarettes risk addiction (*i.e.*, nicotine dependency) and a number of immediate and long term adverse health effects including, but not limited to, coronary heart disease, lung and laryngeal cancer, oral cancer, esophageal cancer, chronic obstructive pulmonary disease, and low-birth-weight babies.

12. Many children and adolescents do not adequately comprehend the nature of the risk or the seriousness of nicotine addiction, or the other dangerous health effects of smoking cigarettes.

13. R.J. Reynolds' actions, as set forth in paragraphs 4, 5, 7, 8, 9 and 10 have caused or were likely to cause substantial and ongoing injury to the health and safety of children and adolescents under the age of 18 that is not offset by any countervailing benefits and is not reasonably avoidable by these consumers.

14. Since at least 1988, most states and the District of Columbia have enacted laws that make it illegal to sell cigarettes to persons under the age of 18, in order to protect children and adolescents from the significant adverse consequences of cigarette smoking. In 1992, Congress passed a federal statute that provided that, as a condition of receiving grant funds for substance abuse programs, states must enact and enforce laws prohibiting the sale or distribution of tobacco products to persons under the age of 18.

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

Commissioner Azcuenaga and Commissioner Starek dissenting.

Complaint

127 F.T.C.

EXHIBIT A

Beach Pamphlet
Smooth Moves

**WHEN ONLY A
SMOOTH MOVE
WILL DO...**



EXHIBIT A

You'll find one in every pack of Camel!
SMOOTH MOVES

The cool way to handle any situation. Smooth Characters have SMOOTH MOVES!

SEE BACK PAGE FOR FREE PACK!

SURGEON GENERAL'S WARNING. Cigarette Smoke Contains Carbon Monoxide.

EXHIBIT A



Smooth character.

MOVES

proof advice

How to impress someone at the beach

SMOOTH MOVE #325

SMOOTH MOVE #384

FREE PACK OFFER ON BACK PAGE!

1. Put your hands on your hips and lean back to the spot of the sun. The more you lean back, the better.
2. If you're wearing a towel, wrap it around your waist.
3. If you're wearing a towel, wrap it around your waist.
4. Always have plenty of Camel ready when the sun is out.

LOOK FOR MORE SMOOTH MOVES COMING YOUR WAY SOON.

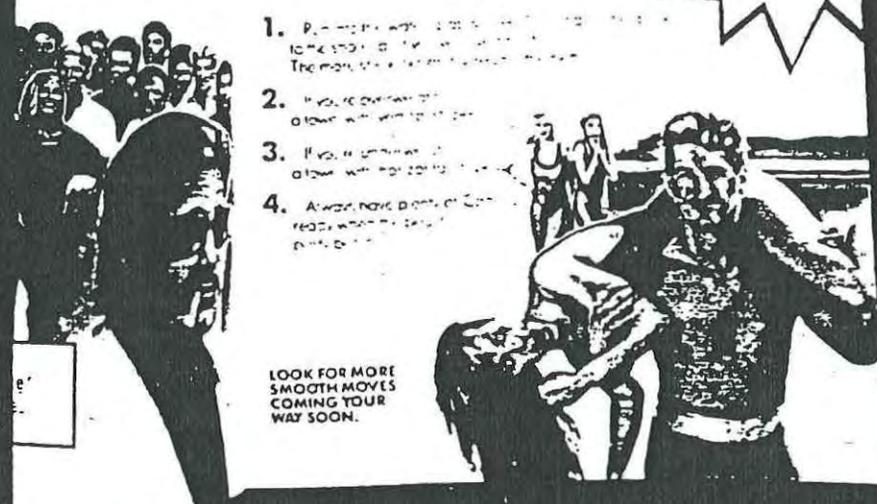


EXHIBIT A

How to get a FREE pack even if you don't like to redeem coupons.

SMOOTH MOVE #437



1. Ask your best friend to redeem it.
2. Ask a kind-looking stranger to redeem it.
3. Ask a good-looking stranger to redeem it.
4. Offer each a Camel and start a warm, wonderful friendship.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

LIGHTS 9 mg "tar", 0.7 mg nicotine, LIGHTS HARD PACK 10 mg "tar", 0.7 mg nicotine, LIGHTS 100's 12 mg "tar", 0.9 mg nicotine, FILTERS 16 mg "tar", 1.0 mg nicotine, FILTERS HARD PACK 17 mg "tar", 1.1 mg nicotine, FILTERS 100's 16 mg "tar", 1.2 mg nicotine, REGULAR 21 mg "tar", 1.4 mg nicotine, av. per cigarette by FTC method

POZ06 MANUFACTURERS COUPON EXPIRES 8/31/93

FREE Pack Of Camel!

When You Buy 1. Any Style.

RETAILER YOU MUST FILL IN NORMAL RETAIL PRICE _____ (DO NOT INCLUDE SALES TAXES) 90704

Complaint

127 F.T.C.

EXHIBIT B

Catalogue #1



EXHIBIT B

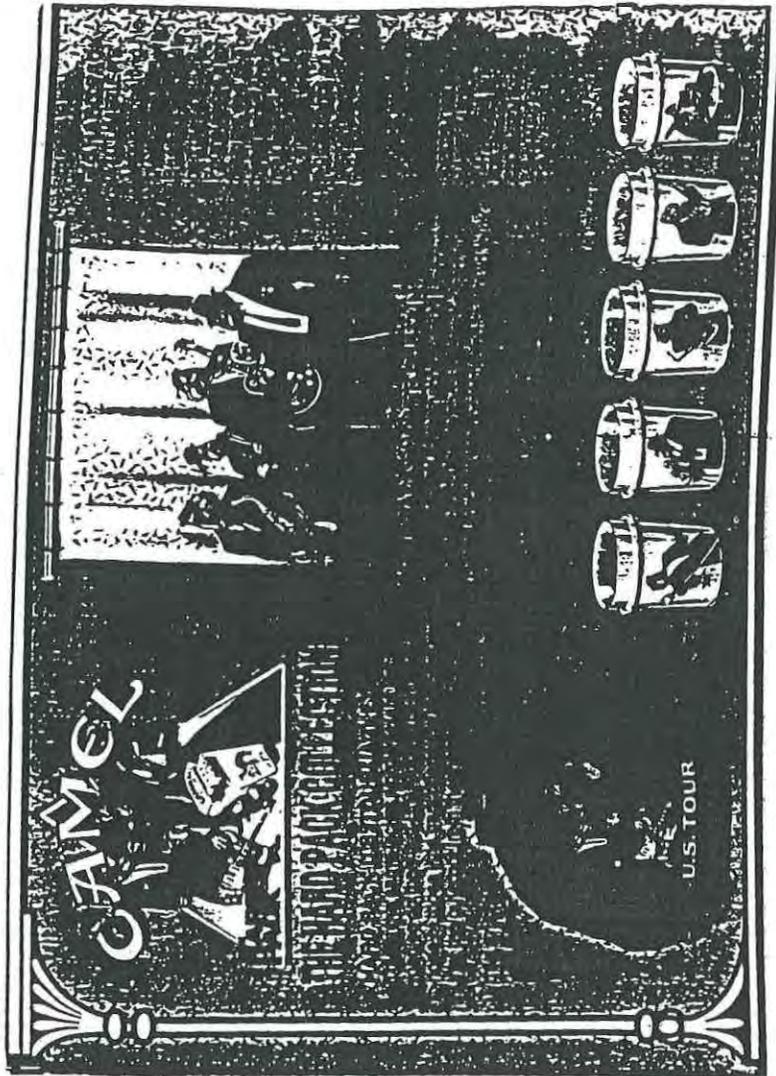


EXHIBIT B



Complaint

127 F.T.C.

EXHIBIT B



ORDER FORM

In order to receive your Smooth stuff, please do the following:

Complete this original order form (next page) by indicating quantity of items requested and amount of Camel Cash included. Circle size desired where needed.

Fill out the back panel of the order form completely. YOU MUST INCLUDE YOUR SIGNATURE, BIRTHDATE AND SHIPPING ADDRESS.

Mail this order form and Camel Cash to:

CAMEL CASH
 P.O. BOX 5665
 NORTHDAKOTA, MINN.
 55803-5665

EXHIBIT B

235

Before ordering please read the instructions on the cover of this order form.
Offer restricted to smokers 21 years of age or older. Please print clearly.

Pg #	Item #	Item Description	Size (circle one)	Quantity Ordered	# of C-Notes Each	Total C-Notes
2	01, 02	Hard Pack U.S. Tour Jacket	L XL		140	
2	03	Hard Pack Shower Curtain			75	
2	04	5 Hard Pack Tumblers Set			40	
2	05	Hard Pack Tumbler - Joe			8	
2	06	Hard Pack Tumbler - Max			8	
2	07	Hard Pack Tumbler - Floyd			8	
2	08	Hard Pack Tumbler - Bustah			8	
2	09	Hard Pack Tumbler - Eddie			8	
3	10	Flip Top Lighter - Hard Pack			5	
3	11	Flip Top Lighter - Born To Be Smooth			5	
3	12, 13	Boxer Shorts - Pool Player Joe	L XL		15	
3	14, 15	Boxer Shorts - Camel Beach	L XL		15	
3	16	Zippo Brass Lighter - *Personalized/Tuxedo Joe			33	
3	17	Zippo Brass Lighter - *Personalized/Original Camel			33	
4	18	Joe's Head Can Hugger			5	
4	19	Joe Camel Tie			35	
4	20	Joe's Sunglasses			10	
4	21, 22	Camel Jean Jacket	L XL		150	
4	23, 24	Joe's Leather Bomber Jacket	L XL		500	
5	25	Neon Camel Sign			600	
5	26	Motorcycle Joe Duffle			36	
5	27	Inflatable Air Mattress w/Radio			75	
5	28	Camel Director's Chair - *Personalized/1st Name			100	
5	29	Camel Beach Flip Flops			15	
6	30	Camel Watch - Tuxedo Joe			25	
6	31	Camel Watch - Camel Cash Joe			25	
6	32	16 oz Etched Glass Mug - Original Camel			15	
6	33	16 oz Etched Glass Mug - Born To Be Smooth			15	
6	34	16 oz Etched Glass Mug - Pool Player Joe			15	
6	35	Baseball Cap - Camel Beach	1 size		10	
6	36	Baseball Cap - Pool Player Joe	1 size		10	
7	37	Beach Towel - Pool Player Joe			20	
7	38	Beach Towel - Camel Beach			20	
7	39	Beach Towel - Hard Pack			20	
7	40, 41	Short Sleeve T-Shirt - Born To Be Smooth	L XL		8	
7	42, 43	Long Sleeve T-Shirt - Born To Be Smooth	L XL		12	
7	44, 45	Short Sleeve T-Shirt - Joe Breaks Through	L XL		8	
7	46, 47	Long Sleeve T-Shirt - Joe Breaks Through	L XL		12	
7	48, 49	Short Sleeve T-Shirt - Camel Cash	L XL		8	
7	50, 51	Long Sleeve T-Shirt - Camel Cash	L XL		12	
7	52	Camel Fleece Shorts - Pool Player Joe	1 size		34	
7	53	Camel Fleece Shorts - Joe Camel	1 size		34	
				TOTAL		TOTAL

*Fill in for Personalized Smooth Stuff Zippo Lighter (Initials 3 letters max.) _____

Director's Chair (Name 12 letters max.) _____

Complaint

127 F.T.C.

EXHIBIT B

Offer restricted to smokers 21 years of age or older.

Please print clearly.

All Camel Club C-Hats run out April 1972. All orders must be postmarked by May 31 1972. Offer good only in U.S.A., void where restricted or prohibited by law. Offer good while supplies last. Supplies are limited so act quickly. All promotional costs paid for by manufacturer. Please allow 10 weeks for shipment. This complete order form must accompany your request. No copies or facsimiles of Camel Club C-Hats will be accepted. No clubs, groups or organizations may participate. Limit 20 items per family, household or address.

Name _____

Address _____ Phone # _____
area code

City _____ State _____ Zip _____
required

What is your birthdate? _____/_____/_____
required month day year Sex M F My usual Brand is _____
required

I certify that I am a smoker, that I am 21 years of age or older and that I want to receive free cigarettes, coupons, premiums, or offers in the mail. I understand that giving false information in order to accept these offers may constitute a violation of law.

Signature (required) _____

**SURGEON GENERAL'S WARNING: Cigarette
Smoke Contains Carbon Monoxide.**

Complaint

EXHIBIT B

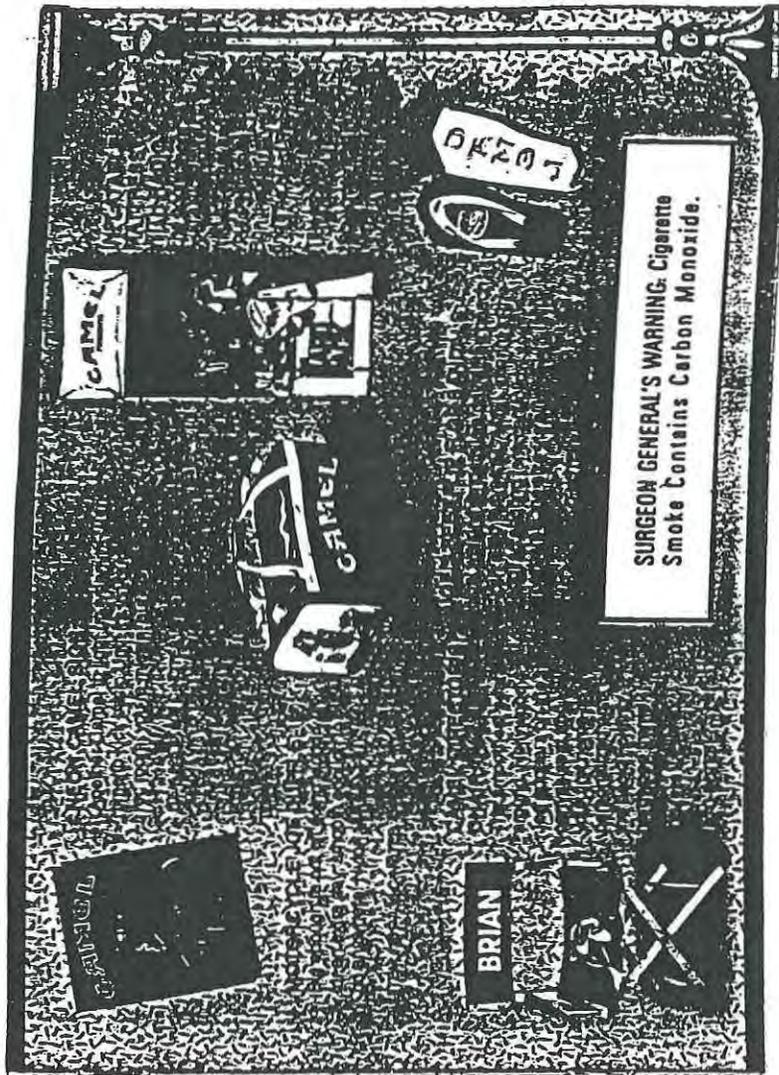


EXHIBIT B

THE CAMEL CUSTOM SHOP

JOE'S BASEBALL CAP:
 Official cap of Camel League Baseball, also approved for any outdoor activity where sunlight gets in your eyes or sand gets in your shoes. Adjustable to fit any adult head, except that of your boss.

CAMEL BEACH, ITEM #35
 POOL PLAYER, ITEM #36
 10 C. NOTES

ETCHED GLASS 16 OZ. MUGS
 The manager at The Gas's ordered too many of these, so Joe decided to offer you. It's the only glassware smooth enough to be Camel.

BORN TO BE SMOOTH, ITEM #33
 15 C. NOTES

CAMEL WATCHES
 It's always time for a Camel. Only question is, "Which one?" You pick.

TUXEDO JOE, ITEM #30
 CAMEL OASH JOE, ITEM #31
 25 C. NOTES

BEACH TOWELS
 When they won't give you space to stretch out at the beach, just yell "Shark!" You'll find room soon. Then mark your spot with the smooth Camel Beach Towel of your choice 80" x 60".

POOL PLAYER, ITEM #37
 CAMEL BEACH, ITEM #38
 HARD PACK, ITEM #39
 20 C. NOTES

POOL PLAYER, ITEM #34
 ORIGINAL CAMEL, ITEM #32

Complaint

EXHIBIT B

T-SHIRTS
 You won't find genuine Camelwear in no shopping mall shirt rack - it's only here. Pick the design you want from below, then wear it everywhere, all the time, 100% cotton, 100% smooth. Breast pocket. Long sleeve or short sleeve. L & XL.

BORN TO BE SMOOTH
 Short Sleeve, L-ITEM #40
 Short Sleeve, XL-ITEM #41
 Long Sleeve, L-ITEM #42
 Long Sleeve, XL-ITEM #43

JOE BREAKS THROUGH
 Short Sleeve, L-ITEM #44
 Short Sleeve, XL-ITEM #45
 Long Sleeve, L-ITEM #46
 Long Sleeve, XL-ITEM #47

CAMEL CASH
 Short Sleeve, L-ITEM #48
 Short Sleeve, XL-ITEM #49
 Long Sleeve, L-ITEM #50
 Long Sleeve, XL-ITEM #51

CAMEL FLEECE SHORTS
 On the town, on the beach, or on the run, everything's cool when these are on your. Cotton blend fleece. One size, fits all, drawstring.

POOL PLAYER, ITEM #52
JOE CAMEL, ITEM #53
 54 C-NOTES

CAMEL
 Smooth Character

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

Complaint

EXHIBIT B

127 F.T.C.

**THE CAMEL CASH
MOTTO**

**"CAMEL CASH SAVED IS
SOME SMOOTH STUFF EARNED."**

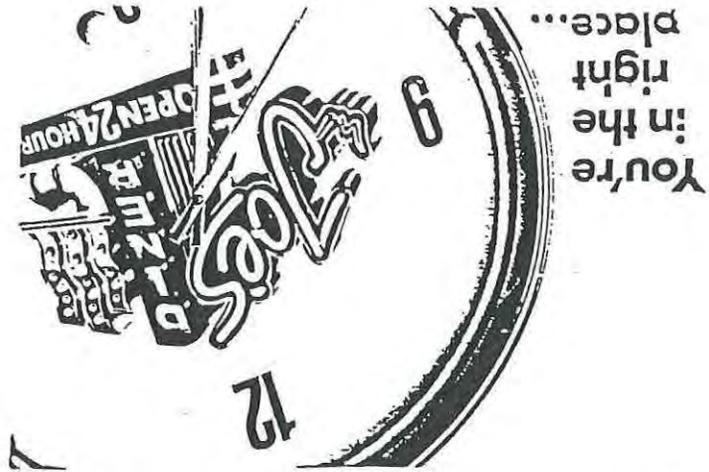
ULTRA LIGHTS HARD PACK: 6 mg. "tar", 0.5 mg. nicotine, ULTRA LIGHTS, ULTRA
LIGHTS 100'S HARD PACK: 6 mg. "tar", 0.6 mg. nicotine, LIGHTS HARD PACK:
9 mg. "tar", 0.6 mg. nicotine, LIGHTS 100'S, 10 mg. "tar", 0.8 mg. nicotine, LIGHTS:
11 mg. "tar", 0.8 mg. nicotine, FILTERS: 14 mg. "tar", 1.0 mg. nicotine, FILTERS 100'S:
16 mg. "tar", 1.0 mg. nicotine, FILTERS HARD PACK: 17 mg. "tar", 1.2 mg. nicotine,
REGULAR: 22 mg. "tar", 1.4 mg. nicotine, av. per cigarette by FTC method.

© 1951 R.J. REYNOLDS TOBACCO CO.
LTD BY USA

Complaint

EXHIBIT C

Direct Mail



Camel Cash Headquarters
 P.O. Box 3200
 Winston-Salem, NC 27102



PRESORTED



301424



Who says you can't have it all?

...at the right time.

EXHIBIT C

Salt & Pepper Shakers
#09 in The Catalog



Get Camel Cash!

We'll send you ten Camel Cash C-Notes good toward anything in the Camel Cash Catalog.

Get The Catalog!

We'll send you the new Camel Cash Catalog - packed with smooth stuff you can get from Camel.

Get Big Savings!

We'll send you valuable coupons good for big savings on Camel.

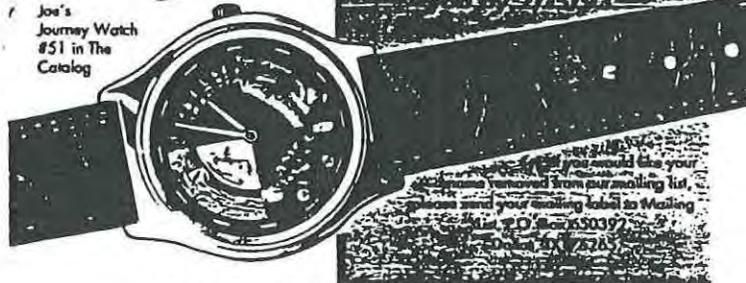
Get Moving!

There's one small catch. We have to hear from you.

Outdoor Zippo®
#12 in The Catalog



Joe's Journey Watch
#51 in The Catalog



Brought to you by Camel Lights

© 1968 R.J. REYNOLDS TOBACCO CO.

11 mg. "tar", 0.8 mg. nicotine av. per cigarette by FTC method.

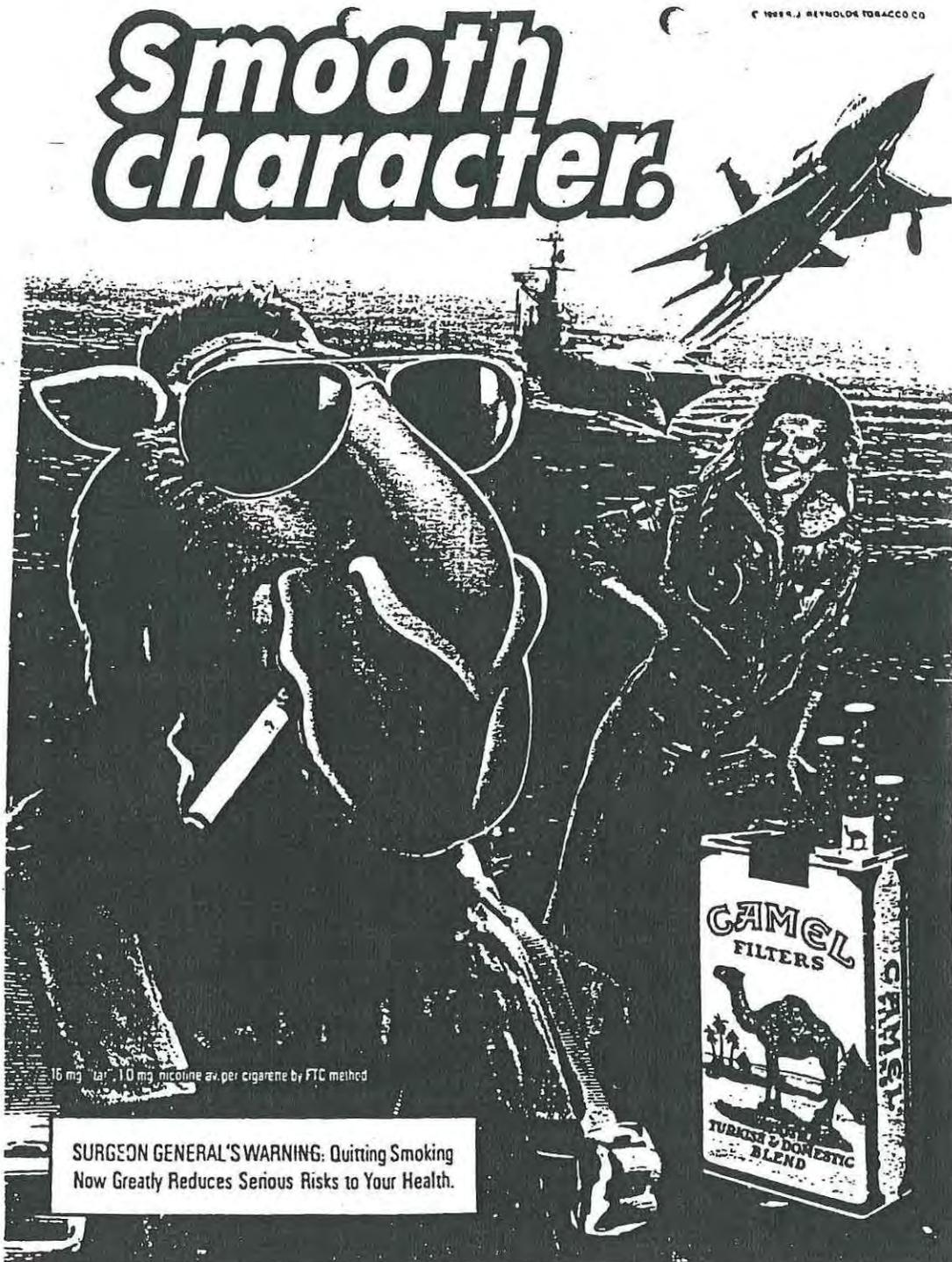
SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

EXHIBIT D

Magazine Ad

Smooth character

© 1989 R.J. REYNOLDS TOBACCO CO



16 mg "tar", 1.0 mg. nicotine av. per cigarette by FTC method

**SURGEON GENERAL'S WARNING: Quitting Smoking
Now Greatly Reduces Serious Risks to Your Health.**

Complaint

127 F.T.C.

EXHIBIT E

Magazine Ad



EXHIBIT E



Complaint

127 F.T.C.

EXHIBIT F

Magazine Ad

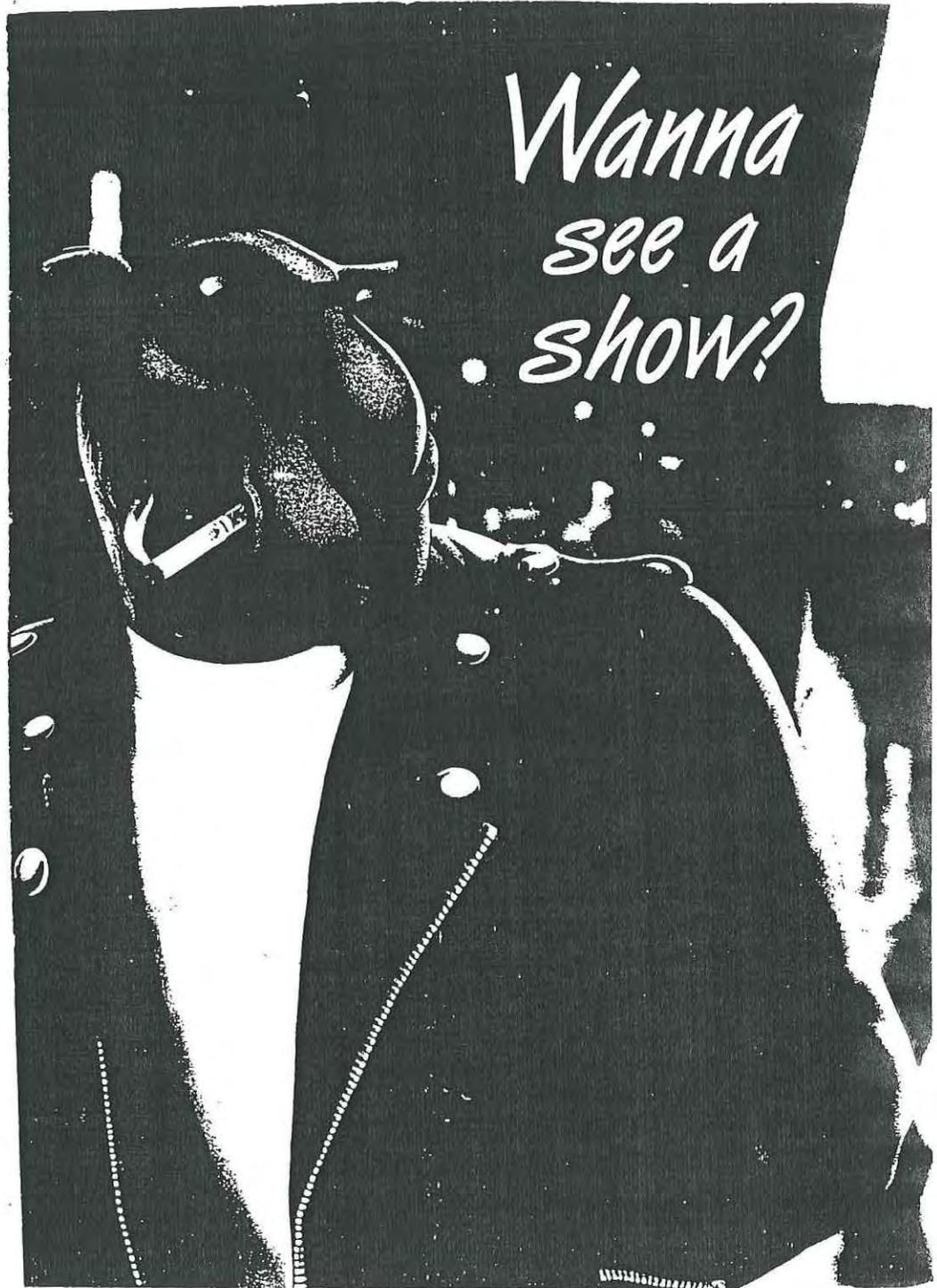


EXHIBIT F

Go ahead, it's on me.

Save \$25
on Ticketmaster® tickets
with Camel Cash.

I'm not just talkin' concerts. With these
\$25 gift certificates, you could save on tickets
to just about any Ticketmaster® event.
And it only takes 100 Camel Cash C-Notes
to get one. Where is this rockin' deal?
Just flip the page, and you'll find it in the
Camel Cash Rockin' Road Trip.

CAMEL
TICKETMASTER®

CERTIFICATES ARE NONREFUNDABLE, NONTRANSFERABLE AND NOT REDEEMABLE FOR CASH.
RESTRICTED TO SMOKERS 21 YEARS OF AGE OR OLDER.
ANY EVENT SUBJECT TO AVAILABILITY. SEE CAMEL CASH ROCKIN' ROAD TRIP FOR DETAILS.

**SURGEON GENERAL'S WARNING: Smoking
By Pregnant Women May Result in Fetal
Injury, Premature Birth, And Low Birth Weight.**

Complaint

127 F.T.C.

EXHIBIT F

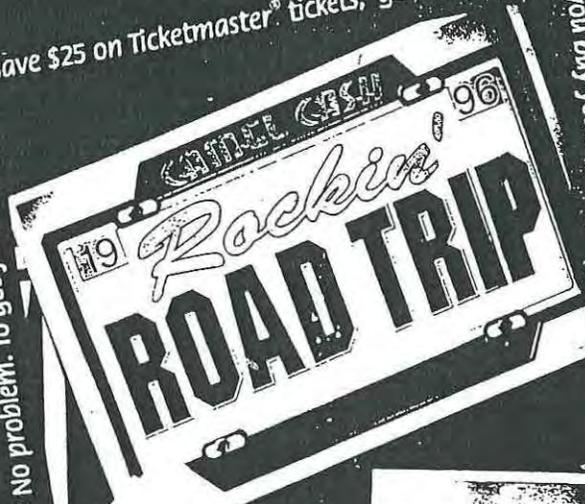


Take a Rockin' Road Trip.

save \$25 on Ticketmaster® tickets, go to wherever

Someone take your Road Trip? No problem. To get your own and

you buy your smokes, or call 1-800-CAMEL-CASH (that's 1-800-226-3522).



Rockin' Ticketmaster® Offer Inside.

© 1996 R.J. REYNOLDS TOBACCO CO.

**OFFER RESTRICTED TO SMOKERS
21 YEARS OF AGE OR OLDER.**

11 mg. "tar", 0.9 mg. nicotine
av. per cigarette by FTC method.

**SURGEON GENERAL'S WARNING: Smoking
By Pregnant Women May Result in Fetal
Injury, Premature Birth, And Low Birth Weight.**

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

Today, the Commission issues a complaint against R.J. Reynolds Tobacco Company ("Reynolds") alleging that Reynolds' "Joe Camel" advertising campaign constitutes an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act. The actions alleged in the complaint are serious, and intuition suggests reason to believe they are true. Intuition alone, however, is not a sufficient basis for issuing a complaint under the statute. The Commission is an agency of limited jurisdiction and is authorized to bring a case only if certain elements of the law are satisfied.¹ Not having found reason to believe that the evidence supports each of those elements, I must dissent.²

The issues underlying the complaint issued today differ little from those considered by the Commission in its 1993-94 inquiry into the same advertising campaign.³ That inquiry was closed by a majority vote of the Commission without law enforcement action. I have decided to take the unusual step of writing to explain my position on the current decision despite the adjudicative status of the case. I emphasize that although as a matter of law I am unable to vote to issue a complaint, I would be free at a later stage in the proceeding to find a violation of law if the record in the upcoming adjudication so demonstrates.

When the Commission voted in 1994 to close its investigation of Joe Camel, the Commission majority issued a Joint Statement (copy attached). The Commission said then, and it is equally true now:

Although it may seem intuitive to some that the Joe Camel advertising campaign would lead more children to smoke or lead children to smoke more, the evidence to support that intuition is not there. Our responsibility as commissioners is not to make decisions based on intuition but to evaluate the evidence and determine whether there is reason to believe that a proposed respondent violated the law.

The Statement continued:

If intuition and concern for children's health were a sufficient basis under the law for bringing a case, we have no doubt that a unanimous Commission would have

¹ 15 U.S.C. 45(b) and (n).

² Unlike my colleague, Commissioner Starek, I would find that the case is in the public interest, but I concur in the first paragraph of his dissenting statement.

³ File No. 932 3162.

taken that action long ago. The dispositive issue here, however, was whether the record showed a link between the Joe Camel advertising campaign and increased smoking among children, not whether smoking has an effect on children or whether the health of children is important.

Like my colleagues, I always am willing to revisit past decisions in light of new evidence, particularly if that evidence might provide a basis for Commission action to protect the health of children. In my view, the serious health issues concerning smoking by children mandate our utmost attention to any new information that might support a case against advertising that can be shown to cause or increase smoking among children.

I have carefully considered the totality of the available evidence, including new material that has been presented to the Commission, and have concluded that the new information does not strengthen the case the Commission rejected in 1994. As in 1994, the available evidence does not support the specific legal requirements of a complaint under Section 5 of the Federal Trade Commission Act.

ATTACHMENT

JOINT STATEMENT OF COMMISSIONERS

MARY L. AZCUENAGA, DEBORAH K. OWEN, AND ROSCOE B. STAREK, III

Today, the Commission closes its investigation of the Joe Camel advertising campaign after voting not to issue a complaint. Although it is unusual to comment on our reasons for taking such action, we have decided to explain our decision in light of the statements of our dissenting colleagues and the widespread public interest the matter has generated.

Although it may seem intuitive to some that the Joe Camel advertising campaign would lead more children to smoke or lead children to smoke more, the evidence to support that intuition is not there. Our responsibility as commissioners is not to make decisions based on intuition but to evaluate the evidence and determine whether there is reason to believe that a proposed respondent violated the law. The Commission has spent a great deal of time and effort reviewing the difficult factual and legal questions raised by this case, including a comprehensive review of relevant studies and statistics. Because the evidence in the record does not provide reason to believe that the law has been violated, we cannot issue a complaint.

If intuition and concern for children's health were a sufficient basis under the law for bringing a case, we have no doubt that a unanimous Commission would have taken that action long ago. The dispositive issue here, however, was whether the record showed a link between the Joe Camel advertising campaign and increased smoking among children, not whether smoking has an effect on children or whether the health of children is important. Indeed, our concern about the health of children led us to consider every possible avenue to a lawsuit before reaching today's decision.

DISSENTING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I am very concerned about the harm that cigarette smoking poses to children, but I also take seriously the statutory limits on the Commission's authority to pursue enforcement actions against allegedly unfair practices. The evidence before us now, including the evidence obtained since the Commission considered this matter in 1994, does not convince me that there is reason to believe that the law has been violated. The issue in this case is whether the Joe Camel advertising campaign causes or is likely to cause children to begin or to continue smoking. As was true three years ago, intuition and concern for children's health are not the equivalent of – and should not be substituted for – evidence sufficient to find reason to believe that there is a likely causal connection between the Joe Camel advertising campaign and smoking by children.

Moreover, it simply is not in the public interest to bring this case now. Before committing a vast amount of scarce agency resources to this litigation, the Commission should await the resolution of the appeal of the federal district court decision striking down the Food and Drug Administration's tobacco advertising restrictions and the outcome of widely-reported settlement discussions between tobacco companies and numerous states. Either of these developments might result in advertising restraints that would largely duplicate any remedies the Commission might obtain.

Accordingly, I dissent from the majority's determination to issue a complaint.

FINAL ORDER

ORDER DISMISSING COMPLAINT

On November 24, 1998, complaint counsel filed a motion to dismiss this matter on the grounds that the relief sought in this proceeding has now been achieved through a recent settlement between the major tobacco companies (including respondent) and the attorneys general for 46 state and 5 other jurisdictions¹ and a modification of the annual survey on tobacco, alcohol, and drug use that is conducted by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services. The Administrative Law Judge ("ALJ"), by order dated December 2, 1998, certified this motion to the Commission, and, by order dated December 7, 1998, stayed further action in the adjudication before him, pending the Commission's review of complaint counsel's motion to dismiss. Respondent's answer, directed to the ALJ on December 4, states that it agrees that this matter should be dismissed but urges the ALJ to recommend that the Commission dismiss with prejudice.² Respondent also asked the ALJ to take action respecting placement on the public record of certain materials received in discovery from the Robert Wood Johnson Foundation ("Foundation") and Dr. John P. Pierce. In a statement filed with the Commission, the Foundation requested the Commission to order *in camera* treatment for its submissions and to order related relief.

Upon consideration of the submission of the parties, the Commission hereby dismisses the complaint without prejudice and denies the Foundation's request for relief respecting materials it submitted in discovery. By Order dated December 29, 1998, the ALJ has denied respondent's motion for action respecting discovery materials.

¹ Master Settlement Agreement Between Settling State Officials and Participating Manufacturers (Nov. 23, 1998)(available as of December 15, 1998 at <http://www.naag.org/settle.html>)(hereafter the "November 23 Master Settlement Agreement").

² Respondent attached to its response its Motion to Dismiss on the grounds that complaint counsel failed to satisfy its evidentiary burden, filed November 23, 1998. This motion was not certified to the Commission by the ALJ and is, accordingly, not before the Commission.

DISCUSSION

Complaint Counsel's Motion to Dismiss

The Commission's notice order accompanying the complaint set out three key areas of relief: (1) a prohibition of advertisements to children of Camel brand cigarettes through the use of themes or images relating to "Joe Camel" or associated figures; (2) dissemination of public education messages discouraging persons under 18 from smoking; and (3) collection, maintenance, and making data available to the Commission concerning sales of each brand of respondent's cigarettes to persons under 18 and each brand's share of smokers under 18.

With respect to the first area of relief, the November 23 Master Settlement Agreement specifically bans the use of all cartoon characters, including Joe Camel, in the advertising, promotion, packaging, and labeling of any tobacco product. As for the second, the settlement requires the tobacco companies to help finance a national public education fund designed to carry out on a nationwide basis sustained advertising and education programs to counter underage usage of tobacco products and to educate consumers about the causes and prevention of diseases associated with the use of tobacco products.³ Finally, the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services is revising the protocol for its annual national household survey on drug abuse to add specific questions to elicit brand share of smokers under 18.⁴

Accordingly, the most important elements of the relief set out in the Commission's notice order should be accomplished without the need for further litigation in this case. Therefore, the public interest warrants dismissal of the complaint.

³ The November 23 Master Settlement Agreement anticipates that each state will seek state court approval of the settlement.

⁴ See Department of Health & Human Servs., Substance Abuse & Mental Health Servs., Agency Information Collection Activities: Submission for OMB Review; Comment Request, 63 Fed. Reg. 44,866 (1998) (noting that annual survey will be revised to include information on usual brands, including Reynolds' brands, smoked by persons 12 and over). In the past, this survey has been used to determine the prevalence of use of tobacco, alcohol, and illegal drugs among persons 12 and over.

Respondent's Request for Dismissal With Prejudice

In its response, which was filed after the ALJ certified complaint counsel's motion to dismiss to the Commission, respondent requested that the ALJ make certain recommendations to the Commission to the effect that the complaint should be dismissed with prejudice.⁵ Respondent also asked the ALJ to forward to the Commission the motion to dismiss that respondent filed with the ALJ at the close of complaint counsel's case-in-chief. That motion asked the ALJ to determine that complaint counsel had failed to meet its evidentiary burden on causation. Respondent claimed that forwarding its motion to the Commission would "inform it of the strong nature of Reynolds' defenses -- and the concomitant advisability of a public interest dismissal" and thus would support respondent's request for a dismissal with prejudice. Respondent's Response to Complaint Counsel's Motion to Dismiss, at 4.

Rule 3.22(a) of the Commission's Rules of Practice contemplates that the ALJ will rule in the first instance on most motions; Rule 3.22(e) also authorizes the ALJ to defer ruling on a motion to dismiss for failure to meet an evidentiary burden until immediately after all evidence has been received and the hearing record is closed. The ALJ is also required to certify a motion to dismiss on public interest grounds to the Commission.⁶ Finally, Rule 3.22(a) authorizes the ALJ to accompany such a certification with "any recommendation that he or she may deem appropriate."

Here, consistent with his authority under Rule 3.22(e), the ALJ has not ruled on respondent's motion to dismiss. As for complaint counsel's motion to dismiss, the ALJ has properly certified this motion to the Commission and has declined to make the recommendations requested by respondent. The ALJ did, however, state in his December 7 Order Staying Proceedings that:

⁵ Respondent requested that the ALJ recommend, among others, that "[t]his dismissal should be with prejudice. Subjecting Reynolds to the continued specter of litigation in this matter in light of the termination of the [Joe Camel] campaign, the length of the investigation and adjudication, and complaint counsel's failure to establish causation would be unreasonable and unfair." Recommendations Concerning Complaint Counsel's Motion to Dismiss, *R.J. Reynolds Co.*, Docket No. 9285 (Dec. 4, 1998) (attached to Respondent's Response to Complaint Counsel's Motion to Dismiss).

⁶ See Rule 3.22(a); *Century 21 Commodore Plaza, Inc.*, 95 FTC 808, 818 (1980); *Herbert R. Gibson, Sr.*, 90 FTC 275 (1977).

[t]o recommend . . . that the complaint be dismissed on the merits would require more than a quick decision on the submitted papers. I am not convinced that the link between the Camel advertising campaign and increased smoking among children must be demonstrated, as argued by respondent, *only* by a definitive, statistically significant scientific study. Furthermore, there may well be reliable evidence in the record of this case on this issue, in the 2,000 exhibits that have been received thus far, or in the testimony of the expert witnesses.⁷

Further, in dismissing this complaint, the Commission is not reaching a decision on the merits. Respondent's motion to dismiss is not before the Commission for decision, and respondent does not appear to ask the Commission to enter a ruling on the merits.⁸ Indeed, a ruling on the merits would require the Commission to remand this matter to the ALJ, resulting in a possible resumption of the trial.⁹ We understand that neither complaint counsel nor respondent intends that result.

The Commission has consistently refrained from dismissing a complaint with prejudice absent a substantive ruling. Without such a ruling by the ALJ or the Commission, it is not appropriate to foreclose the possibility of further litigation where unanticipated problems might develop with one or more of the relevant remedies.¹⁰

⁷ (Emphasis in original) (footnote omitted). We decline to provide an advisory opinion on what is legally required to prove that the Joe Camel campaign caused or was likely to have caused children to begin or continue smoking. However, we do agree with the ALJ that proving a link between advertising and youth smoking might be accomplished by means other than a definitive, statistically significant scientific study. Because we are not ruling on the merits of this matter, we express no opinion on whether the record does or does not contain the necessary, relevant evidence.

⁸ Respondent does argue that closure to the prosecution of Reynolds "can be accomplished by recognizing the arguments advanced in Reynolds' pending Motion for Dismissal as additional rationales for terminating this proceeding," Respondent's Response to Complaint Counsel's Motion to Dismiss, at 2. We view this discussion of possible outcomes to fall short of a request for an explicit ruling on the merits of Reynolds' motion.

⁹ We view the ALJ's Order Staying Proceedings as indicative of his lack of willingness to decide Respondent's Motion to Dismiss at this time and, as discussed *supra*, the ALJ is authorized by Rule 3.22(e) to defer ruling on such a motion to dismiss until immediately after all evidence has been received and the hearing record is closed.

¹⁰ The Commission is not persuaded that any future litigation challenging the Joe Camel campaign would violate any of Respondent's Due Process or other legal rights. The doctrine of *res judicata*, which bars a subsequent action only if there is a final judgment on the merits in the earlier action, would not apply. As described above, no such judgment was rendered here by the ALJ or the Commission. See, e.g., *United States v. Cunan*, 156 F.3d 110 (1st Cir. 1998). In addition, the Double Jeopardy Clause of the Fifth Amendment "protects only against the imposition of multiple *criminal* punishments for the same offense." *Hudson v. United States*, 118 S. Ct. 488, 493 (1997)(emphasis in the original). Nor can we conclude that any passage of time between the dismissal of the instant complaint and the possible commencement of a new proceeding would deprive respondent of an opportunity to present an effective defense. In any event, a future Commission would undoubtedly give careful consideration, as part of its determination that a case is in the public interest, to any claims respondent might make that it was unfairly prejudiced by the passage of time.

We, therefore, conclude that the complaint should be dismissed without prejudice.

Requests Relating to Third Party Submissions

Respondent's Response to Complaint Counsel's Motion to Dismiss initially requested that the ALJ hold open the public record to permit respondent "to place in evidence certain documents submitted in discovery from" the Foundation and Dr. Pierce. After opposing statements were filed by the Foundation and Dr. Pierce,¹¹ respondent filed a submission with the ALJ explaining that its response had only requested (and, notwithstanding the stay, continued to request) that the ALJ issue an order establishing a schedule for a briefing and hearing on the disclosure issue. By order dated December 29, 1998, the ALJ declined to issue such an order.

The Foundation's statement in opposition to respondent's request, which was filed with the Commission, asked the Commission to rule on its prior motion to the ALJ. That motion sought *in camera* treatment for Foundation documents. The statement also asked, as related relief, that respondent "be required to (i) submit a certification that it has fully complied with the terms of the protective order with regard to the Foundation's peer review materials [and] (ii) provide to the Foundation all copies of all agreements executed in accordance with paragraph 11 of the protective order."¹²

Rather than delaying the disposition of this matter by remanding the Foundation's requests to the ALJ, the Commission has considered and hereby denies them. There is no basis for granting the Foundation's request for *in camera* treatment because, in light of this Order dismissing the complaint, the documents are not to be used in litigation. In addition, paragraph 11 of the ALJ's July 18, 1997 protective order prohibits respondent from disclosing the documents

¹¹ The Foundation and Dr. Pierce, along with the Commonwealth of Massachusetts, had previously filed oppositions before the ALJ to Respondent's Notice of Disclosure of confidential documents submitted by the Foundation and Dr. Pierce.

¹² The paragraph 11 agreements are those executed by certain recipients of confidential materials obtained by RJR.

The Foundation also sought other related relief, including a requirement that respondent "... (iii) identify all persons to whom the Foundation's peer review materials have been disseminated or disclosed; (iv) describe with particularity any dissemination or disclosure of the peer review materials not authorized by or in accordance with the terms of the protective order; and (v) retrieve and return to the Foundation all copies of the peer review materials disseminated or disclosed contrary to the protective order's terms."

outside of this litigation and paragraph 14 requires respondent to return the documents upon dismissal of the proceeding. Paragraph 11 itself already entitles the Foundation to copies of the paragraph 11 agreements at issue here.¹³ The Foundation has not offered sufficient justification for the other related relief sought by its motion.

Accordingly, *It is ordered*, That the Complaint is dismissed without prejudice. *It is further ordered*, That the Foundation's motion for *in camera* treatment and related relief is denied.

¹³ The protective order, by its own terms, continues to bind the parties' communication and use of confidential materials after conclusion of the action. *See* paragraph 16.

IN THE MATTER OF
FIRST AMERICAN REAL ESTATE SOLUTIONS, LLC

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

Docket C-3849. Complaint, Jan. 27, 1999--Decision, Jan. 27, 1999

This consent order, among other things, requires the respondent, a provider of consumer credit reports, to investigate information in the respondent's credit reports that consumers dispute and then either record the current status of the disputed information or delete it from the file. Within five business days after receiving a consumer dispute, the respondent must notify the furnisher of the information that the information is being disputed. The respondent must also maintain reasonable procedures to prevent the reappearance of information that has been deleted in future credit reports issued by respondent. In addition, the consent order requires that the respondent provide written notice to the consumer of the results of the reinvestigation of any disputed item and extend to the consumer the right to request that the respondent provide to any person designated by the consumer either a notice that the disputed item has been corrected or deleted, or a copy of the consumer's dispute statement.

Participants

For the Commission: *Thomas E. Kane, David Medine and Margaret Patterson.*

For the respondent: *Michael Meltzer, Miller, Nash, Wiener, Hager & Carlsen, Portland, OR.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that certain prior practices of First American CREDCO, Inc., a corporation, violated the provisions of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681-1681u, as amended, as well as the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. First American CREDCO, Inc. is incorporated in the State of Washington and has its principal office or place of business at 5625 Ruffin Road, Suite 200, San Diego, California.
2. As of November 30, 1997, the consumer reporting business of First American CREDCO, Inc. was reorganized as an operating

division of First American Real Estate Solutions, LLC ("respondent"). For purposes of this complaint, "CREDCO" refers to First American CREDCO, Inc., prior to the reorganization, and to respondent after the reorganization.

3. Respondent is a limited liability company organized under the laws of California, with its principal office or place of business at 150 Second Avenue North, Suite 1600, St. Petersburg, Florida.

4. CREDCO is now and has been regularly engaged in the practice of assembling or evaluating consumer credit information. CREDCO assembles or evaluates such information in order to provide "consumer reports," as defined by § 603(d) of the FCRA, 15 U.S.C. 1681a(d), to third parties. Accordingly, CREDCO is a "consumer reporting agency," as defined by § 603(f) of the FCRA, 15 U.S.C. 1681a(f).

5. The acts and practices of CREDCO alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. 44.

CREDCO'S COURSE OF BUSINESS

Instant Merge Reports

6. One of CREDCO's consumer reporting products is its Instant Merge Report ("IMR").

7. IMRs blend consumer account information from at least two, and often all three, of the national consumer reporting agencies ("repositories"), Trans Union, Equifax, and Experian. When these repositories provide contradictory information for a particular consumer account, CREDCO's reporting system merges this contradictory information into a single, unified trade line. CREDCO does not verify the accuracy of the information contained in its IMRs before delivering the IMRs to its customers.

8. CREDCO sells its IMRs to mortgage lenders, lenders in the automotive and home equity markets, and landlords and property managers in the residential rental market. The IMRs are produced and delivered electronically via computer directly to the end-user in a matter of seconds. Once an IMR is created, CREDCO's computer system maintains it on file but prevents any corrections from being made to it.

Consumer Disputes

9. CREDCO has not typically reinvestigated information in MRs when consumers have disputed that information. Instead, CREDCO has referred such consumers to the repository or repositories from which CREDCO received the disputed information, so that the consumers could request that the repository or repositories reinvestigate the disputed information.

10. Even on the rare occasions when CREDCO has reinvestigated disputed information, CREDCO has not corrected or deleted information in its files found to be inaccurate or obsolete.

11. If a reinvestigation has not resolved a consumer's dispute about IMR information and the consumer has submitted a statement setting forth the nature of the dispute, CREDCO has not reported such disputes in future IMRs.

12. When CREDCO has learned through reinvestigation that IMR information is inaccurate or obsolete, CREDCO has not prevented the information from re-appearing in future IMRs.

CREDCO'S VIOLATIONS OF THE FCRA AND THE FTC ACT

13. In connection with its Instant Merge Reports, CREDCO has violated § 611 of the FCRA, 15 U.S.C. 1681i. CREDCO's violations include, but are not limited to:

- A. Failing to reinvestigate disputed information;
- B. Failing to correct or delete information in consumers' files that CREDCO has found to be inaccurate or obsolete, or whose accuracy can no longer be verified; and
- C. Failing to include in subsequent IMRs a notation that a consumer disputes an item and a statement by the consumer setting forth the nature of the dispute or a codification or summary of that statement.

14. CREDCO has violated § 607(b) of the FCRA, 15 U.S.C. 1681e(b), by failing to follow reasonable procedures to prevent information that CREDCO has found to be inaccurate or obsolete, or whose accuracy could not be verified, from appearing on subsequent IMRs.

15. The acts and practices set forth in this complaint as violations of the FCRA constitute unfair or deceptive acts or practices in

commerce in violation of § 5(a) of the FTC Act, 15 U.S.C. 45(a), pursuant to § 621(a) of the FCRA, 15 U.S.C. 1681s(a).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of First American CREDCO, Inc., now a division of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Fair Credit Reporting Act and the Federal Trade Commission Act; and

The respondent, its attorneys, 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 the 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 First American CREDCO, Inc. 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 considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent First American Real Estate Solutions, LLC is a limited liability company organized under the laws of California, with

ts principal office or place of business at 150 Second Avenue North, Suite 1600, St. Petersburg, Florida.

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

ORDER

DEFINITIONS

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

1. The term "*Fair Credit Reporting Act*" ("FCRA") refers to the Fair Credit Reporting Act, as amended by Public Law 104-208 (Sept. 30, 1996), 15 U.S.C. 1681-1681u, and as amended in the future.

2. The terms "*person*," "*consumer*," "*consumer report*," "*consumer reporting agency*," and "*file*," are defined as set forth in Sections 603(b), (c), (d), (f), and (g), respectively, of the FCRA, 15 U.S.C. 1681a(b), (c), (d), (f) and (g).

3. Unless otherwise specified, "*respondent*" shall mean First American Real Estate Solutions, LLC, a limited liability company, its successors and assigns, and its officers, agents, representatives, and employees.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the collection, preparation, assembly, maintenance, and furnishing of consumer reports and files, shall comply with Section 611 of the FCRA, 15 U.S.C. 1681i, including but not limited to the following provisions:

A. Subject to Section 611(a)(3), 15 U.S.C. 1681i(a)(3), if the completeness or accuracy of any item of information contained in a consumer's file at respondent is disputed by the consumer and the consumer notifies respondent directly of such dispute, respondent shall reinvestigate free of charge and record the current status of the disputed information or delete the information from the file, as required by Section 611(a)(1), 15 U.S.C. 1681i(a)(1);

B. As required by Section 611(a)(2), 15 U.S.C. 1681i(a)(2), but subject to Section 611(a)(3), 15 U.S.C. 1681i(a)(3),

1. Before the expiration of the five (5)-business-day period beginning on the date on which respondent receives notice of a dispute from a consumer in accordance with Section 611(a)(1), 15 U.S.C. 1681i(a)(1), respondent shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person; the notice shall include all relevant information regarding the dispute that respondent has received from the consumer; and

2. Respondent shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by respondent from the consumer after the five (5)-business-day period referred to in paragraph B.1. above and before the end of the thirty (30)-day period beginning on the date on which respondent receives the notice of the dispute directly from the consumer;

C. As required by Section 611(a)(4), 15 U.S.C. 1681i(a)(4), in conducting any reinvestigation under Section 611(a)(1), 15 U.S.C. 1681i(a)(1), with respect to disputed information in the file of any consumer, respondent shall review and consider all relevant information submitted by the consumer in the period described in Section 611(a)(1)(A) with respect to such disputed information;

D. As required by Section 611(a)(5)(C), 15 U.S.C. 1681i(a)(5)(C), respondent shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that has been deleted (other than information that has been reinserted after the person furnishing the information certifies that the information is complete and accurate, as required by Section 611(a)(5)(B)(i), 15 U.S.C. 1681i(a)(5)(B)(i));

E. Respondent shall provide written notice to the consumer of the results of the reinvestigation of any item disputed by the consumer under Section 611(a), 15 U.S.C. 1681i(a), not later than five (5) business days after the completion of the reinvestigation of the item, as required by Section 611(a)(6), 15 U.S.C. 1681i(a)(6), including but not limited to:

1. A notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information ("dispute statement"), as required by Section 611(a)(6)(B)(iv); and

2. A notice, as required by Section 611(a)(6)(B)(v), that the consumer has the right to request that respondent provide either a notification that the item has been corrected or deleted, or the consumer's dispute statement described in paragraph E.1. above or a codification or summary of that dispute statement, to any person specifically designated by the consumer who has received a consumer report that contained the deleted or disputed information

(a) Within two years prior to the consumer's request, for employment purposes; or

(b) Within six months prior to the consumer's request, for any other purpose;

F. If the reinvestigation under Section 611(a), 15 U.S.C. 1681i(a), does not resolve the consumer's dispute, respondent shall permit the consumer to file a dispute statement, as required by Section 611(b), 15 U.S.C. 1681i(b);

G. As required by Section 611(c), 15 U.S.C. 1681i(c), whenever a consumer files a dispute statement pursuant to paragraph I.F. above, respondent shall include the consumer's dispute statement, or a codification or summary of the dispute statement, in all subsequent consumer reports that respondent prepares concerning the consumer that contains the information in question, unless respondent has reasonable grounds to believe the dispute statement is frivolous or irrelevant; and

H. Respondent shall, at the request of the consumer, provide a notification, as required by Section 611(d), 15 U.S.C. 1681i(d), that a disputed item has been corrected or deleted, or the consumer's dispute statement or a codification or summary of that dispute statement, to any person specifically designated by the consumer who has received a consumer report that contained the deleted or disputed information

1. Within two years prior to the consumer's request, for employment purposes; or

2. Within six months prior to the consumer's request, for any other purpose.

II.

It is further ordered, That respondent and its successors and assigns shall for five (5) years maintain and upon request make available to the Federal Trade Commission for inspection and copying all business records demonstrating respondent's compliance with the terms and provisions of this order.

III.

It is further ordered, That respondent 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 such current personnel within thirty (30) days after the date of service of this order, and to such personnel hired after such date within thirty (30) days after the person assumes such position or responsibilities.

IV.

It is further ordered, That respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in respondent 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 entity; 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 entity name or address. Provided, however, that, with respect to any proposed change in the entity 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.

V.

It is further ordered, That respondent and its successors and assigns shall, within sixty (60) days after the date of service of this order, and, thereafter, within thirty (30) days of 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 it has complied with this order.

VI.

This order will terminate on January 27, 2019, 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:

- B. Any Part in this order that terminates in less than twenty (20) years;
- C. This order's application to any respondent that is not named as a defendant in such complaint; and
- D. 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

127 F.T.C.

IN THE MATTER OF
GEOCITIES

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

Docket C-3850. Complaint, Feb. 5, 1999--Decision, Feb. 5, 1999

This consent order, among other things, prohibits GeoCities, a corporation that operates a World Wide Web site, from misrepresenting the purpose for which it collects or uses personal identifying information from or about consumers, including children. The consent order requires the respondent to: place a prominent privacy notice on its web sites; establish a system to obtain parental consent before collecting personal information from children; and notify individuals from whom it previously collected personal information and offer them an opportunity to have that information deleted. In addition, the order permits the respondent to collect or use personal information from children to the extent permitted by the Children's Online Privacy Protection Act of 1998, or by regulations or guides issued under that Act.

Participants

For the Commission: *Toby Levin, Dean Forbes, Martha Landesberg, C. Lee Peeler, Caroline Curtin and Louis Silversin.*

For the respondent: *Ronald Plessner, Piper & Marbury, Washington, D.C. and Bart Lazar, Seyfarth, Shaw, Fairweather & Geraldson, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that GeoCities, 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 GeoCities is a California corporation with its principal office or place of business at 1918 Main Street, Suite 300, Santa Monica, California.

2. Respondent has operated a World Wide Web ("Web") site located at <http://www.geocities.com>. This Web site is a virtual community consisting of consumers' personal home pages that are organized into 40 themed neighborhoods. Respondent "hosts" a personal home page by posting it to an address in the consumer's chosen neighborhood.

3. Respondent has provided numerous services including free and fee-based personal home pages, free e-mail service, contests and children's clubs. Respondent provides personal home pages and e-mail addresses to adults and children who reveal personal identifying and demographic information when they register with the Web site.

4. Respondent has more than 1.8 million members whom it refers to as "homesteaders." As of December 2, 1997, approximately 200,000 GeoCities homesteaders were between the ages of 3 and 15. As of May 18, 1998, approximately 50,000 homesteaders were under age 13. Respondent's site is one of the ten most frequently visited Web sites, and was the sixth top trafficked site in April 1998 with 14.1 million unique visitors ages 12 and up. Among visitors between the ages of 12 and 17, it was the third most frequently visited Web site in March 1998. One out of five U.S. Web users visited respondent's Web site in October 1997.

5. Respondent has created opportunities for third party advertisers to promote products in a targeted manner to its more than 1.8 million members through respondent's collection of personal identifying, demographic, and "special interest" information obtained in the registration process and through the placement of members' personal home pages in themed neighborhoods.

6. Respondent has derived its revenues from: selling third party advertising space on the Web site (including rotated ad banners, pop-up ads, and sponsorships of major areas on the Web site); selling personal identifying, demographic, and/or interest information collected from consumers who register; GeoPlus, an enhanced fee-based service that provides members extra server space for their personal home pages, among other benefits; merchandising in the Web site's GeoStore; and respondent's publishing unit (GeoPress Publishing).

7. Respondent has required consumers, including children, to complete a "New Member Application" form to become a GeoCities member. The form requests certain mandatory information and certain other information that respondent describes as "optional." The form also asks consumers to designate whether they would like to receive "special offers" from a list of topics or from specific companies. The default setting on the form for special offers is for members to receive them unless members choose otherwise.

8. Respondent has promoted on its Web site a children's neighborhood called the "Enchanted Forest." The Enchanted Forest is designated as respondent's "KIDS" area, "[a] community for and by kids." To join the Enchanted Forest neighborhood, children must complete the New Member Application form and post personal home pages. As of May 18, 1998, there were approximately 40,300 homesteads in the Enchanted Forest neighborhood.

9. Respondent has promoted on its Web site a children's club in the Enchanted Forest neighborhood called the "GeoKidz Club." To join the GeoKidz Club, children must complete the "Official GeoCities GeoKidz Club Membership Request Form." This form requires applicants to be GeoCities members and to fill in all information requested, including name, age, e-mail address, GeoCities home page address, and gender. Respondent has also promoted on its Web site contests in the Enchanted Forest neighborhood for which children must complete the "Enchanted Forest Contest Entry Form," by providing their name, personal Web page address, and e-mail address.

10. Respondent has distributed a newsletter called the "World Report." The World Report is e-mailed at regular intervals to respondent's members and occasionally is posted on respondent's Web site. Members automatically receive the World Report but can discontinue receiving it by using respondent's "Profile Editor," a form used to revise members' registration information. The Profile Editor's default setting is for members to receive the World Report unless they request not to.

11. 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.

DECEPTIVE PRACTICES IN CONNECTION WITH RESPONDENT'S
COLLECTION AND USE OF PERSONAL IDENTIFYING INFORMATION

Misrepresentations Involving Information Collection By GeoCities

12. Respondent has placed privacy statements on its New Member Application form [*Exhibit A*]. This form collects from consumers, including children, certain mandatory information (first and last name, zip code, e-mail address, gender, date of birth, and member name) and certain other information respondent designates as "optional" (education level, income, marital status, occupation, and

interests). The form also asks consumers to designate whether they wish to receive "special offers" from advertisers, to select from a list of special offer topics, and to designate whether they wish to receive specific products or services from individual companies. Respondent has also placed privacy statements on its "GeoCities Free Member E-mail Program" Web page [*Exhibit B*] and in the September 2, 1997 issue of the World Report newsletter [*Exhibit C*], which refer to consumers' information collected on the New Member Application form. Through the privacy statements in Exhibits A, B, and C, respondent has made the following statements about the uses and privacy of the information it collects:

A. "The following section is completely optional. We will not share this information with anyone without your permission, but will use it to gain a better understanding of who is visiting GeoCities. This information will help us to build a better GeoCities for everyone. . . . [The information requested is] Highest Level of Education Completed . . . Household Income . . . Marital Status . . . Occupation . . . Interests" [*Exhibit A*]

B. "When [consumers] apply to GeoCities we ask if they would like to receive information on a variety of topics. . . . Before we send anything out, we deliver an orientation e-mail to explain the program, to ensure that only those people who requested topically-oriented mail receive it and to protect your privacy. . . . We assure you this is a free service provided only to GeoCitizens who request this information, and we will NEVER give your information to anyone without your permission." [*Exhibit B*]

C. "[Certain e-mail to members] came from our friends at CMG Direct Corporation. It was only sent to homesteaders who clicked a box in the topic list on the GeoCities application. The letter was meant as a heads-up to those people that information about the interests they selected would be coming from reputable companies. . . . We are sorry about any confusion concerning these e-mails. We assure you that we will NEVER give your personal information to anyone without your permission." [*Exhibit C*]

13. Through the means described in paragraph 12, respondent has represented, expressly or by implication, that the personal identifying information collected through its New Member Application form is used only for the purpose of providing to members the specific e-mail advertising offers and other products or services they request.

14. In truth and in fact, the personal identifying information collected through respondent's New Member Application form is not used only for the purpose of providing to members the specific e-mail advertising offers and other products or services they request.

Respondent has also sold, rented, or otherwise marketed or disclosed this information, including information collected from children, to third parties who have used this information for purposes other than those for which members have given permission. For example, third parties have targeted unrequested e-mail advertising offers to individual members based on their chosen GeoCities neighborhoods. Therefore, the representation set forth in paragraph 13 was, and is, false or misleading.

15. Through the means described in paragraph 12, respondent has represented, expressly or by implication, that the "optional" information collected through its New Member Application form is not disclosed to third parties without the consumer's permission, and is used only to gain a better understanding of who is visiting GeoCities.

16. In truth and in fact, respondent has disclosed the "optional" information it collects through the New Member Application form to third parties without the consumer's permission, and for purposes other than to gain a better understanding of who is visiting GeoCities. Respondent has disclosed this information, including information collected from children, to third parties who have used this information to target advertising to GeoCities' members. Therefore, the representation set forth in paragraph 15 was, and is, false or misleading.

Misrepresentations Involving Sponsorship By GeoCities Where Information Is Collected By Third Parties

17. Respondent has disseminated or caused to be disseminated Enchanted Forest Web pages [*Exhibits D, H*]. These Web pages have promoted children's activities in the Enchanted Forest, including the Official GeoCities GeoKidz Club, through print [*Exhibit D*] and audio [*Exhibit E*] messages, and contests through print messages [*Exhibit H*]. Respondent has also disseminated or caused to be disseminated the July 16, 1997 issue of the World Report newsletter [*Exhibit F*], which also promotes the Official GeoCities GeoKidz Club. These promotions have caused children to reveal personal identifying information through the Official GeoCities GeoKidz Club Membership Request Form [*Exhibit G*] and the Enchanted Forest Contest Entry Form [*Exhibit I*]. Through its Web page and e-mail promotions, respondent has made the following statements:

A. "Welcome kids to this enchanting forest created by your friends for you to enjoy. . . . Join the GeoKidz Club at Enchanted Forest/3696 for fun and HTML help. Play Java games and be sure to visit Charlie, the GeoKidz Club's new dog." [*Exhibit E*]

B. "JOIN THE GEOKIDZ CLUB!

We all want a safe spot for our children to play and The GeoKidz Club is the perfect place. Enchanted Forest Community Leader Melange has been busy providing an HTML Center, games, message forums, a member's gallery and many more features for both parents and children to enjoy. The GeoKidz Club is always growing and expanding, so visit <http://www.geocities.com/EnchantedForest/3696> often . . . and make sure to say hello to our virtual dog!" [*Exhibit F*]

C. "Join us in our quest to name our Prince and Princess, the mascots of Enchanted Forest! Enter the contest to name them by June 7th, and win 25 GeoPoints." (emphasis in original) [*Exhibit H*]

18. Through the means described in paragraph 17, respondent has represented, expressly or by implication, that respondent collects and maintains the children's personal identifying information collected through the Official GeoCities GeoKidz Club Membership Request Form and Enchanted Forest Contest Entry Form.

19. In truth and in fact, respondent does not collect and maintain the children's personal identifying information collected through the Official GeoCities GeoKidz Club Membership Request Form and Enchanted Forest Contest Entry Form. In fact, the Official GeoCities GeoKidz Club and the GeoCities Enchanted Forest contests are run by third parties hosted on the GeoCities Web site, who collect the children's personal identifying information directly and maintain it. Therefore, the representation set forth in paragraph 18 was, and is, false or misleading.

20. 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.

Complaint

127 F.T.C.

EXHIBIT A

<http://www.geocities.com/cgi-bin/no...d=EnchantedForest/Cottage&addr=44>

GeoCities Join us! New Member Application

You are about to join the largest community on the Internet. Being a member of GeoCities is fun and becoming a member is easy. All you have to do is pick a membership plan, select a GeoCities name and address and review the member terms of service. After you've completed those minor tasks - we'll even help you build your first home page.

Free Personal Home Page Program

The key word is FREE. This program includes 3 megabytes of space to work with and all the tools, utilities and help you may need to succeed.

GeoPlus

You get all the free stuff listed above, PLUS a total of 15 megabytes of space, a personalized URL, a file of free trial memberships in other web-related companies, a bunch of subdirectories to help organize your files, and a cache of cool utilities to soup up your site. And, under the new plan, you can join for only \$4.95 a month. You don't have to decide now. You can always sign up for GeoPlus at

<http://www.geocities.com/join/geoplus/>.

The next step is understanding our Member Terms of Service.

GeoCities Page Content Guidelines and Member Terms of Service

Specifically, we do not allow any nudity or pornography in GeoCities.

The GeoCities Page Content Guidelines and Terms of Service 

are available at:

<http://www.geocities.com/members/guidelines/>

Members who are in violation of these policies may be deleted and their pages, or portions of their pages, removed without warning.

The purpose of the free Personal Home Page program is to give people the ability to create a home on the World Wide Web that reflects their interests, hobbies and background. 

Are you already a Netopia Virtual Office Member? No
 Yes

I Agree to these Terms and Conditions

© 1995, 1996, 1997 GeoCities. All rights reserved

EXHIBIT A

EXHIBIT A

http://www.geocities.com/cgi-bin/homestead/new_a



GeoCities Membership Application Form.

You are only moments away from membership in GeoCities. This simple form will secure your home on the Web. Once we receive your registration, we'll send you a confirmation e-mail with your password and instructions for moving into your new home.

Welcome to the Neighborhood!

PERSONAL INFORMATION

* = required

*First Name: _____ *Last Name: _____
 Street Address: _____
 City: _____ State: _____ *Postal Code: _____
 Choose One [v] - [v]
 Country: _____
 Choose One [v]

Very Important:
 Please ensure you enter your E-mail address correctly so that you receive your GeoCities Registration Confirmation and password.

*E-Mail Address: _____

*Gender: Male Female *Date of Birth: _____ Year: _____
 MONTH [v] DAY [v] 19 [v] 0 [v] 0 [v]

HOME PAGE INFORMATION

Neighborhood: EnchantedForest/Cottage Address: 4475

Your member name is how you will be referred to within GeoCities. It will also determine the username of your GeoCities e-mail address, and appears next to your Address in the Neighborhood Listings.

*Member Name: _____ Click for Rules [v]

The following is used to describe the theme of your page. It appears next to your address in the neighborhood listings. Note: You can always change these values later by using the Personal Profile Editor.

Line 1: _____ Click for Rules [v]
 Line 2: _____
 Line 3: _____

GEOCITIES E-MAIL ACCOUNT

Complaint

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EXHIBIT A

http://www.geocities.com/cgi-bin/homestead/new_ep

As part of your free membership, GeoCities offers you a free E-mail account. Your address will be "mambname@geocities.com", and will be yours for as long as you remain a member of GeoCities.

Would you like to receive a free GeoCities E-mail account? Yes No

SPECIAL OFFERS

Would you like to receive special offers from advertisers based on your interests? Yes No

If yes, please check all that apply:

- Automotive Broadway College Computers Finance
 Health Movies Music Magazines Software
 Sports Stamp Collecting Telecommunications Travel Video Games

SURPLUS DIRECT

Would you like to receive information about the best computer bargains on the Net from Egghead Computer and Surplus Direct?

Yes No

GEOPLANET

Having trouble staying in touch with friends? GeoPlanet helps you find and communicate with important people in your life. Join today, it is FREE and completely private.

Yes No

INFOBEAT

Would you like to receive NEWSpot, a FREE e-mail service from InfoBeat, delivering a daily e-mail summary of news topics, including U.S. news, international news, sports and more? Yes No

Select 1 or more products:	
<input type="checkbox"/> U.S. Front Page News	<input type="checkbox"/> U.S. Bus. & Fin. News
<input type="checkbox"/> World Front Page News	<input type="checkbox"/> Sports
<input type="checkbox"/> Entertainment	<input type="checkbox"/> Science & Medicine
<input type="checkbox"/> Technology	<input type="checkbox"/> The Environment

OPTIONAL INFORMATION

The following section is completely optional. We will not share this information with anyone without your permission, but will use it to gain a better understanding of who is visiting GeoCities. This information will help us to build a better GeoCities for everyone.

Highest Level of Education Completed

Click for options

Household Income

Click for options

Marital Status

Click for options

Occupation

Click for options

Interests:

Once you press submit below, we'll build your initial home page for you and we'd like to include some information about you. Is it okay if we display your interests and e-mail address on your initial home page? Yes No

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Complaint

EXHIBIT A

GeoCities Homesteader Application

http://www.geocities.com/cgi-bin/homestead/new_ap

[Main](#) | [Neighborhoods](#) | [Featured Content](#) | [Members](#) | [MarketPlace](#) | [Search](#) | [Join](#) | [Help](#)

Complaint

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EXHIBIT B

<http://www.geocities.com/members/info/email.htm>
GeoCities Free Member E-mail ProgramEditors Note: [e-mail list info](#)

GeoCities is pleased to offer our free e-mail program for all of its members. Through the phenomenal success of our homesteading program, and the support of our advertisers and sponsors, we are able to provide a free e-mail account to everyone on the web.

This e-mail account will be your permanent e-mail address, so that even if you switch access providers, you will always have one address to call "home". You may also find it more convenient to receive your personal e-mail in your GeoCities account, to avoid the uncomfortable feeling of receiving personal e-mail at your place of business. Wherever you go to access the Internet, you can always check in on your GeoCities mailbox by configuring your Netscape Web Browser with the appropriate settings.

GeoCities recommends that you use Netscape for downloading, reading, and sending your GeoCities e-mail.

**Important Notice:**

Due to the overwhelming demand, we have been forced to place a few limitations on the member e-mail program. They are as follows:

- Mail left on the server over 7 days will be deleted. Please configure your Netscape browser to remove mail from server.
- All accounts are limited to 500kB of mailbox space at one time. This should be plenty for everyone, as long as mail is downloaded and removed from the server on a regular basis.

How do you sign up?**Current members:**

Go to the [GeoMail Manager](#) to sign up. Be sure to check the box next to "Please add GeoMail account".

Visitors and non-members:

In order to get your own free GeoCities e-mail account, go to our [Information Page](#) and read about our [free Personal Home Page Program](#). In a matter of minutes, you'll be completing the registration form and securing your own space in one of our 40 themed [Communities](#). Once you become a GeoCities member, a free e-mail account is just one of the many benefits that you'll receive while you're here. You'll be able to sign up for it while you're

Tools**Programs****Guidelines****Info****FTP Procedures****System Status****File types****Promote Your Page****GeoCities E-mail****Sponsorship****Banners****Help**

EXHIBIT B

Geocities info: e-mail

<http://www.geocities.com/members/info/email.htm>

completing the application form.

We also offer the most user-friendly tools, including your choice of three home page editors. We allow unlimited page modifications through either of the home page editors or via FTP. We allocate three megabytes of disk space to allow you to fully express yourself, and support an incredible number of different filetypes to encourage your creativity.

Read about all of the other benefits of becoming a "GeoCitizen" and make plans to move in to your new home today.

You too can enjoy our e-mail List Service!

When homesteaders apply to GeoCities we ask if they would like to receive information on a variety of topics. We present this option because our staff keeps an eye out for value-added opportunities that our homesteaders might enjoy.

Before we send anything out, we deliver an orientation e-mail to explain the program, to ensure that only those people who requested topically-oriented mail receive it and to protect your privacy.

We assure you this is a free service provided only to GeoCitizens who request this information, and we will NEVER give your information to anyone without your permission.

To add or delete yourself from this list, please visit the profile editor.

[\(Main\)](#) [\(Neighborhoods\)](#) [\(Featured Content\)](#) [\(Members\)](#) [\(MarketPlace\)](#) [\(Search/Join\)](#) [\(Help\)](#)
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Complaint

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EXHIBIT C

From: world_report@list.geocities.com (GeoCities World Report)
 To: world_report@list.geocities.com (GeoCities World Report)
 Date: 97-09-04 13:49:02 EDT

GeoCities World Report
 Vol. 2, No. 3
 September 2, 1997

IN THIS ISSUE:
 GeoCitizens honor Princess Di
 Fun With Finance
 Beat The Bookies!
 Free Offers By E-mail
 News You Can Choose
 Get Back! Beatles Trivia

THE PEOPLE'S PRINCESS

Tragedy struck during Labor Day Weekend when Princess Diana's car crashed in Paris. People around the world are mourning and the mood in Cyberspace is no different.

"When I heard the news on Sunday night my wife and I decided to put up a page that honors Diana's accomplishments for people who would be interested in knowing more about her life," said GeoCitizen Steve Whitlock, who was interviewed for NBC's "Access Hollywood" about his Web page tribute to Diana at: <http://www.geocities.com/Heartland/Prairie/3322/>. "Since then I've been pretty overwhelmed. When I woke up in the morning I had more than 200 visits, that's more than I usually get in two months. This speaks to the power of the Internet as well as, of course, the life's work of Diana. This is unprecedented."

Here are some samples of the homesteads that have put up pages in honor of Diana:

<http://www.geocities.com/Tokyo/Temple/2742/princess.html>
<http://www.geocities.com/CollegePark/4642>
<http://www.geocities.com/Wellesley/1076/princess.html>
<http://www.geocities.com/Paris/Metro/9101>
<http://www.geocities.com/Paris/Metro/7849>
<http://www.geocities.com/Hollywood/Set/7883>
<http://www.geocities.com/SoHo/Studios/8197>
<http://www.geocities.com/Heartland/Prairie/7600>
<http://www.geocities.com/Heartland/Meadows/9548>
<http://www.geocities.com/TheTropics/Shores/9988>
<http://www.geocities.com/Paris/LeftBank/5943/>
<http://www.geocities.com/Area51/1047/privcy.htm>

As soon as the news hit the airwaves a special Sound Off was launched at: <http://www.geocities.com/features/SoundOff/>. The amazing pace of its growth is a tribute to the people Diana

EXHIBIT C

Complaint

EXHIBIT C

reached. Here are a few excerpts of the hundreds of postings from around the world:

* "I live in a country which has major ties to Britain and it has saddened our entire nation. I think that it will be one of those days in history where I will remember what I was doing at the time I found out." - Kathryn, New Zealand

* "It was the one of the saddest things that I've heard in my life. I'm very sad. She wasn't happy in all her life!! I hope now she's in a better place, living forever." - Renata Zambrana Ortiz - Brazil

* "We were all so shocked to hear of Princess Diana's death. She was such a lovely person, and very caring towards others less fortunate than herself. We are all thinking of, and praying for, her and Mr. Fayed's family at this sad time.....God Bless." - Limeyone, Cannock, England

* "I only hope that her sons inherited such quality and become their own men despite their official future duties. I do believe the Queen will honor Diana with aplomb and due respect, she too is a Lady. My heart goes out to Harry, William, Charles and Sarah. God save us all. Peace." - Bermuda Onion

* "You're the queen of hearts. There will be no person can take your place. You have been thru' on so many things in life. God took you away from us because He doesn't want you to suffer again in future." - Nurina Rahman, Malaysia

FINANCE TIPS FROM A FOURTEEN-YEAR OLD?

Wall Street's Investment Center is officially open for business at: <http://www.geocities.com/WallStreet/>. This week's highlighted homestead is Absolute Wall Street, authored by a 14-year-old GeoCitizen. Offering everything from current stock market reviews and an investor's guide to company reports and hot stock tips, this is a must-see resource if you're considering your next stock move, or just looking to get started.

Is your page a resource for WallStreeters looking to get ahead? Then maybe it belongs in the Investment Center. Send your GeoCities address to wallstreet@geocities.com.

BEAT THE BOOKIES!

Picture this: You open up your newspaper, yank out the Sports section and rip it apart looking for the scoop on the upcoming NFL season. There on the center of the page in a grid you know all too well, it's those sports columnists making their pro picks for the week. You browse their not-so-bold predictions and shake your head...you could do better.

Well, here is your chance to "Beat the Bookies." Each week, we're going to highlight four of our homesteaders at: <http://www.geocities.com/Colosseum/> who have published their picks (complete with comments) and Best Bet on their site. On Tuesday morning, the person with the best record is our winner for the week. The prize? Well, besides traffic to your site...and the honor of helping homesteaders with their picks...you get to take part in the following week's game! Sound kind of tempting? Write to colosseum@geocities.com for all the rules and regulations.

EXHIBIT C

FREE OFFERS BY E-MAIL

Wellesley homesteader Katie posted the following question in one of our discussion forums:

"I received this e-mail this evening. It's not the normal GeoCities format that I know and I don't remember saying I was interested in getting free offers. If I'm wrong, then I'm wrong. But if it's with GeoCities, wouldn't it have a geocities.com e-mail address like the other e-mails?"

The e-mail that Katie refers to came from our friends at CMG Direct Corporation. It was only sent to homesteaders who clicked a box in the topic list on the GeoCities application. The letter was meant as a heads-up to those people that information about the interests they selected would be coming from reputable companies.

To join the list or to delete yourself from this free service, simply visit the GeoCities profile editor at: http://www.geocities.com/members/tools/profile_editor.html and change your selections.

We are sorry about any confusion concerning these e-mails. We assure you that we will NEVER give your personal information to anyone without your permission.

NEWS YOU CAN CHOOSE

You will never have to surf, sift or struggle again to stay on top of the latest news. Now, InfoBeat offers a great service to the Internet community and gives you the power to select the stories you want to see and when you want to see them for the unbelievably, low price of ... FREE!

Choose from among eight different categories and three different delivery times. You select the news that interests you the most and the time that is most convenient to you. Clear, concise and informative summaries are delivered to your e-mail address. Life's too short to miss a beat. Get InfoBeat! To sign up go to: <http://www.geocities.com/join/infobeat.html>

SEARCHING FOR BEATLES

Just how big of a Beatles fan are you? Do you know who started the Beatles? What was John Lennon's first instrument? If you can answer these and other Beatles questions (or even if you can't because we give you the URLs with the answers) come play the SunsetStrip Search Contest at: <http://www.geocities.com/SunsetStrip/>. Three people will win a \$20 gift certificate from CDnow!

FEATURES

— Keeping up with all that's new and noteworthy in today's high tech world can be a real chore. If you need quick access to latest news and information, the CMPNet Tech Center is the place for you.

Complaint

EXHIBIT C

<http://www.geocities.com/features/cmp/>

– GeoCities has a new Member Profile Editor. Please stop by:
http://www.geocities.com/members/tools/profile_editor.html and
check it out so you know where to go to update your information.

– Are you keeping track of who is visiting your home page and
when? Get a GUESTBOOK at
<http://www.geocities.com/members/tools/guestbook.html> and start
learning more about your guests.

– Chat this way <http://www.geocities.com/features/chat/>. We've
introduced chat rooms into 10 neighborhoods and will soon be
rolling out more new chat features. We have new HTML based chat
and personal chat rooms on the horizon. Tell us what you think -
send e-mail to chat@geocities.com with your comments about the new
chat environment.

– Do you think your site deserves fame and fortune? Then apply for
the Featured Page Program. Featured Pages are highlighted on the
main page of every neighborhood and are eligible for our Enhanced
GeoRewards program, where you can earn GeoPoints. Please go to:
http://www.geocities.com/join/featured_pages.html for details, or
talk to one of your Community Leaders.

STUFF YOU NEED TO KNOW

Want to read about the most interesting sites at GeoCities?
<http://www.geocities.com/features/allis/>

Want free advertising for your site?
<http://www.geocities.com/join/georewards/>

Want information about GeoPlus?
<http://www.geocities.com/join/geoplus/>

Want to promote your page?
<http://www.geocities.com/members/info/promote.html>

Looking for more traffic?
<http://www.geocities.com/members/info/profile.html>

Don't want to get this newsletter anymore?
http://www.geocities.com/members/tools/profile_editor.html
(While you're there, fill out the other stuff too)

Want to reach one of your Community Leaders?
Go to the main page of your neighborhood
Click on the COMMUNITY LEADERS link on the left

Need help?
<http://www.geocities.com/members/help/>

Want to provide feedback to GeoCities?
<http://www.geocities.com/main/contact/>
Anytime. Anything, complimentary or critical.
We want to hear from you.

GeoCities

<http://www.geocities.com>

EXHIBIT D

GeoCities - EnchantedForest

Page 1 of 1



More features on the new GeoGuide! [Click here.](#)



- Explore the Suburbs.
- [EnchantedForest](#)
 - [Cottage](#)
 - [Glade](#)
 - [Dell](#)

Or, Browse by Topic.

- [Anime](#)
- [Babies](#)
- [Boys](#)
- [Cartoons](#)
- [Chat](#)
- [Children's Books](#)
- [Cyberpets](#)
- [Education](#)
- [Family](#)
- [Games](#)
- [Girls](#)
- [Graphics](#)
- [HTML/Web Page Help](#)
- [Pen-pals](#)
- [Pets](#)
- [Schools](#)
- [Toys](#)
- [Other](#)

[Register Your Page](#)



Spice up your site with our **NEW, Enchanted Forest Page Kits**. Great free graphics for your site are just a few clicks away!



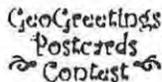
stories to read!

[Community Leader - EnchantedForest Guidelines](#)



Join the **GeoKidz Club** for fun and HTML help. And remember... **Safety First** on the Internet!

Do you care about kids? Want to get involved in fun, safe online events for kids and families? Visit our [application page](#) to join the EnchantedForest Community Leader program!



Attention all graphic artists and designers! We want your artwork for a special series of Spring Break Postcards for **GeoGreetings**. If you enjoy creating graphics and would like to have your work sent out across the Web this spring, then come over to the **GeoGreetings Postcards Contest** for more details.

Get your bid in Now!
Auctions held daily.



[click here](#)

CDs from CDnow
[Click to Buy Tribute To Diana - Princess Of Wales.](#)



CDnow - A Better Music Store

Books from [amazon.com](#)



[The Complete Tales of Winnie-the-Pooh](#)

More books about: [Children's Books](#)

LVCS powered

[Join This Neighborhood](#) | [Forum](#)
[Home](#) | [Neighborhood](#) | [Featured Content](#) | [Members](#) | [MarketPlace](#) | [Search](#) | [Join](#)
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EXHIBIT D

Friday, February 20, 1998

9:56 AM

Complaint

EXHIBIT E

(Web audio ad for Official GeoCities GeoKidz Club)

Welcome kids to this enchanting forest created by your friends for you to enjoy. . . . Join the GeoKidz Club at EnchantedForest/3696 for fun and HTML help. Play Java games and be sure to visit Charlie, the GeoKidz Club's new dog.

(Web audio ad: link from "Audio Description" icon on GeoCities Enchanted Forest home page, <http://www.geocities.com/EnchantedForest> (Exhibit D))

EXHIBIT E

EXHIBIT F

The GeoCities World Report
Vol. 2 No. 15
July 16, 1997

IN THIS ISSUE
The New GeoPlus!
Vote! Flash For Cash
'People' Like Us
Join The GeoKidz Club
Summer School?

GEOPLUS GETS A FACELIFT WITH NEW FEATURES

Rave reviews are pouring in about the revamped GeoPlus program. We gave the Community Leaders a sneak peak last week and now GeoPlus members are taking advantage by snagging tools like the cool CGIs from our new online library.

For those of you who aren't familiar with the program, GeoPlus gives you even more utilities, features and opportunities to take your homestead to the next level.

"Looks great!" wrote Becky, a SoHo Community Leader. "I really like the info listed down the left side. It's clean, simple and easy to navigate. And, CGIs with additional space? You've been reading our minds! I give it a big GeoPlus thumbs up."

Our new GeoPlus still includes the freedom of 10 megabytes of space, the ability to use subdirectories to manage your files, the convenience of a personalized URL, the rewards of double GeoPoints and the free trials to get great Internet products and services, but you also get FREE options like:

- *A library of great new CGI's featuring a variety of counters, a simple survey, a clock, Add-A-Link, an upgraded guestbook and many more new gadgets for your home pages

- *The ability to update your billing options at the click of a mouse

- *A powerful new GeoPlus Manager to keep on top of your current account status. The GeoPlus Manager was part of a special Community Leader contest to name our GeoPlus admin page. Several people submitted the name, but the first one was Bryan of West Hollywood. Congrats and thanks to all of our CLs for helping us critique the new GeoPlus program.

- *Direct access to the GeoCities File Manager from the GeoPlus Manager.

In addition to those great features, the new GeoPlus provides you with the option to purchase expandable disk space above the initial GeoPlus 10 megabytes in five-megabyte blocks and the option to have us help you secure a custom URL (www.anything.com).

To find out our more about the new GeoPlus or to sign up for this service, please visit <http://www.geocities.com/geoplus>.

.....

VOTE: FLASH FOR CASH!

The 'Flash for Cash Photo Contest' voting booth is now open for business! Browse the finalists in five categories and cast your vote for

EXHIBIT F

Complaint

EXHIBIT F

who should win \$500. That's a total of \$2,500 up for grabs thanks to the folks at Storm Easy Photo.

Thanks to everyone who submitted a photo (or two or three...), we will be showing our appreciation by putting up an additional gallery of YOUR photos next week.

Go find out what fine photographers your fellow homesteaders are by visiting <http://www.geocities.com/contest/flash/>. And, by the way, it should be noted that in the 'Funny/Outrageous' category - the action taking place is the preliminary trials of the Turtle Hurdles for the 1998 Animal Olympics. Well, either that -- or a mean game of leap frog. Don't forget to vote!

* * * * *

"PEOPLE" LIKE US

GeoCitizen Steve Schalchlin and his home page (<http://www.geocities.com/Broadway/1171>) will be featured in People Magazine next week for his inspiring "A Life of Survival Featuring A Songwriter With AIDS" site.

"They did an interview and also took photos," Steve reports. "They'll talk about the musical (Last Session) but the reporter was REALLY interested in the Web page. So, be on the lookout."

Another GeoCitizen in the news is surrealist painter J. Alden Kingston. He was recently featured in two Vancouver publications, but you don't have to find an out-of-town edition... just visit his home page at <http://www.geocities.com/SoHo/3061>

If your GeoCities home page has been featured in the news, please contact us at news@geocities.com

* * * * *

JOIN THE GEOKIDZ CLUB!

We all want a safe spot for our children to play and The GeoKidz Club is the perfect place. Enchanted Forest Community Leader Melange has been busy providing an HTML Center, games, message forums, a members' gallery and many more features for both parents and children to enjoy. The GeoKidz club is always growing and expanding, so visit <http://www.geocities.com/EnchantedForest/1696> often...and make sure to say hello to our virtual dog!

* * * * *

SUMMER IS THE PERFECT SEASON TO...

Write about your college! OK, it might sound strange, but stick with us...this is going to be fun. Don't you wish that when you went away to college someone had opened your eyes a little about what your school was really like or what kind of challenges you would actually face?

This is your chance to re-ignite those college memories, whether it was last year or last decade. All you have to do is design a page about university life and send it to us at collegepark@geocities.com. We will select cool pages to create a college catalog for prospective students to learn about college life and your academic institution.

Frat party warnings are OK, but show some school spirit and brag about your college! For a few examples that we found in our Featured Pages, please visit:

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EXHIBIT F

<http://www.geocities.com/CollegePark/5014/Un.html>
<http://www.geocities.com/CollegePark/1802/index2.html>

 ALL ABOUT AUTOS

Hey Auto fans ... take a drive through the new GeoCities Car Center. Whether you're in the market for a new set of wheels, looking for expert advice, or just want to get the latest auto and racing news, we've got it from our friends at Auto-By-Tel. Check it out today at:
http://www.geocities.com/MotorCity/auto_center.html

 ENJOYING THE RIDE: GEOGUIDE

The GeoGuide is now served up on more than 100,000 pages day! And, it's not too late to win that computer, or a digital camera. To enter The Great GeoGuide Sweepstakes, please visit:
<http://www.geocities.com/homesread/geoguide/> and put a Java or GIF GeoGuide on your page.

 GEOCITIES IS STYLIN!

Drop by our newest neighborhood Fashion Avenue. Take a tour through the world of high fashion. Get weekly fashion and beauty news, browse through some great home pages, share tips and advice with fellow GeoCitizens, and while you're there don't forget to stop by the Avon Beauty Counter at:
http://www.avon.com/shopping/drill.cgi/D?a=login&f=geo_avon and order your favorite products online.

 EXPLORE PLANET DIRECT

A while back we told you about an exciting new feature that will bring even more visitors to your GeoCities Web site. Since then, Planet Direct, one of our sister companies, has launched its enhanced and expanded personal Web service, featuring powerful, easy-to-use features and content relevant to you, your interests and your community. Visit <http://my.planetdirect.com> and you could win cool prizes like a BMW Z1 roadster.

 FEATURES

-- The SoundOff section is growing by the second. Visit <http://www.geocities.com/SoundOff/> and speak out on Mike Tyson's punishment, the truth behind Roswell, exploring Mars and more!

-- Are you keeping track of who is visiting your home page and when? Get a GUESTBOOK at http://www.geocities.com/homesread/guest_book.html and start learning more about your guests.

-- Chat this way <http://www.geocities.com/BHI/newchat.html>. We've introduced new chat rooms into 10 neighborhoods and will soon be rolling out more new chat features. We have new HTML-based chat and personal chat rooms on the horizon. Tell us what you think -- send e-mail to chat@geocities.com with your comments about the new chat environment.

Complaint

EXHIBIT F

-- Do you think your site deserves fame and fortune? Then, apply for the Featured Page Program. Featured Pages are highlighted on the main page of every neighborhood and are eligible for our Enhanced GeoRewards program, where you can earn GeoPoints for drawing traffic to your site. Go to <http://www.geocities.com/homestead/contribute.html> for details, or talk to one of your Community Leaders.

STUFF YOU NEED TO KNOW

Want to read about the most interesting sites at GeoCities?
<http://www.geocities.com/alist/>

Want to promote your page?
<http://www.geocities.com/homestead/promote.html>

Looking for more traffic?
<http://www.geocities.com/companies/profile.html>

Don't want to get this newsletter anymore?
<http://www.geocities.com/homestead/homeprof.html>
(While you're there, fill out the other stuff too)

Want to reach one of your Community Leaders?
Go to the main page of your neighborhood
Click on the COMMUNITY LEADERS link on the left

Need help?
<http://www.geocities.com/help/>
http://www.geocities.com/BHT/resource_guide.html

Want to provide feedback to GeoCities?
<http://www.geocities.com/contact/>
Anytime. Anything, complimentary or critical.
We want to hear from you.

.....
GeoCities
<http://www.geocities.com>

Complaint

127 F.T.C.

EXHIBIT G

<http://www.geocities.com/EnchantedForest/3696/Geokidz.htm>

Official GeoCities GeoKidz Club Membership Request Form

If you have any problems responding to this form,
 (or if you are not using a forms-capable browser)
 you may email your response to this form to: geokidz@geocities.com.
Parents can also use the above email link to email us if they'd like to.

Join the Official GeoCities GeoKidz Club!
 Fill in the information here and send in the form.
 Please fill in everything. Don't leave anything empty.

PLEASE GET YOUR PARENTS' PERMISSION to join!

This club is free. There is no cost to join.
 All ages welcome - Kidz and Parents alike!

You *must* have a home page on GeoCities to be a member.
Please make sure you include your GeoCities home page address

Thank you!

Name:

Age:

Email Address:

If you don't have a GeoCities Email address yet, give us
 your current email address and then let us know the GeoCities
 address when you activate it. **But don't leave this blank.** Thanks!

Email address:

Alternate Email address:

EXHIBIT G

EXHIBIT G

http://www.geocities.com/cncantest/ores/1696/Geokidz.htm

You must have a home page in GeoCities to join the club. If you don't have one already, please let us know what it is as soon as you get it or we won't be able to sign you up.

GeoCities Home Page address:

http://www.geocities.com/

Are you a:

Boy

Girl

Do you have your parents' permission to join the Official GeoCities GeoKidz Club?

Yes

No

Will your parents Email us and tell us we have their permission?

Yes, my parents will Email you

No, my parents wont email you

Some of your Interests and hobbies:

Text input field with scrollbars and a small arrow icon on the right side.

Some of your favorite subjects at school:

Text input field with scrollbars and a small arrow icon on the right side.

Some subjects at school you don't like:

Text input field with scrollbars and a small arrow icon on the right side.

Some of your favorite books, magazines:

Text input field with scrollbars and a small arrow icon on the right side.

Some of your favorite television shows:

Text input field with scrollbars and a small arrow icon on the right side.

Complaint

127 F.T.C.

EXHIBIT G

-----COMPLAINT UNDER 15 U.S.C. § 562(k)-----

Some of your favorite music, bands, etc.:

	▶
	▶

Some of your favorite movies:

	▶
	▶

Some of your favorite games (board games, computer games, outdoor games, ALL games):

	▶
	▶

We're not putting up a whole bunch of rules and regulations, but the general GeoCities guidelines, especially for the Enchanted Forest will apply here. By sending in this form, you agree to be respectful of others and not break GeoCities and Enchanted Forest rules.

Thank you for joining the Official GeoCities GeoKidz Club!

You'll hear back from us very soon! **If you don't hear from us within 2 - 3 days, please email us.** Some people have left out their names and email addresses so we can't answer!

We're looking forward to having you in the GeoCities GeoKidz Club!

Ready to join? Click this button!	Clear and Reset
-----------------------------------	-----------------

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EXHIBIT H

[COMMUNITY LEADERS](#)

[SEARCH](#)

[UTILITIES](#)

[HELP](#)



Browse Great Pages Here	Join This Neighborhood	Visit Our Commercial Sponsors
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Tell us how to improve your neighborhood

SAY HI TO OUR NEW PARTNERS

We're pleased to welcome [RockVillage](#), [Earwig](#), [CountrySpotlight](#) and [GroovePlanet](#) to our GeoPartners program. These sites are affiliated with over 90 radio stations around the country. Tune in today!



\$10 off on your first purchase of \$50 or more at [Internet Shopping Network](#)

Shop for [computer products](#), [flowers](#) or [GeoCities logo items](#) ... or just play!

Read messages from your neighbors in the [EnchantedForest newsletter](#). Contribute your own stories, birthday wishes and more!

Have you ever given your dad an OUTRAGEOUS Fathers Day gift? Tell us about it for our Father's Day Contest! All entrants will get this graphic to put on their pages to show off.



Join us in our quest to name our Prince and Princess, the mascots of Enchanted Forest! [Enter the contest](#) to name them by June 7th, and win 25 GeoPoints.

Please take a moment to read the [special content guidelines](#) relating to the EnchantedForest neighborhood.

Featured Enchanted Forest Homesteaders

Reload the page to see new features

[EnchantedForest/3115](#)

Kids Kewl Picks is a site by and for kids.

[EnchantedForest/3787](#)

Castle Infinity connects kids from around the world to one magical castle.

[EnchantedForest/6864](#)

Bryan is a San Francisco 49'ers fanatic.

[EnchantedForest/1534](#)

Ian's Cyber Place: a six-year-old's life.

Does your site belong here? [Tell us!](#)

Complaint

127 F.T.C.

EXHIBIT I

<http://www.geocities.com/EnchantedForest/Glade/3890/hform.htm><http://www.geocities.com/EnchantedForest/Glade/3890/hform.htm>**ENTER THE HOLIDAY SEASON HOMEPAGE
CONTEST HERE**

Please tell us your name:

(Do not hit return)

Tell us the address (URL) of your special holiday page:

PLEASE ENTER THE URL AS

<http://www.geocities.com/EnchantedForest/????/????/>

Fill in your own information where the question marks are.

(Do not hit return)

What is your e-mail address?:

(Do not hit return)**PLEASE BE SURE THAT YOUR HOLIDAY SEASONS PAGE IS READY
FOR DECEMBER 15TH.** GET YOUR FREE HOME PAGE [HERE](#)

EXHIBIT I

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

1. Respondent GeoCities, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office or principal place of business located at 1918 Main Street, Suite 300, Santa Monica, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. "*Child*" or "*children*" shall mean a person of age twelve (12) or under.
2. "*Parents*" or "*parental*" shall mean a legal guardian, including, but not limited to, a biological or adoptive parent.
3. "*Personal identifying information*" shall include, but is not limited to, first and last name, home or other physical address (e.g., school), e-mail address, telephone number, or any information that identifies a specific individual, or any information which when tied to the above becomes identifiable to a specific individual.
4. "*Disclosure*" or "*disclosed to third party(ies)*" shall mean (a) the release of information in personally identifiable form to any other individual, firm, or organization for any purpose or (b) making publicly available such information by any means including, but not limited to, public posting on or through home pages, pen pal services, e-mail services, message boards, or chat rooms.
5. "*Clear(ly) and prominent(ly)*" shall mean in a type size and location that are not obscured by any distracting elements and are sufficiently noticeable for an ordinary consumer to read and comprehend, and in a typeface that contrasts with the background against which it appears.
6. "*Archived*" database shall mean respondent's off-site "back-up" computer tapes containing member profile information and GeoCities Web site information.
7. "*Electronically verifiable signature*" shall mean a digital signature or other electronic means that ensures a valid consent by requiring: (1) authentication (guarantee that the message has come from the person who claims to have sent it); (2) integrity (proof that the message contents have not been altered, deliberately or accidentally, during transmission); and (3) non-repudiation (certainty that the sender of the message cannot later deny sending it).
8. "*Express parental consent*" shall mean a parent's affirmative agreement that is obtained by any of the following means: (1) a signed statement transmitted by postal mail or facsimile; (2) authorizing a charge to a credit card via a secure server; (3) e-mail accompanied by an electronically verifiable signature; (4) a procedure that is specifically authorized by statute, regulation, or guideline

issued by the Commission; or (5) such other procedure that ensures verified parental consent and ensures the identity of the parent, such as the use of a reliable certifying authority.

9. Unless otherwise specified, "*respondent*" shall mean GeoCities, its successors and assigns and its officers, agents, representatives, and employees.

10. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any online collection of personal identifying information from consumers, in or affecting commerce, shall not make any misrepresentation, in any manner, expressly or by implication, about its collection or use of such information from or about consumers, including, but not limited to, what information will be disclosed to third parties and how the information will be used.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any online collection of personal identifying information from consumers, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the identity of the party collecting any such information or the sponsorship of any activity on its Web site.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal identifying information from children, in or affecting commerce, shall not collect personal identifying information from any child if respondent has actual knowledge that such child does not have his or her parent's permission to provide the information to respondent. Respondent shall not be deemed to have actual knowledge if the child has falsely represented that (s)he is not a child and respondent does not knowingly possess information that such representation is false.

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal identifying information, in or affecting commerce, shall provide clear and prominent notice to consumers, including the parents of children, with respect to respondent's practices with regard to its collection and use of personal identifying information. Such notice shall include, but is not limited to, disclosure of:

A. What information is being collected (*e.g.*, "name," "home address," "e-mail address," "age," "interests");

B. Its intended use(s);

C. The third parties to whom it will be disclosed (*e.g.*, "advertisers of consumer products," mailing list companies," "the general public");

D. The consumer's ability to obtain access to or directly access such information and the means by which (s)he may do so;

E. The consumer's ability to remove directly or have the information removed from respondent's databases and the means by which (s)he may do so; and

F. The procedures to delete personal identifying information from respondent's databases and any limitations related to such deletion.

Such notice shall appear on the home page of respondent's Web site(s) and at each location on the site(s) at which such information is collected.

Provided that, respondent shall not be required to include the notice at the locations at which information is collected if such information is limited to tracking information and the collection of such information is described in the notice required by this Part.

Provided further that, for purposes of this Part, compliance with all of the following shall be deemed adequate notice: (a) placement of a clear and prominent hyperlink or button labeled **PRIVACY NOTICE** on the home page(s), which directly links to the privacy notice screen(s); (b) placement of the information required in this Part clearly and prominently on the privacy notice screen(s), followed on the same screen(s) with a button that must be clicked on to make it disappear; and (c) at each location on the site at which any personal

identifying information is collected, placement of a clear and prominent hyperlink on the initial screen on which the collection takes place, which links directly to the privacy notice and which is accompanied by the following statement in bold typeface:

NOTICE: We collect personal information on this site. To learn more about how we use your information click here.

V.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal identifying information from children, in or affecting commerce, shall maintain a procedure by which it obtains express parental consent prior to collecting and using such information.

Provided that, respondent may implement the following screening procedure that shall be deemed to be in compliance with this Part. Respondent shall collect and retain certain personal identifying information from a child, including birth date and the child's and parent's e-mail addresses (hereafter "screening information"), enabling respondent to identify the site visitor as a child and to block the child's attempt to register with respondent without express parental consent. If respondent elects to have the child register with it, respondent shall: (1) give notice to the child to have his/her parent provide express parental consent to register; and/or (2) send a notice to the parent's e-mail address for the purpose of obtaining express parental consent. The notice to the child or parent shall provide instructions for the parent to: (1) go to a specific URL on the Web site to receive information on respondent's practices regarding its collection and use of personal identifying information from children and (2) provide express parental consent for the collection and use of such information. Respondent's collection of screening information shall be by a manner that discourages children from providing personal identifying information in addition to the screening information. All personal identifying information collected from a child shall be held by respondent in a secure manner and shall not be used in any manner other than to effectuate the notice to the child or parent, or to block the child from further attempts to register or

otherwise provide personal identifying information to respondent without express parental consent. The personal identifying information collected shall not be disclosed to any third party prior to the receipt of express parental consent. If express parental consent is not received by twenty (20) days after respondent's collection of the information from the child, respondent shall remove all such personal identifying information from its databases, except such screening information necessary to block the child from further attempts to register or otherwise provide personal identifying information to respondent without express parental consent.

VI.

Nothing in this order shall prohibit respondent from collecting personal identifying information from children or from using such information, as specifically permitted in the Children's Online Privacy Protection Act of 1998 (without regard to the effective date of the Act) or as such Act may hereafter be amended; regulations or guides promulgated by the Commission; or self-regulatory guidelines approved by the Commission pursuant to the Act.

VII.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall provide a reasonable means for consumers, including the parents of children, to obtain removal of their or their children's personal identifying information collected and retained by respondent and/or disclosed to third parties, prior to the date of service of this order, as follows:

A. Respondent shall provide a clear and prominent notice to each consumer over the age of twelve (12) from whom it collected personal identifying information and disclosed that information to CMG Information Services, Inc., describing such consumer's options as stated in Part VII.C and the manner in which (s)he may exercise them.

B. Respondent shall provide a clear and prominent notice to the parent of each child from whom it collected personal identifying information prior to May 20, 1998, describing the parent's options as stated in Part VII.C and the manner in which (s)he may exercise them.

C. Respondent shall provide the notice within thirty (30) days after the date of service of this order by e-mail, postal mail, or

facsimile. Notice to the parent of a child may be to the e-mail address of the parent and, if not known by respondent, to the e-mail address of the child. The notice shall include the following information:

1. The information that was collected (*e.g.*, "name," "home address," "e-mail address," "age," "interests"); its use(s) and/or intended use(s); and the third parties to whom it was or will be disclosed (*e.g.*, "advertisers of consumer products," "mailing list companies," "the general public") and with respect to children, that the child's personal identifying information may have been made public through various means, such as by publicly posting on the child's personal home page or disclosure by the child through the use of an e-mail account;

2. The consumer's and child's parent's right to obtain access to such information and the means by which (s)he may do so;

3. The consumer's and child's parent's right to have the information removed from respondent's or a third party's databases and the means by which (s)he may do so;

4. A statement that children's information will not be disclosed to third parties, including public posting, without express parental consent to the disclosure or public posting;

5. The means by which express parental consent may be communicated to the respondent permitting disclosure to third parties of a child's information; and

6. A statement that the failure of a consumer over the age of twelve (12) to request removal of the information from respondent's databases will be deemed as approval to its continued retention and/or disclosure to third parties by respondent.

D. Respondent shall provide to consumers, including the parents of children, a reasonable and secure means to request access to or directly access their or their children's personal identifying information. Such means may include direct access through password protected personal profile, return e-mail bearing an electronically verifiable signature, postal mail, or facsimile.

E. Respondent shall provide to consumers, including the parents of children, a reasonable means to request removal of their or their children's personal identifying information from respondent's and/or the applicable third party's databases or an assurance that such

information has been removed. Such means may include e-mail, postal mail, or facsimile.

F. The failure of a consumer over the age of twelve (12) to request the actions specified above within twenty (20) days after his/her receipt of the notice required in Part VII.A shall be deemed to be consent to the information's continued retention and use by respondent and any third party.

G. Respondent shall provide to the parent of a child a reasonable means to communicate express parental consent to the retention and/or disclosure to third parties of his/her child's personal identifying information. Respondent shall not use any such information or disclose it to any third party unless and until it receives express parental consent.

H. If, in response to the notice required in Part VII.A, respondent has received a request by a consumer over the age of twelve (12) that respondent should remove from its databases the consumer's personal identifying information or has not received the express consent of a parent of a child to the continued retention and/or disclosure to third parties of a child's personal identifying information by respondent within twenty (20) days after the parent's receipt of the notice required in Part VII.B, respondent shall within ten (10) days:

1. Discontinue its retention and/or disclosure to third parties of such information, including but not limited to (a) removing from its databases all such information, (b) removing all personal home pages created by the child, and (c) terminating all e-mail accounts for the child; and

2. Contact all third parties to whom respondent has disclosed the information, requesting that they discontinue using or disclosing that information to other third parties, and remove the information from their databases.

With respect to any consumer over the age of twelve (12) or any parent of a child who has consented to respondent's continued retention and use of personal identifying information pursuant to this Part, such consumer's or parent's continuing right to obtain access to his/her or a child's personal identifying information or removal of such information from respondent's databases shall be as specified in the notice required by Part IV of this order.

I. Within thirty (30) days after the date of service of this order, respondent shall obtain from a responsible official of each third party to whom it has disclosed personal identifying information and from each GeoCities Community Leader a statement stating that (s)he has been advised of the terms of this order and of respondent's obligations under this Part, and that (s)he agrees, upon notification from respondent, to discontinue using or disclosing a consumer's or child's personal identifying information to other third parties and to remove any such information from its databases.

J. As may be permitted by law, respondent shall cease to do business with any third party that fails within thirty (30) days of the date of service of this order to provide the statement set forth in Part VII.I or whom respondent knows or has reason to know has failed at any time to (a) discontinue using or disclosing a child's personal identifying information to other third parties, or (b) remove any such information from their databases. With respect to any GeoCities Community Leader, the respondent shall cease the Community Leader status of any person who fails to provide the statement set forth in Part VII.I or whom respondent knows or has reason to know has failed at any time to (a) discontinue using or disclosing a child's personal identifying information to other third parties, or (b) remove any such information from their databases.

For purposes of this Part: "third party(ies)" shall mean each GeoCities Community Leader, CMG Information Services, Inc., Surplus Software, Inc. (Surplus Direct/Egghead Computer), Sage Enterprises, Inc. (GeoPlanet/Planetall), Netopia, Inc. (Netopia), and InfoBeat/Mercury Mail (InfoBeat).

VIII.

It is further ordered, That for the purposes of this order, respondent shall not be required to remove personal identifying information from its archived database if such information is retained solely for the purposes of Web site system maintenance, computer file back-up, to block a child's attempt to register with or otherwise provide personal identifying information to respondent without express parental consent, or to respond to requests for such information from law enforcement agencies or pursuant to judicial process. Except as necessary to respond to requests from law enforcement agencies or pursuant to judicial process, respondent shall

not disclose to any third party any information retained in its archived database. In any notice required by this order, respondent shall include information, clearly and prominently, about its policies for retaining information in its archived database.

IX.

It is further ordered, That for five (5) years after the date of this order, respondent GeoCities, and its successors and assigns, shall place a clear and prominent hyperlink within its privacy statement which states as follows in bold typeface:

NOTICE: Click here for important information about safe surfing from the Federal Trade Commission.

The hyperlink shall directly link to a hyperlink/URL to be provided to respondent by the Commission. The Commission may change the hyperlink/URL upon thirty (30) days prior written notice to respondent.

X.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying the following:

A. For five (5) years after the last date of dissemination of a notice required by this order, a print or electronic copy in HTML format of all documents relating to compliance with Parts IV through IX of this order, including, but not limited to, a sample copy of every information collection form, Web page, screen, or document containing any representation regarding respondent's information collection and use practices, the notice required by Parts IV, V and VII, any communication to third parties required by Part VII, and every Web page or screen linking to the Federal Trade Commission Web site. Each Web page copy shall be accompanied by the URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting information on the World Wide Web; and

Provided that, after creation of any Web page or screen in compliance with this order, respondent shall not be required to retain a print or electronic copy of any amended Web page or screen to the

extent that the amendment does not affect respondent's compliance obligations under this order.

B. For five (5) years after the last collection of personal identifying information from a child, all materials evidencing the express parental consent given to respondent.

XI.

It is further ordered, That respondent GeoCities, 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. 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.

XII.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall establish an "information practices training program" for any employee or GeoCities Community Leader engaged in the collection or disclosure to third parties of consumers' personal identifying information. The program shall include training about respondent's privacy policies, information security procedures, and disciplinary procedures for violations of its privacy policies. Respondent shall provide each such current employee and GeoCities Community Leader with information practices training materials within thirty (30) days after the date of service of this order, and each such future employee or GeoCities Community Leader such materials and training within thirty (30) days after (s)he assumes his/her position or responsibilities.

XIII.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation 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.

XIV.

It is further ordered, That respondent GeoCities, and its successors and assigns, shall, within sixty (60) days after 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.

XV.

This order will terminate on February 5, 2019, 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.

CONCURRING STATEMENT OF COMMISSIONER ORSON SWINDLE

I have voted in favor of final issuance of the consent order in this matter because its provisions are appropriate to remedy the alleged violations of the law by GeoCities, Inc. However, I want to emphasize that my support for these provisions as a remedy for alleged law violations in this particular case does not necessarily mean that I would support imposing these requirements on other commercial Internet sites through either legislation or regulation.

Complaint

127 F.T.C.

IN THE MATTER OF

ERNESTO L. RAMIREZ TORRES, D.M.D., ET. AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3851. Complaint, Feb. 5, 1999--Decision, Feb. 5, 1999*

This consent order, among other things, prohibits Ernesto L. Ramirez Torres, D.M.D., and other dentists in Juana Diaz, Coamo, and Santa Isabel, Puerto Rico, from fixing prices and engaging in a boycott in order to obtain higher reimbursement rates for dental services under Puerto Rico's government managed care plan.

Participants

For the Commission: *Steven Osnowitz, Gary Schorr, Michael Kades, Patricia Allen, David Pender, Robert Leibenluft, Anne Schenof, Daniel Ducore, Willard Tom, William Baer, Louis Silvia and Peter Guly.*

For the respondents: *Manuel Fernandez-Mejias, Hato Rey, Puerto Rico.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the individuals named above, hereinafter respondents, violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondents are dentists licensed and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico. These dentists constitute a majority of the dentists in the contiguous municipalities of Juana Diaz, Coamo, and Santa Isabel, Puerto Rico. The respondents are:

(a) Ernesto L. Ramirez Torres, D.M.D., Calle Comercio #105, Juana Diaz, Puerto Rico;

(b) Eric D. Frontera Roura, D.M.D., Calle Mario Braschi #7, Coamo, Puerto Rico;

(c) Ernesto L. Ramirez L.V., D.M.D., Comercio #105, Juana Diaz, Puerto Rico;

(d) Jaime R. Gierbolini Borelli, D.M.D., Jose I. Quinton #49, Coamo, Puerto Rico;

(e) Adolfo L. Gierbolini Borelli, D.M.D., P.O.Box 261, Coamo, Puerto Rico;

(f) Roberto L. Mateo Nieves, D.M.D., Calle Betances #12, Santa Isabel, Puerto Rico;

(g) Miguel E. Rivera Mateo, D.M.D., Haciendas del Monte, Calle 6 G-2, Santa Isabel, Puerto Rico;

(h) Hector Renta Melendez, D.M.D., Calle Florencio Santiago #41, Coamo, Puerto Rico;

(i) Migdalia E. Alvarado Burgos, D.M.D., Calle Santiago Iglesias #66, Coamo, Puerto Rico;

(j) Juan R. Rosario Ramos, D.M.D., Calle Comercio, Esq. Hostos #116-C, Juana Diaz, Puerto Rico;

(k) Jorge L. Rivera Rosario, D.M.D., Calle Munoz Rivera #47, Juana Diaz, Puerto Rico;

(l) Jorge C. Munoz Mattei, D.M.D., Munoz Rivera #54-C, Juana Diaz, Puerto Rico; and

(m) Raul D. Ortiz Escalera, D.D.S., Calle Baldoriaty #42, Coamo, Puerto Rico.

PAR. 2. The acts and practices of respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 3. The acts and practices of respondents herein alleged concern their agreements, combinations, and conspiracies to set the prices and other terms and conditions under which they would participate in Puerto Rico's program to provide medical, pharmaceutical, and dental services to the indigent (the "Reform"), established pursuant to the Puerto Rico Health Insurance Administration Act of 1993, Act No. 72, Article II. The Reform was intended to create a health insurance system to give high quality health care, including dental services, to indigent residents of Puerto Rico. The Reform is financed by the Commonwealth, Federal Medicaid, other applicable Federal funds, contributions by employers and individual employees, and income from privatization funds (such as leases and sales of

government-owned health care facilities). To date, the Reform has been implemented throughout much of Puerto Rico, although it is not yet in place in San Juan and its environs, Ponce, or Mayaguez. The Reform currently covers 1.1 million individuals among the over 3.8 million residents of Puerto Rico.

PAR. 4. The Administración de Seguros de Salud ("ASES"), a public corporation, implements and administers the Reform. ASES has divided Puerto Rico into regions, soliciting for each region bids from payers to organize and provide services for beneficiaries. ASES currently selects one payer with which to contract per region. That payer then contracts with providers, including hospitals, physicians, pharmacies, and dentists.

PAR. 5. After reviewing bids from several payers, ASES selected La Cruz Azul to administer the Southeast Region of the Reform beginning October, 1994. Initially the municipalities of Juana Diaz, Coamo, and Santa Isabel were not included in the Reform, but ASES included them in the Southeast Region on December 20, 1995. The combined population of Juana Diaz, Coamo, and Santa Isabel is approximately 106,000 residents.

PAR. 6. Absent agreements among competing dentists on the price and other terms upon which they will provide services to third-party payers, competing dentists decide individually whether to enter into contracts with third-party payers, and on the terms and conditions under which they are willing to enter into such contracts.

PAR. 7. Beginning in September of 1995, many of the respondents, in various combinations, sometimes including other dentists, met and discussed the impending expansion of the Southeast Region to Juana Diaz, Coamo, and Santa Isabel, and the terms and conditions under which they would agree to participate in the Reform. During these meetings, respondents agreed to the price terms that would cause them to participate in the Reform, and respondents agreed that they would convey their joint response to La Cruz Azul's request to each of them to participate in the Reform. Thereafter, a letter was prepared to present to La Cruz Azul, stating respondents' opposition to certain terms and conditions, including the amount of payment, which they wanted increased. The respondents threatened a boycott of the Reform program if La Cruz Azul did not address their demands. During this period of time, the respondents constituted a majority of dentists engaged in the practice of dentistry in the municipalities of Juana Diaz, Coamo, and Santa Isabel.

PAR. 8. On December 14, 1995, the respondents met with representatives of La Cruz Azul, and presented their letter with the terms and conditions under which they would participate in the Reform, including price terms, for which they sought higher reimbursement. During the meeting with La Cruz Azul, and while a representative of La Cruz Azul was not present, the respondents discussed among themselves their response to the terms and conditions for participation in the Reform, and agreed to nearly identical responses. Each respondent provided La Cruz Azul written notice that the dentist would not participate in the Reform under the terms offered by La Cruz Azul.

PAR. 9. The respondents refused to participate in the Reform upon its expansion to the areas of their practices on December 20, 1995, and communicated with the public that they would not accept its terms and conditions. Respondents in Juana Diaz placed an advertisement in a newspaper notifying the public that they would not participate, and some respondents conveyed their refusal to deal with the Reform in a radio interview. Because of this concerted refusal to deal, residents of Juana Diaz, Coamo, and Santa Isabel who were eligible under the Reform were not able to receive dental services from local providers.

PAR. 10. Dentists from Ponce advertised their willingness to accept Reform patients from Juana Diaz, Coamo, and Santa Isabel. In response, respondents sought to have the Colegio de Cirujanos Dentistas de Puerto Rico (the "Colegio") prohibit this advertising. The Colegio eventually found advertisements by one of the dentists from Ponce to be in violation of the Colegio's rules, and notified the dentist, who then stopped advertising that was targeted to residents of Juana Diaz, Coamo, and Santa Isabel.

PAR. 11. La Cruz Azul acceded to respondents' demand to raise the level of reimbursement of dental fees under the Reform. The respondents then agreed to participate in the Reform, effective February 1, 1996.

PAR. 12. The respondents have not integrated their businesses in any economically significant way, nor have they created any efficiencies that might justify the acts and practices described in paragraphs seven through eleven.

PAR. 13. The acts and practices of the respondents as described in this complaint have had the purpose, tendency, effects, and

capacity to restrain trade unreasonably and hinder competition in the provision of dental goods and services in Southeast Puerto Rico, in the following ways, among others:

1. To restrain competition among dentists;
2. To fix the compensation and other terms and conditions upon which dentists would deal with payers and participate in the Reform, thereby raising the cost of and limiting access to dental services to be funded by the Reform; and
3. To deprive the Commonwealth of Puerto Rico, payers, and consumers of the benefits of competition among dentists.

PAR. 14. The combination or conspiracy and the acts and practices of respondents, as herein alleged, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The acts, practices, and violations, or the effects thereof, as herein alleged, will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondents, named in the caption above, and the respondents having been furnished thereafter with a copy of the draft complaint which the Bureau of Competition 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 of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purpose 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 the complaint should issue stating its

charges in that respect, and having thereupon accepted the executed consent agreement and placed it on the public record for a period of sixty (60) days, and having duly considered the comment 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. Respondents are dentists licensed and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with their names and principal places of business located at the addresses listed below:

(a) Ernesto L. Ramirez Torres, D.M.D., Calle Comercio #105, Juana Diaz, Puerto Rico;

(b) Eric D. Frontera Roura, D.M.D., Calle Mario Braschi #7, Coamo, Puerto Rico;

(c) Ernesto L. Ramirez L.V., D.M.D., Calle Comercio #105, Juana Diaz, Puerto Rico;

(d) Jaime R. Gierbolini Borelli, D.M.D., Calle Jose I. Quinton #49, Coamo, Puerto Rico;

(e) Adolfo L. Gierbolini Borelli, D.M.D., P.O. Box 261, Coamo, Puerto Rico;

(f) Roberto L. Mateo Nieves, D.M.D., Calle Betances #12, Santa Isabel, Puerto Rico;

(g) Miguel E. Rivera Mateo, D.M.D., Haciendas del Monte, Calle 6 G-2, Santa Isabel, Puerto Rico;

(h) Hector Renta Melendez, D.M.D., Calle Florencio Santiago #41, Coamo, Puerto Rico;

(i) Migdalia E. Alvarado Burgos, D.M.D., Calle Santiago Iglesias #66, Coamo, Puerto Rico;

(j) Juan R. Rosario Ramos, D.M.D., Calle Comercio, Esq. Hostos # 16 Juana Diaz, Puerto Rico;

(k) Jorge L. Rivera Rosario, D.M.D., Calle Munoz Rivera #47, Juana Diaz, Puerto Rico;

(l) Jorge C. Munoz Mattei, D.M.D., Calle Munoz Rivera #54-C, Juana Diaz, Puerto Rico; and

(m) Raul D. Ortiz Escalera, D.D.S., Calle Baldoriaty #42, Coamo, Puerto Rico.

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

A. "*Payer*" means any person that purchases, reimburses for, or otherwise pays for all or part of any health care services for itself or for any other person. Payer includes, but is not limited to, any health insurance company; preferred provider organization; prepaid hospital, medical, or other health service plan; health maintenance organization; government health benefits program; employer or other person providing or administering self-insured health benefits programs; and patients who purchase health care for themselves.

B. "*Person*" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

C. "*Provider*" means any person that supplies health care services to any other person, including, but not limited to, dentists, physicians, pharmacies, hospitals, and clinics.

D. "*Qualified risk-sharing joint arrangement*" means an arrangement to provide dental services in which (1) the arrangement does not restrict the ability, or facilitate the refusal, of providers participating in the arrangement to deal with payers individually or through any other arrangement, and (2) all providers participating in the arrangement share substantial financial risk from their participation in the arrangement through: (a) the provision of services to payers at a capitated rate; (b) the provision of services for a predetermined percentage of premium or revenue from payers; (c) the use of significant financial incentives (*e.g.*, substantial withholds) for its participating providers, as a group, to achieve specified cost-containment goals; or (d) the provision of a complex or extended course of treatment that requires the substantial coordination of care by different types of providers offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual patient can vary greatly due to

the individual patient's condition, the choice, complexity, or length of treatment, or other factors.

E. "*Qualified clinically-integrated joint arrangement*" means an arrangement to provide dental services in which (1) the arrangement does not restrict the ability, or facilitate the refusal, of providers participating in the arrangement to deal with payers individually or through any other arrangement, and (2) all providers participating in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the providers participating in the arrangement, in order to control costs and ensure quality of the services provided through the arrangement.

F. "*Reimbursement*" means any payment, whether cash or non-cash, or other benefit received for the provision of dental goods and services.

II.

It is further ordered, That each respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of dental goods and services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, cease and desist from:

A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding to:

1. Negotiate on behalf of any other dentist with any payer or provider;
2. Deal or refuse to deal with, boycott or threaten to boycott, any payer or provider; or
3. Determine any terms, conditions, or requirements upon which dentists deal with any payer or provider, including, but not limited to, terms of reimbursement.

B. Encouraging, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited if the person were subject to this order.

Provided that nothing in this order shall be construed to prohibit any agreement or conduct by any respondent that is reasonably necessary to form, facilitate, manage, operate, or participate in:

(a) A qualified risk-sharing joint arrangement; or

(b) A qualified clinically integrated joint arrangement, if the applicable respondent has provided the prior notification(s) as required by this paragraph (b). Such prior notification must be filed with the Secretary of the Commission at least thirty (30) days prior to forming; facilitating; managing; operating; participating in; or taking any action, other than planning, in furtherance of any joint arrangement requiring such notice ("first waiting period"), and shall include for such arrangement the identity of each participant, the location or area of operation, a copy of the agreement and any supporting organizational documents, a description of its purpose or function, a description of the nature and extent of the integration expected to be achieved and the anticipated resulting efficiencies, an explanation of the relationship of any agreement on reimbursement to furthering the integration and achieving the expected efficiencies, and a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from such agreement(s). If, within the first waiting period, a representative of the Commission makes a written request for additional information, the applicable respondent shall not form; facilitate; manage; operate; participate in; or take any action, other than planning, in furtherance of such joint arrangement until thirty (30) days after substantially complying with such request for additional information ("second waiting period") or such shorter waiting period as may be granted by letter from the Bureau of Competition.

III.

It is further ordered, That each respondent shall, within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint, as well as certified Spanish translations thereof, to each payer or provider who, at any time since January 1, 1995, has communicated any desire, willingness, or interest in contracting for dentists' goods and services with the respondent.

IV.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final, each respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order.

B. One (1) year from the date this order becomes final, annually for the next five (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, each 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 and III of this order.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, each 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, calendars, and other records and documents in the possession or under the control of respondent relating to any matter contained in this order; and

B. Upon five business days' notice to a respondent, and without restraint or interference from that respondent, to interview that respondent or any employee or representative of that respondent.

VI.

It is further ordered, That this order shall terminate on February 5, 2019.

IN THE MATTER OF
ALLEGHANY CORPORATION

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

Docket C-3335. Consent Order, July 11, 1991—Modifying Order, Feb. 11, 1999

This order reopens a 1991 consent order -- that required Alleghany Corporation to divest certain rights and interests in title plants and back plants to a Commission-approved acquirer, and, for ten years, to obtain Commission approval before acquiring certain related assets -- and this order modifies the consent order by relieving Alleghany of its compliance obligations, under paragraphs VI, VII, VIII.B., IX and X, since Alleghany restructured itself and is no longer engaged in the title plant/back plant business.

Participants

For the Commission: *Pamela Gill and Roberta Baruch.*

For the respondents: *John C. Christie, Jr., Hale & Dorr,*
Washington, D.C.

ORDER REOPENING AND MODIFYING ORDER

On October 14, 1998, respondent Alleghany Corporation ("Alleghany") filed a Petition to Reopen and Modify Consent Order ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. In its Petition, Alleghany requests that the Commission reopen the order in Docket No. C-3335 ("Order") to relieve Alleghany of its compliance obligations under Paragraphs VI, VII, VIII.B., IX and X, the only remaining operative paragraphs of the Order.¹ The Petition was placed on the public record for thirty days pursuant to Section 2.51(c) of the Commission's Rules of Practice and Procedure. Paragraph VI of the Order prohibits Alleghany from acquiring for ten years without prior notice to the Commission any stock, share capital, or equity

¹ In support of its Petition, Alleghany provided the affidavits of Robert M. Hart, General Counsel of Alleghany and Thomas J. Adams, III, General Corporate Counsel of Chicago Title Corporation ("Chicago Title") and of Chicago Title and Trust Company ("CT&T") ("Hart Affidavit" and "Adams Affidavit").

interest in any concern that in turn has any direct or indirect ownership interest in a title plant or back plant servicing the same area, or acquire from any concern any assets (other than in the ordinary course of business) of, or ownership interest in, any existing title plant or back plant servicing any geographic area for which Alleghany has any ownership interest in a title plant or back plant servicing the same area. Paragraph VII of the Order exempts from the requirements of Paragraph VI certain acquisitions. Paragraph VIII.B. requires Alleghany to file annual reports respecting its compliance with the Order. Paragraph IX provides that the Commission shall have access to specified records and officers and personnel of Alleghany. Paragraph X requires that Alleghany provide prior notice of any changes that may affect compliance obligations arising out of the Order.² These Order provisions expire by their own terms on July 23, 2001, ten years after the Order became final.³ Alleghany asserts that the purpose of the Order is to preserve competition in the provision of title plant/back plant information. Since Alleghany is no longer, directly or indirectly, in the title plant/back plant business, the prohibitions and requirements of the Order as to Alleghany serve no useful purpose. According to Alleghany, the Order now places responsibility upon Alleghany for the actions or inaction of other firms that Alleghany, since the spin-off, no longer controls.⁴

The changes of fact alleged by Alleghany include the fact that Alleghany restructured itself by forming an independent publicly-traded corporation named Chicago Title Corporation ("Chicago Title"). Chicago Title includes Alleghany's title insurance and real estate related services business. On June 17, 1998, Alleghany spun-off Chicago Title ("Spin-Off").⁵ The Spin-Off was accomplished through a pro rata distribution to Alleghany stockholders; specifically, three shares of Chicago Title stock were distributed for each share of

² 114 FTC 385 (1991). By an order issued June 27, 1996, the Commission reopened and modified the Order resulting in, among other things, certain modifications of the prior notice provisions contained in paragraph VI of the original Order. 121 FTC 934 (1996).

³ Order ¶¶ VI, VII, VIII.B., IX, X.

⁴ Petition at 5.

⁵ Prior to the Spin-Off, Alleghany was the sole owner of Chicago Title and Trust Company ("CT&T"). CT&T is the sole owner of Chicago Title Insurance Company ("Chicago Title Insurance"), Tigor Title Insurance Company of California ("Tigor") and Security Union Title Insurance Company ("STI"). Chicago Title Insurance, Tigor and STI are engaged in the title plant/back plant business. Chicago Title is a newly formed holding company for these former Alleghany subsidiaries.

Alleghany common stock outstanding as of the record date of June 10, 1998. On the effective date of the Spin-Off, the largest individual stockholder of Alleghany held no more than 12.5% of the total amount of Alleghany stock outstanding. None of the executive officers of Chicago Title holds any present position with Alleghany. The Board of Directors of Chicago Title consists of fourteen directors. Although certain of these Board members hold positions with Alleghany, the substantial majority of the Board has no connection with Alleghany. Only two directors are executive officers of Alleghany, and one of those directors is also a director of Alleghany. Two other directors are also directors of Alleghany and a third is an executive officer of Alleghany Asset Management, Inc. ("AAM"), an Alleghany subsidiary which has never been in the business of title insurance. The remaining directors are either officers of Chicago Title or outside directors unaffiliated in any way with Alleghany.⁶

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition.⁷

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so

⁶ See Petition at 2-5; ¶¶ 3-11 Hart Affidavit; ¶¶ 1-6 Adams Affidavit. Prior to the Spin-Off, AAM was a subsidiary of CT&T which conducted the financial services business of CT&T. CT&T distributed the stock of AAM to Alleghany because Alleghany chose to retain the financial services business, while it spun off the title insurance and real estate services business. While Alleghany and Chicago Title have entered into certain administrative agreements to define their ongoing relationship, and to allocate responsibility for past obligations and certain obligations that might arise in the future, these agreements do not give Alleghany responsibility for management of Chicago Title or its subsidiaries. Petition at 4.

⁷ S. Rep. No. 96-500, 96th Cong., 1st Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter"). See also *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification.⁸

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order."⁹ If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.¹⁰ However, if the Commission denies relief, it must provide a sufficient explanation of its reasons for the denial.¹¹

Upon consideration of Alleghany's request and other information, the Commission finds pursuant to Section 2.51 of the Commission's Rules of Practice and Procedure, that changed conditions of fact warrant reopening and modification of the Order to set aside the aforementioned provisions as to Alleghany. As a result of the Spin-Off, Alleghany is no longer engaged in the title plant/back plant business which gave rise to the Order and has stated that it has no present intent to re-enter that business in the future. In addition, Alleghany is not in a position to oversee the management of Chicago Title. Therefore, there are no longer competitive concerns that would justify the need for prior notice for any acquisition that Alleghany

⁸ Alleghany has based its request upon changed conditions of fact and not the public interest standard for reopening and modifying orders.

⁹ S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify).

¹⁰ *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

¹¹ *United States v. Louisiana-Pacific Corp.*, 754 F.2d 1445 (9th Cir. 1985).

may wish to make of a title plant/back plant business. In relieving Alleghany of its compliance obligations under the aforementioned paragraphs, the Commission notes that Chicago Title, as a successor corporation, remains bound by the terms of the Order for its duration and that Chicago Title has submitted an affidavit specifically acknowledging that it is bound by the Order as successor.¹²

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened and that the Commission's Order be, and it hereby is, modified to relieve Alleghany of its compliance obligations under Paragraphs VI, VII, VIII.B., IX and X as of the effective date of this order.

¹² Petition at 6; ¶ 6 Adams Affidavit.

IN THE MATTER OF
LAFARGE, S.A., 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-3852. Complaint, Feb. 12, 1999--Decision, Feb. 12, 1999

This consent order, among other things, prohibits the respondents from entering into any contract or agreement relating to the acquisition by Lafarge of any of the Holnam Acquisition Assets, in which the amount of any payment made after the closing of the acquisition is calculated by reference to or dependent upon the quantity of cement produced or sold by Lafarge in any market in the states of Washington or Oregon.

Participants

For the Commission: *Joseph Lipinsky, John Kirkwood, Patricia Hensley, Shane Woods, Maxine Stansell, Virginia Davidson, Robert Schroeder, Charles Harwood, Kenneth Libby, Daniel Ducore, William Baer, Daniel O'Brien, J. Elizabeth Callison and Roger Boner.*

For the respondents: *Richard Favretto, Mayer, Brown & Platt, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Lafarge, S.A., through an entity it controls, Lafarge Corporation (collectively "respondents"), has entered into an agreement to acquire cement production assets of Holnam, Inc., that the agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that the acquisition, if consummated, would result in a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

A. THE RESPONDENTS

1. Respondent Lafarge, S.A., is a corporation organized, existing and doing business under and by virtue of the laws of France with its principal executive offices located at 61 rue des Belles Feuilles, F-

75782 Paris, France. Lafarge, S.A., is an international corporation engaged in the manufacture and sale of building materials: cement, aggregates, concrete and concrete admixtures.

2. Respondent Lafarge Corporation ("Lafarge") is a corporation controlled by Lafarge, S.A., with its principal executive offices located at 11130 Sunrise Valley Drive, Reston, Virginia. Lafarge is one of North America's largest suppliers of cement for residential, commercial, institutional and public works construction. Lafarge operates 14 cement plants in the United States and Canada and had sales of \$1.6 billion in 1996.

3. Holnam, Inc. ("Holnam"), headquartered in Dundee, MI, is the number one supplier of cement for residential, commercial, institutional and public works construction in the United States. It operates 19 cement plants in North America and had sales of \$983 million in 1996. Holnam is a wholly-owned subsidiary of Holderbank Financiere Glaris, Ltd., a Swiss-based holding company.

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

B. THE PROPOSED ACQUISITION

5. On February 4, 1998, Lafarge and Holnam signed a Letter of Intent setting out the principal elements of a proposed transaction, whereby Lafarge would acquire Holnam's Seattle, Washington cement plant and related assets.

C. RELEVANT MARKET

6. The relevant line of commerce in which to analyze the effects of Lafarge's proposed acquisition of Holnam's Seattle cement plant and related assets is the manufacture, marketing and sale of portland cement.

7. Portland cement is the essential binding ingredient in concrete. Portland cement is a construction raw material that users mix with water and aggregates (crushed stone, sand, or gravel) to form concrete. Portland cement is a closely controlled chemical combination of calcium (normally from limestone), silicon, aluminum, iron and small amounts of other ingredients. It is made by quarrying, crushing and grinding the raw materials, burning them in

huge kilns at extremely high temperatures and finely grinding the resulting marble-size pellets (called "clinker") with gypsum into an extremely fine, usually gray, powder. Portland cement produced by one manufacturer is virtually indistinguishable from that manufactured by another.

8. The relevant geographic market in which to analyze the effects of Lafarge's proposed acquisition of Holnam's Seattle cement plant and related assets is the Puget Sound area of the state of Washington. This area, whose commercial center is the city of Seattle, consists of the portion of Washington state south from the Canadian border to the area just south of the state capital of Olympia (roughly halfway between Seattle and Portland, Oregon) and east from the Pacific Ocean to the Cascade mountains, plus two adjacent counties just east of the Cascade Mountains. The 13 counties in this market west of the Cascades are Clallum, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom, and the two counties east of the mountains are Chelan and Kittitas.

D. MARKET STRUCTURE

9. The Puget Sound market for portland cement is highly concentrated with only five suppliers -- Lafarge, Holnam, Ash Grove Cement Company, CBR Cement Corporation and Lone Star Northwest. The first four companies operate cement plants in or contiguous to the Puget Sound market. The fifth company, Lone Star Northwest, which is also a large user of cement, does not operate a cement plant in this area; instead, it imports cement into the market from Asia and South America and purchases cement from other suppliers in the market. Based on 1997 sales, the acquisition would increase the Herfindahl-Hirschman Index by 329 points from 2260 to 2589.

E. CONDITIONS OF ENTRY

10. Entry under any of the three methods that an entrant could use to enter the Puget Sound cement market -- building a cement plant, building a rail terminal or building a deep-sea importing terminal -- would not be timely, likely or sufficient to offset reductions in competition resulting from the acquisition.

11. The minimum viable scale of a cement plant likely precludes new entry. The prevailing cement production technology demands large-scale production, relative to market size, in order to operate efficiently. This technology has but a single use -- *i.e.*, the production of cement. It cannot economically be shifted toward another use. Therefore, all returns on investment must be derived from cement sales. Because economic entry would require that a new producer capture a significant market share from existing producers, and because the costs of such entry would be sunk, such entry is inherently risky. Current overcapacity, as well as announced expansions by existing producers, serve as additional deterrents to new entry.

12. *De novo* entry into the Puget Sound cement market by building a rail terminal is also very unlikely. Cement producers that are not currently in the Puget Sound market are at least 800 miles away. If these producers shipped cement to Puget Sound via rail, they would encounter a freight cost of approximately \$20 per ton. This cost, which is not faced by the current suppliers, would put the new entrant at a severe cost disadvantage. Moreover, these producers are currently operating their cement production plants at full capacity and selling this production near their plants. For these reasons, the price of cement would need to rise substantially from existing levels before another producer would find building a rail terminal economically attractive.

13. In order to enter the Puget Sound market via a deep-sea terminal, the entrant needs a terminal that can receive deep-drafting ocean-going vessels. Currently, and for the foreseeable future (more than two years), the commercial ports in the Puget Sound area do not have such sites available. Thus, *de novo* entry via a deep-sea terminal is unlikely.

F. EFFECTS OF THE PROPOSED ACQUISITION

14. The effects of the acquisition, if consummated, may be to substantially lessen competition in the Puget Sound cement market. Absent the proposed acquisition, Holnam likely would significantly increase the supply of cement to the market resulting in a decrease in cement prices. As originally structured, the proposed acquisition contains a contractual provision that imposes a significant cost penalty on Lafarge for quantities of cement produced at the Holnam cement plant in excess of the amount Holnam currently supplies to

the market. The proposed acquisition thus would give Lafarge the incentive to unilaterally restrict the output of cement at the Holnam plant in order to avoid the additional contractual cost. This would prevent any increase in supply of cement to the market and thus avoid a significant decrease in the price of cement in the Puget Sound market.

G. VIOLATIONS CHARGED

15. Lafarge's agreement to acquire Holnam's Seattle cement plant and related assets violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the proposed acquisition would, if consummated, violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Lafarge Corporation, a corporation controlled by Lafarge, S.A. (collectively "Lafarge"), of the Seattle cement plant and related assets of Holnam, Inc. ("Holnam"), and respondents having been furnished with a copy of a draft of complaint which, if issued by the Commission, would charge respondents with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; 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 the respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

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

1. Respondent Lafarge, S.A., is a corporation organized, existing and doing business under and by virtue of the laws of France with its principal executive offices located at 61 rue des Belles Feuilles, F-75782 Paris, France.

2. Respondent Lafarge Corporation is a corporation controlled by Lafarge, S.A., with its principal executive offices located at 11130 Sunrise Valley Drive, Reston, Virginia.

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. "*Respondents*" or "*Lafarge*" means Lafarge Corporation and Lafarge, S.A., their directors, officers, employees, agents, representatives, predecessors, successors, and assigns; their subsidiaries, divisions, groups and affiliates controlled by Lafarge Corporation and Lafarge, S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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

C. "*Holnam Acquisition Assets*" means the cement plant in Seattle, Washington, the cement distribution terminal in Vancouver, Washington, and the rock quarry in Twin Rivers, Washington, owned by Holnam, Inc., which has its office and principal place of business located at 6211 Ann Arbor Road, Dundee, Michigan; and the rock quarry on Texada Island, British Columbia, and the cement distribution terminal in New Westminster, British Columbia, owned by Holnam West Materials, Ltd., a subsidiary of Holnam, Inc.

II.

It is further ordered, That respondents shall not enter into any contract, agreement, or understanding, relating to the acquisition by Lafarge of any or all of the Holnam Acquisition Assets, in which the

amount of any payment by Lafarge or Holnam made after the closing of the acquisition is calculated by reference to, affected by, or dependent upon, directly or indirectly, the quantity of cement produced or sold by Lafarge in any market in the states of Washington or Oregon.

III.

It is further ordered, That, within thirty (30) days after the date this order becomes final or within thirty (30) days after the date on which respondents consummate the acquisition of any or all of the Holnam Acquisition Assets, whichever is later, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied with paragraph II of this order. Respondents shall include in their compliance report, among other things, a full description of the efforts made to comply with paragraph II of the order.

IV.

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

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondents 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 respondents relating to any matters contained in this order; and

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

Complaint

127 F.T.C.

IN THE MATTER OF
MERCK & CO., 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-3853. Complaint, Feb. 18, 1999--Decision, Feb. 18, 1999

This consent order, among other things, requires Merck & Co., Inc., a leading pharmaceutical manufacturer, and its subsidiary to maintain and make available an open formulary, containing information concerning the relative costs of drugs, and the respondents shall appoint or reappoint an independent committee with the authority to maintain an open formulary. In addition, the consent order prohibits Merck and Medco from sharing proprietary or other non-public information.

Participants

For the Commission: *Karen Berg, Veronica Kayne, Michael McNeely, Naomi Licker, Roberta Baruch, Willard Tom, William Baer, Charissa Wellford, J. Elizabeth Callison, Leslie Farber and Geary Gessler.*

For the respondents: *Michael Sohn, Arnold & Porter, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Merck & Co., Inc. ("Merck"), a corporation subject to the jurisdiction of the Commission, acquired Medco Containment Services, Inc., a corporation, now respondent Merck-Medco Managed Care, L.L.C. ("Medco"), a limited liability company subject to the jurisdiction of the Commission, that such acquisition violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, stating its charges as follows:

PARAGRAPH 1. Respondent Merck & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office located at One Merck Drive, Whitehouse Station, New Jersey.

PAR. 2. Respondent Merck is engaged in the development, production and sale of pharmaceutical products, including Mevacor and Zocor, which are "HMG-CoA reductase inhibitors" used for the treatment of high cholesterol, and Prinivil and Vasotec, which are "angiotensin converting enzyme inhibitors" ("ACE Inhibitors") used for the treatment of hypertension, high blood pressure, and heart disease.

PAR. 3. Respondent Merck-Medco Managed Care, L.L.C., is a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 100 Summit Avenue, Montvale, New Jersey.

PAR. 4. Respondent Medco provides pharmacy benefit management ("PBM") services to corporations, insurance companies, labor unions, Blue Cross Blue Shield organizations, federal and state employee plans, health maintenance organizations, and other members of the healthcare industry.

PAR. 5. On November 18, 1993, Merck acquired all the outstanding stock of Medco Containment Services, Inc., now doing business as Merck-Medco Managed Care, L.L.C., for approximately \$6.6 billion.

PAR. 6. At all times relevant herein, respondents Merck and Medco have been, and are now, 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 "corporation" and "commerce" are defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 7. A relevant line of commerce within which to analyze the effects of this acquisition is the provision of pharmacy benefit management ("PBM") services by national full-service PBM firms, and any narrower markets contained therein. Other relevant lines of commerce within which to analyze the effects of this acquisition are the development, manufacture and sale of pharmaceutical products in specific therapeutic categories, and narrower markets contained therein (including, but not limited to, the markets for HMG-CoA reductase inhibitors and angiotensin converting enzyme inhibitors).

PAR. 8. A relevant section of the country within which to analyze the effects of this acquisition is the United States.

PAR. 9. The relevant market for PBM services by national full-service PBM firms, and the relevant markets for pharmaceutical products in specific therapeutic categories, are moderately to highly concentrated.

PAR. 10. There are substantial entry barriers into the relevant markets. Even if new entry were to occur, it would take a long time, during which time substantial harm to competition could occur.

PAR. 11. As part of its PBM services, Medco maintains drug formularies, which are listings, by therapeutic category, of ambulatory drug products that are approved for use by the U.S. Food & Drug Administration, and which are used by pharmacies, physicians, third-party payors, and other persons, to guide in the prescribing and dispensing of pharmaceuticals. Merck pharmaceutical products are included on Medco's formularies. Medco also provides other PBM services, including claims processing, drug utilization review, pharmacy network administration, mail service, and related services. Medco negotiates with pharmaceutical manufacturers, including Merck, concerning placement of drugs on Medco's formularies, rebates, discounts, prices to be paid for pharmaceutical products purchased pursuant to pharmacy benefit plans managed by Medco, and similar matters. Medco thereby influences the prices of pharmaceutical products and the availability of such products under the Medco pharmacy benefit plans.

PAR. 12. The effects of Merck's acquisition of Medco may be substantially to lessen competition 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, as amended, 15 U.S.C. 45, in the following ways, among others:

- (a) Products of manufacturers other than Merck are likely to be foreclosed from Medco's formularies;
- (b) Reciprocal dealing, coordinated interaction, interdependent conduct, and tacit collusion among Merck and other vertically integrated pharmaceutical companies will be enhanced;
- (c) Medco will be eliminated as an independent negotiator of pharmaceutical prices with manufacturers;
- (d) Incentives of other manufacturers to develop innovative pharmaceuticals will be diminished; and

- (e) Pharmaceutical prices are likely to increase and the quality of the pharmaceuticals available to consumers is likely to diminish.

PAR. 13. Merck's acquisition of Medco violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the acquisition by respondent Merck and Company, Inc., of respondent Merck-Medco Managed Care, LLC, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, 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, 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 Merck & Company, Inc., ("Merck") is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at One Merck Drive, Whitehouse Station, New Jersey.

2. Respondent Merck-Medco Managed Care, LLC, ("Medco") is a limited liability company 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 100 Summit Avenue, Montvale, New Jersey.

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 the following definitions shall apply herein:

A. "*Merck*" means Merck & Co., Inc., its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Merck & Co., Inc., other than Medco or any other supplier of PBM Services owned or controlled by Merck; and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "*Medco*" means Merck-Medco Managed Care, L.L.C., its managers, directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Medco other than Merck; all other suppliers of PBM Services owned or controlled by Merck; and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. "*Respondents*" means both Merck and Medco.

D. "*Comission*" means the Federal Trade Commission.

E. "*Formulary*" means a listing, by therapeutic category, of branded and generic ambulatory drug products that are approved for use by the U.S. Food & Drug Administration ("FDA"), which listing is made available to pharmacies, physicians, third-party payors, or other persons involved in the healthcare industry, to guide in the prescribing or dispensing of pharmaceuticals. An "Open Formulary"

is a formulary that allows the inclusion of any ambulatory prescription drug product approved by the FDA for use in the United States, which the P&T Committee (defined below) determines is appropriate for inclusion in such formulary. For purposes of this order, an Open Formulary may provide truthful information stating or indicating the benefits of drugs on the formulary.

F. "*Pharmacy Benefit Management Services*" or "*PBM Services*" means services provided by a pharmacy benefits manager, such as formulary services, negotiation of rebates or discounts from pharmaceutical manufacturers, prescription claims processing, and drug utilization review.

G. "*Formulary Services*" means the provision, development, establishment, management or maintenance of a formulary by a pharmacy benefits manager. For purposes of this order, "management" of a formulary includes the negotiation and administration of rebate or discount agreements with pharmaceutical manufacturers for drugs included on a formulary.

H. "*Merck Non-Public Information*" means information not in the public domain that is provided to Merck by a supplier of PBM Services in connection with the supply of PBM Services and that directly or indirectly discloses actual, relative or proposed prices, discounts, rebates, other trade terms (including, but not limited to, returned goods arrangements, delivery arrangements, performance levels and guarantees) or similar terms or conditions of sale of such supplier of PBM Services.

I. "*Medco Non-Public Information*" means information not in the public domain that is provided to Medco by a manufacturer of prescription drug products in connection with the supply of prescription drug products and that directly or indirectly discloses actual, relative or proposed prices, discounts, rebates, other trade terms (including, but not limited to, returned goods arrangements, delivery arrangements, and payment terms or schedules) or similar terms or conditions of sale of such manufacturer of prescription drug products.

J. "*Auditors*" means 1) those employees of Merck whose primary responsibility is systematically inspecting, substantiating, and reporting on: the reliability and integrity of Merck's information; its compliance with laws and regulations; the safeguarding of its assets; the economical and efficient use of its resources; and the accomplishment of its established objectives and goals; and who regularly work

in the organizational subdivision of Merck with company-wide responsibility for performing these functions, and 2) employees of independent firms retained by Merck to perform one or more of these functions.

K. "*Pharmacy and Therapeutics Committee*" or "*P&T Committee*" means a group of healthcare professionals, such as doctors, pharmacists, and pharmacologists, appointed for the purpose of evaluating prescription drug products for inclusion on a formulary.

II.

It is ordered, That:

A. Within sixty (60) days from the date this order becomes final, Merck shall cause Medco to, and Medco shall, maintain, disclose the availability of, and make available an Open Formulary. Such Open Formulary shall provide information concerning the relative costs of drugs listed on such formulary and such information shall be truthful and accurate. As of the date this order becomes final, the Medco "Universal Formulary," a copy of which is attached hereto as Appendix A, shall be deemed an Open Formulary that complies with this paragraph II.A.

B. Within thirty (30) days from the date this order becomes final, Merck shall cause Medco to, and Medco shall, appoint or reappoint an independent P&T Committee with the authority and responsibility to maintain an Open Formulary as required by paragraph II.A above. Such P&T Committee shall make all decisions concerning the inclusion of drugs on such Open Formulary, the exclusion of drugs from such Open Formulary, and the clinical and therapeutic advice and evaluation appearing in such Open Formulary, and shall operate according to the following provisions:

1. Such P&T Committee shall consist of at least seven (7) members, all of whom shall be physicians, pharmacists, pharmacologists, or other healthcare professionals.

2. A majority of the P&T Committee shall consist of persons who are not employees, officers, directors, or agents of, and who have no financial interest in: (a) Merck, (b) Medco, or (c) any other person who has an ownership interest in Merck or Medco; provided, however, that Medco may pay P&T Committee members reasonable and customary consulting fees and/or honoraria for their services.

Any person who meets the criteria set forth in this subparagraph shall be deemed an "independent" member of the P&T Committee.

3. Each independent member of the P&T Committee shall have one vote on each decision of the P&T Committee.

4. All members of the P&T Committee who are employees, officers, directors, or agents of, or who have a financial interest in, Merck, Medco, or any other person who has an ownership interest in Merck or Medco, shall not be entitled to vote on decisions of the P&T Committee.

5. All independent members of the P&T Committee shall be appointed for two-year terms, except that the initial terms for approximately one-half of the independent members may be for fewer than two years if necessary to ensure that approximately one-half of the independent members' terms expire each year. At the expiration of their terms, or upon the occurrence of a vacancy, members may be reappointed, or new members may be appointed, by a majority of the then-appointed independent members of the P&T Committee.

6. No independent member of the P&T Committee may be removed except for cause by vote of a majority of the independent members of the P&T Committee.

7. In performing its responsibilities in maintaining the Open Formulary, the P&T Committee shall utilize only criteria relating to safety, efficacy, FDA approved indications, side effects, contra-indications, pharmacokinetics, patient compliance, physician follow-up requirements, effect on emergency room visits and hospitalizations, laboratory tests, cost, and similar objective factors. Such P&T Committee shall give no preference to the products of Merck, or of any other person with an ownership interest in Medco, except on the basis of such objective criteria.

8. Merck shall cause Medco to, and Medco shall, cover the reasonable costs and expenses of the P&T Committee, and Merck shall cause Medco to, and Medco shall, indemnify the P&T Committee against any losses or claims of any kind that might arise out of its performance of functions under this order, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith.

9. Medco shall maintain written records, for five (5) years from the date thereof, sufficient to show the basis and rationale for all P&T

Committee decisions relating to the exclusion of any products from the Open Formulary required by paragraph II.A.

C. Merck shall cause Medco to, and Medco shall, accept all discounts, rebates or other concessions offered solely in connection with the Open Formulary by any manufacturer, seller or distributor of pharmaceutical products included by the P&T Committee on the Open Formulary, and Merck shall cause Medco to, and Medco shall, ensure that all such discounts, rebates, or concessions are truthfully and accurately reflected in the information concerning the relative costs of drugs listed on such Open Formulary.

D. Nothing in this order shall preclude Medco from offering any formulary other than the Open Formulary to any customer.

E. Merck shall cause Medco to, and Medco shall, provide a copy of this order to each member of the P&T Committee on or before the date of each such person's appointment to such P&T Committee or on or before the date this order becomes final.

III.

It is further ordered, That:

A. Merck shall not provide, disclose, or otherwise make available to Medco any Merck Non-Public Information; and

B. Medco shall not provide, disclose, or otherwise make available to Merck any Medco Non-Public Information; provided, however:

1. For the purpose of obtaining legal advice, Medco may provide Medco Non-Public Information to lawyers for Merck, on condition that such lawyers for Merck shall not disclose such Medco Non-Public Information to any other person at Merck not expressly permitted to receive the information under this Section III.B. and shall not use such information for any purpose other than providing legal advice;

2. For the purpose of obtaining legal advice, Merck may provide Merck Non-Public Information to lawyers for Medco, on condition that such lawyers for Medco shall not disclose such Merck Non-Public Information to any other person at Medco not expressly permitted to receive the information under this Section III.B. and shall not use such information for any purpose other than providing legal advice; and

3. Medco may disclose to Merck auditors Medco Non-Public Information to the extent necessary to enable Merck auditors to perform their auditing duties in the ordinary course of business, on condition that such auditors shall not use such Non-Public Information for any other purpose and shall not disclose such Non-Public Information to any other person at Merck not expressly permitted to receive the information under this Section III.B.

IV.

It is further ordered, That Merck shall retain all documents and shall cause Medco to separately retain all documents, and Medco shall retain all documents, that relate to (A) the exclusion of any prescription drug product from the Open Formulary required by paragraph II.A above, (B) any preference or ranking accorded to any prescription drug product on the Open Formulary required by paragraph II.A above, or (C) statements or indications of discounts, rebates, or other concessions, as described in paragraph II.C above, for a period of five (5) years from the date such document is created or received.

V.

It is further ordered, That Merck and Medco shall disclose the availability of the Open Formulary as follows:

A. Merck shall cause Medco to, and Medco shall, disclose the availability of the Open Formulary to all persons who currently have an agreement with Medco concerning PBM Services or concerning the inclusion of pharmaceuticals on a formulary, by providing to each such person a written communication containing the following statement not later than ten (10) days after initiation of contact between Medco and such person regarding renewal or extension of such person's existing agreement with Medco:

Medco maintains an Open Formulary that allows, subject to the determination of an independent Pharmacy and Therapeutics Committee, the inclusion of any ambulatory prescription drug product approved by the FDA for use in the United States. This Open Formulary will be provided to you upon request.

B. For a period of five (5) years from the date this order becomes final, Merck shall cause Medco to, and Medco shall, provide in writing the statement set forth in paragraph V.A above to each prospective customer of Medco at the time of Medco's response to such prospective customer's request for proposal, or at the time of Medco's initial written formulary proposal to such prospective customer, whichever occurs first.

VI.

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

VII.

It is further ordered, That:

A. Within thirty (30) days after the date this order becomes final, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they have complied and are complying with paragraph II.B of this order.

B. Within sixty (60) days after the date this order becomes final, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they have complied and are complying with paragraph II.A of this order.

C. One (1) year from the date this order becomes final, annually thereafter on the anniversary of the date this order becomes final until the order terminates, and at other times as the Commission may require, respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this order.

D. Respondents shall include in their compliance reports a copy of the Open Formulary required by paragraph II.A above, and all written communications, internal memoranda, and reports and recommendations concerning compliance with the order.

VIII.

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:

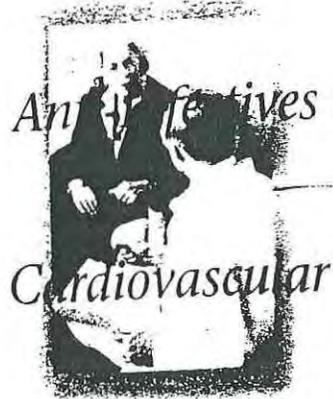
A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this order; and

B. Upon five days' notice to respondents and without restraint or interference from them, to interview officers, directors, or employees of respondents in the presence of counsel.

IX.

It is further ordered, That this order shall terminate on February 18, 2006.

APPENDIX A



Endocrine

G. I.

Psychotherapeutics



**Merck-Medco
Universal
Formulary™**



ATTACHMENT A

 **Merck-Medco
Managed Care, L.L.C.**
A subsidiary of Merck & Co., Inc.

APPENDIX A

Dear Provider,

The Universal Formulary is a list of selected FDA approved, prescription medications developed by Merck-Medco Managed Care's Pharmacy and Therapeutics (P&T) Committee. In a totally coordinated prescription drug benefit program, the formulary can assist you in maintaining quality of care and cost containment for your patient's benefit plan.

Our P&T Committee is an independent group of distinguished health care professionals with various medical and pharmacological specialties. The P&T Committee reviews drugs in all therapeutic categories and evaluates them on such objective criteria as safety and efficacy. To ensure the integrity of the formulary for our plan sponsors and their members, the P&T Committee reviews new and existing drugs on a regular basis and revises the formulary accordingly.

The Universal Formulary also includes specific information on the use of medications in the elderly that has been reviewed by an outside panel of geriatric experts. This information indicates those drugs that, in general, should not be prescribed to the elderly because they pose unnecessary risk. The Universal Formulary also provides information on drugs where the initial dosage should be decreased in the elderly.

Providers, as important professional resources in the coordinated managed care process, are invited to offer suggestions for the improvement of the Universal Formulary. Please send correspondence to Merck-Medco Managed Care, L.L.C., Clinical Services Department, 100 Summit Avenue, Montvale, New Jersey 07645.

Thank you for your continued support.

APPENDIX A

THERAPEUTIC CHAPTERS

- I. Anti-Infectives**
- 1.1 Penicillins
 - 1.2 Tetracyclines
 - 1.3 Cephalosporins
 - 1.3.1 First Generation Cephalosporins
 - 1.3.2 Second Generation Cephalosporins
 - 1.3.3 Third Generation Cephalosporins
 - 1.3.4 Carbacephems
 - 1.4 Erythromycins & Other Macrolides
 - 1.5 Quinolones
 - 1.6 Sulfas and Related Agents
 - 1.7 Urinary Tract Agents
 - 1.8 Antivirals
 - 1.8.1 Miscellaneous Antivirals
 - 1.8.2 HIV/AIDS Therapy
 - 1.9 Antifungal Agents
 - 1.10 Vancomycin
 - 1.11 Miscellaneous Anti-infectives
 - 1.11.1 Miscellaneous Anti-infectives
 - 1.11.2 Antiparasitics
 - 1.11.3 Antimalarials
 - 1.11.4 Antimycobacterials
 - 1.11.5 Aminoglycosides
- 2. Antineoplastics & Immunosuppressant Drugs**
- 2.1 Antineoplastics & Immunosuppressant Drugs
 - 2.1.1 Alkylating Agents
 - 2.1.2 Antimetabolites
 - 2.1.3 Androgens, Estrogens, Hormones & Related Drugs
 - 2.1.3.1 Androgens
 - 2.1.3.2 Estrogens
 - 2.1.3.3 Hormones
 - 2.1.3.4 Antiestrogens
 - 2.1.3.5 Antiandrogens
 - 2.1.5 Immunosuppressant Drugs
 - 2.1.6 Miscellaneous Antineoplastic Drugs
 - 2.2 Adjunctive Agents
 - 2.2.1 Adjunctive Agents
- 3. Autonomic & CNS Drugs, Neurology & Psych**
- 3.1 Narcotic Analgesics
 - 3.1.1 Narcotics
 - 3.1.2 Combination Narcotic/Analgesics
 - 3.2 Propoxyphene
 - 3.3 Non-Narcotic Analgesics
 - 3.3.1 NSAIDs
 - 3.3.2 Salicylates
 - 3.3.3 Miscellaneous Analgesics
 - 3.3.4 Narcotic Antagonists
 - 3.4 Migraine & Cluster Headache Therapy
 - 3.4.1 Headache Therapy
 - 3.4.2 Antivertigo & Antiemetic Drugs
 - 3.5 Antiparkinsonism Agents
 - 3.6 Anticonvulsants
 - 3.7 Miscellaneous Neurological Therapy
 - 3.8 Muscle Relaxants & Antispasmodic Therapy
 - 3.8.1 Muscle Relaxants & Antispasmodic Agents
 - 3.8.2 Myasthenia Gravis
 - 3.9 Psychotherapeutic Drugs
 - 3.9.1 Hypnotic Agents
 - 3.9.2 Antidepressant Agents
 - 3.9.2.1 Tricyclics
 - 3.9.2.2 Miscellaneous Antidepressants
 - 3.9.2.3 MAO Inhibitors
 - 3.9.2.4 Selective Serotonin Reuptake Inhibitors
- 4. Cardiovascular, Hypertension & Lipids**
- 4.1 Antiarrhythmic Agents
 - 4.2 Cardiac Glycosides
 - 4.3 Nitrates
 - 4.3.1 Rapid Acting Nitrates
 - 4.3.2 Long Acting Nitrates
 - 4.4 Coagulation Therapy
 - 4.4.1 Anticoagulants
 - 4.4.2 Antiplatelet Drugs
 - 4.4.3 Heparin
 - 4.4.4 Vitamin K
 - 4.4.5 Hemostatics
 - 4.4.6 Miscellaneous Coagulation Agents
 - 4.5 Antihypertensive Therapy
 - 4.5.1 Thiazide & Related Diuretics
 - 4.5.2 Beta Blockers
 - 4.5.3 Calcium Channel Blockers
 - 4.5.4 ACE Inhibitors
 - 4.5.5 Adrenergic Antagonists & Related Drugs
 - 4.5.6 Agents for Pheochromocytoma
 - 4.5.7 Vasodilators
 - 4.5.8 Other Antihypertensive Combinations
 - 4.5.9 Angiotensin II Receptor Blockers
 - 4.6 Lipid/Cholesterol Lowering Agents
- 5. Dermatologicals/Topical Therapy**
- 5.1 Topical Corticosteroids
 - 5.1.1 Topical Corticosteroids Group I
 - 5.1.2 Topical Corticosteroids Group II
 - 5.1.3 Topical Corticosteroids Group III
 - 5.1.4 Topical Corticosteroids Group IV
 - 5.1.5 Topical Corticosteroids Group V
 - 5.1.6 Topical Corticosteroids Group VI
 - 5.1.7 Topical Corticosteroids Group VII
 - 5.2 Topical Anesthetics
 - 5.3 Therapy for Acne
 - 5.4 Topical Antibacterials
 - 5.5 Topical Antifungals
 - 5.6 Topical Antivirals
 - 5.7 Burn Therapy
 - 5.8 Topical Enzymes
 - 5.9 Keratolytics
 - 5.10 Antipsoriatic/Antiseborrheic
 - 5.11 Topical Scabicides/Pediculicides
 - 5.12 Miscellaneous Dermatologicals
- 6. Ear, Nose & Throat Medications**
- 6.1 Intranasal Steroids
 - 6.2 Miscellaneous Otic Preparations
 - 6.3 Otic Steroids/Antibiotics
 - 6.4 Miscellaneous Agents

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- 7. Endocrine/Diabetes**
 - 7.1 Antithyroid Agents
 - 7.2 Thyroid Hormones
 - 7.3 Adrenal Hormones
 - 7.4 Miscellaneous Hormones
 - 7.4.1 Androgens
 - 7.4.2 Ovarian Stimulants
 - 7.4.3 Miscellaneous Agents
 - 7.4.4 Gonadotropin & Related Agents
 - 7.5 Diabetes Therapy
 - 7.5.1 Insulin Therapy
 - 7.5.2 Oral Hypoglycemic Agents
 - 7.5.3 Glucose Elevating Agents
 - 7.5.4 Insulin Syringes
 - 7.5.5 Blood Glucose Monitoring Strips
 - 7.5.6 Blood Glucose Monitoring Meters
- 8. Gastroenterology**
 - 8.1 Ulcer Therapy
 - 8.1.1 H₂ Antagonists
 - 8.1.2 Prostaglandins
 - 8.1.3 Other Ulcer Therapy
 - 8.1.4 Proton Pump Inhibitors
 - 8.2 Antidiarrheals & Antispasmodics
 - 8.2.1 Antidiarrheals
 - 8.2.2 Antispasmodics
 - 8.2.3 Combination Anticholinergics
 - 8.3 Miscellaneous Gastrointestinal Agents
 - 8.3.1 Bile Acids
 - 8.3.2 Digestive Enzymes
 - 8.3.3 Miscellaneous Gastrointestinal Agents
 - 8.3.4 Antiemetics
 - 8.3.5 Bowel Evacuants
- 9. Biotechnology Drugs**
 - 9.1.1 Erythroid Stimulants
 - 9.1.2 Myeloid Stimulants
 - 9.1.3 Interferons
 - 9.1.4 Growth Hormones
- 10. Musculoskeletal & Rheumatology**
 - 10.1 NSAIDs
 - 10.1.2 Salicylates
 - 10.2 Gout Therapy
 - 10.3 Other Rheumatologicals
 - 10.3.1 Corticosteroids
 - 10.3.2 Miscellaneous Rheumatological Agents
 - 10.3.3 Muscle Relaxants & Antispasmodic Therapy
 - 10.4 Osteoporosis Therapy
- 11. Obstetric & Gynecology**
 - 11.1 Oral Contraceptives & Related Agents
 - 11.1.2 Progestin Only
 - 11.2 Oxytocics
 - 11.3 Estrogens & Progestins
 - 11.3.1 Progestins
 - 11.3.2 Estrogens
 - 11.3.3 Estrogen Combinations
 - 11.4 Miscellaneous OB/GYN
 - 11.4.1 Drugs to Treat Infertility/IVF Agents
 - 11.4.2 Vaginal Cleanser/Anti-Infectives
 - 11.4.3 Vaginal Antifungals
 - 11.4.4 Specialized OB/GYN Drugs
- 12. Ophthalmology**
 - 12.1 Beta-Blockers
 - 12.2 Cholinesterase Inhibitor Miotics
 - 12.3 Direct Acting Miotics
 - 12.4 Other Glaucoma Drugs
 - 12.5 Oral Drugs for Glaucoma
 - 12.6 Cycloplegic Mydriatics
 - 12.7 Non-Steroidal Anti-Inflammatory Agents
 - 12.8 Vasoconstrictor Decongestants
 - 12.9 Antibiotics
 - 12.10 Sulfonamides
 - 12.11 Steroids
 - 12.12 Steroid-Antibiotic Combinations
 - 12.13 Steroid-Sulfonamide Combinations
 - 12.14 Sympathomimetics
 - 12.15 Miscellaneous Ophthalmologics
 - 12.16 Antivirals
- 13. Respiratory, Allergy, Cough & Cold**
 - 13.1 Antihistamine & Antiallergenic Agents
 - 13.1.1 Antihistamines
 - 13.1.2 Adrenergics
 - 13.1.3 Corticosteroids
 - 13.2 Cough & Cold Therapy
 - 13.2.1 Antitussive Combinations
 - 13.2.2 Expectorant Combinations
 - 13.2.3 Decongestant/Antihistamines
 - 13.3 Pulmonary Agents
 - 13.3.1 Xanthines
 - 13.3.2 Beta Agonists Oral
 - 13.3.3 Beta Agonists Inhalers
 - 13.3.4 Inhaled Corticosteroids
 - 13.3.5 Intranasal Steroids
 - 13.3.6 Miscellaneous Pulmonary Agents
- 14. Urologicals**
 - 14.1 Cholinergic Stimulants
 - 14.2 Anticholinergics & Antispasmodics
 - 14.3 Urinary Anesthetics
 - 14.4 Miscellaneous Urologicals
- 15. Vitamins, Hematinics & Electrolytes**
 - 15.1 Vitamins & Hematinics
 - 15.2 Coagulation Therapy
 - 15.2.1 Anticoagulants
 - 15.2.2 Antiplatelet Drugs
 - 15.2.3 Heparin
 - 15.2.4 Vitamin K
 - 15.2.5 Hemostatics
 - 15.2.6 Miscellaneous Coagulation Agents
 - 15.3 Electrolytes
 - 15.4 Miscellaneous Vitamins, Hematinics & Electrolytes
- 16. Diagnostics & Miscellaneous**
 - 16.1 Miscellaneous Agents
 - 16.2 Smoking Deterrents
 - 16.4 Miscellaneous Agents
 - 16.6 Irrigation Solutions
 - 16.7 Enzymes
 - 16.9 Local Anesthetics

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APPENDIX A

INTRODUCTION

The Universal Formulary is a list of FDA approved, prescription drug medications which was developed by an independent Pharmacy and Therapeutics (P&T) Committee comprised of distinguished health care professionals. Use of the formulary will assist in maintaining the quality of patient care and cost containment for the patient's drug benefit plan. Providers, participating physicians and pharmacists, are requested to refer to the Universal Formulary when selecting prescription drug therapy for eligible plan members.

Physicians are requested to prescribe medications included in the formulary whenever possible. Information on geriatric prescribing provides suggested alternatives for prescriptions that may pose particular risk to elderly persons.

The Universal Formulary is divided into major therapeutic categories (chapters) for easy use. Products that are approved for more than one therapeutic indication may be included in more than one chapter. Formulary drugs are identified by generic names. Brand names are included only for reference. Dependent upon the number of branded products, not all branded names are identified, but are deemed on the formulary. Due to the numerous generic and branded drugs in category 13.2, Cough & Cold Therapy, the formulary only lists examples of medications in this group.

FORMULARY MEDICATION COVERAGE

All drugs included in the formulary are not necessarily covered by each patient's prescription drug benefit plan design. Patients should consult their policies or customer service representatives to determine specific coverage.

• Approved Medications

Only FDA-approved medications are eligible for coverage under the participant's or employer's policy.

• Experimental Indications

Medications used for experimental indications are not eligible for coverage.

• Over-the-counter (OTC) Medications

Most benefit plans do not cover over-the-counter (non-prescription) medications. When a drug is available in the identical strength and dosage form as both a prescription and non-prescription drug, the prescription drug is usually not covered by the plan. In these cases, providers should refer the patient to the equivalent OTC product. In some instances, OTC medications are listed in the Universal Formulary for reference purposes only.

• Prior Authorization

Prior Authorization is necessary for certain medications. Based on current medical information, the P&T Committee has established clinical criteria for specific drug therapies that require the physician to provide patient-specific information before the drug would be permitted to be covered. Prior Authorized drugs often include those with potential for significant toxicity, inappropriate use and exceptionally high cost.

APPENDIX A

GENERIC DRUG SUBSTITUTION

Generic drugs are increasingly available as less costly equivalents to brand name drugs. Drugs which are available generically are designated in the formulary by a plus (+) sign. Brand name drugs are listed for reference purposes only. Unless medically necessary, physicians are encouraged to allow generic substitution when possible. When generic equivalents are available, pharmacists are encouraged to dispense generic products unless otherwise prohibited.

Most plan participants will have a lower copayment for generic alternatives. Some participants' plan designs may require generic substitution when an equivalent generic drug is available. In these plans, drugs which are available generically are subject to specific reimbursement levels, such as Maximum Allowable Cost (MAC) or Federal Upper Limit (FUL) price reimbursements. Depending on the participant's plan design, if the patient or physician requests the brand name drug, the participant may be required to pay the cost difference between the brand name drug price and the MAC or FUL reimbursement price, in addition to the plan's copayment requisites. In all instances, the pharmacist is reminded to follow state regulations regarding generic substitution.

COPAYMENTS

The participant's prescription drug benefit policy determines the applicable copayment for the covered prescriptions.

KEY TO SYMBOLS

Symbols used throughout the document have these definitions:

- + Use generic, brand listed for reference only; MAC reimbursement applies to some or all dosage forms and strengths.
- ▲ Use in the elderly is associated with increased risk; safer alternatives may be available. If used, dosage should generally be lowered.
- ↓ Dosage reduction may be required in elderly patients.

RELATIVE COST INDICATORS

Within each category, drug names are followed by a series of one or more dollar signs (\$\$) and/or one or more exclamation points (!) that represent the approximate cost (including, where applicable, discounts or other cost containment factors) of that prescription to the health plan. Such cost indicators are generally based upon the estimated cost for a one-day supply of comparable dosage for each drug in the category, although other bases for comparison may be used when appropriate. Example:

\$	Less than \$1.00/day
\$\$	Less than \$2.00/day
\$\$\$	Less than \$3.00/day
\$\$\$\$	Less than \$4.00/day
\$\$\$\$\$	Less than \$5.00/day
\$\$\$\$\$!	Less than \$10.00/day
\$\$\$\$\$!!	Less than \$15.00/day
\$\$\$\$\$!!!	Less than \$20.00/day
\$\$\$\$\$!!!!	Less than \$25.00/day
\$\$\$\$\$!!!!!	More than \$25.00/day

APPENDIX A

1. ANTI-INFECTIVES**1.1 PENICILLINS**

GENERIC NAME	BRAND NAME	REL. COST VALUE
+amoxicillin	+Amoxil, Trimox, Polymox	\$
+ampicillin	+Polycillin, Omnipen, Totacillin	\$
+penicillin VK	+Pen-Vee K, Boepen-VK	\$
+dicloxacillin	+Dynapen	\$\$
penicillin G procaine (inj)	Wycillin	\$\$\$\$
amoxicillin/clavulanate	Augmentin	\$\$\$\$\$!
carbenicillin	Geocillin	\$\$\$\$\$!

1.2 TETRACYCLINES

GENERIC NAME	BRAND NAME	REL. COST VALUE
+doxycycline	+Vibramycin, Bio-Tab, Monodox	\$
+tetracycline	+Sumycin, Achromycin	\$
+minocycline	+Minocin, Dynacin	\$\$
demeclocycline	Declomycin	\$\$\$\$\$!!!

1.3 CEPHALOSPORINS

GENERIC NAME	BRAND NAME	REL. COST VALUE
1.3.1 FIRST GENERATION CEPHALOSPORINS		
+cephalexin	+Keflex, Kefab	\$\$
+cephradine	+Anspor, Velosef	\$\$
+cefadroxil	+Duricef, Ultracel	\$\$\$\$\$!
1.3.2 SECOND GENERATION CEPHALOSPORINS		
+cefaclor	+Ceclor	\$\$\$\$
cefepodoxime	Vantin	\$\$\$\$\$!
cefprozil	Cefzil	\$\$\$\$\$!
cefuroxime axetil	Ceftin	\$\$\$\$\$!
1.3.3 THIRD GENERATION CEPHALOSPORINS		
cefixime	Suprax	\$\$\$\$\$!
1.3.4 CARBACEPHEMS		
loracarbef	Lorabid	\$\$\$\$\$!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

1.4 ERYTHROMYCINS & OTHER MACROLIDES

GENERIC NAME	BRAND NAME	REL. COST VALUE
+erythromycin base, film & enteric coated tabs	+E-Mycin, Ery-Tab	\$
+erythromycin ethylsuccinate	+EES, EryPED	\$
+erythromycin stearate	+Erythrocin	\$
+erythromycin estolate	+Elosone	\$\$
+EES w/sulf	+Pediazole	\$\$\$
+erythromycin base, delayed release	+ERYC	\$\$\$
erythromycin polymer coated	PCE	\$\$\$\$
azithromycin	Zithromax*	\$\$\$\$\$
dirithromycin	Dynabac	\$\$\$\$\$
clarithromycin	Biaxin	\$\$\$\$\$!

*adjusted for therapy length.

1.5 QUINOLONES

GENERIC NAME	BRAND NAME	REL. COST VALUE
norfloxacin	Noroxin	\$\$\$\$\$
ciprofloxacin	Cipro	\$\$\$\$\$!
enoxacin	Penetrex	\$\$\$\$\$!
lomefloxacin	Maxaquin	\$\$\$\$\$!
levofloxacin	Levaquin	\$\$\$\$\$!
ofloxacin	Floxin	\$\$\$\$\$!

1.6 SULFAS & RELATED AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+sulfamethoxazole/trimethoprim	+Bactrim, Bacrim DS, Septra, Septra DS	\$
+sulfasalazine	+Azulfidine	\$
+sulfisoxazole	+Gantrisin	\$
trisulfapyrimidine	Triple Sulfa No. 2	\$
sulfacytine	Renoquid	\$\$
sulfanilamide	Sulfanilamide	\$\$
sulfamethoxazole	Gantanol	\$\$\$
+sulfadiazine	+Sulfadiazine	\$\$\$\$
+sulfisoxazole/erythromycin	+Pediazole	\$\$\$\$\$!

+ Use generic; brand name listed for reference only.
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1.7 URINARY TRACT AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+methenamine mandelate	+Mandelamine	\$
+nitrofurantoin macrocrystals	+Macrodanin	\$
+phenazopyridine potassium citrate	+Pyridium	\$
+trimethoprim	Uroci-K	\$
methenamine hippurate	+Proloprim	\$
nitrofurantoin monohydrate macrocrystals	Hiprex, Urex	\$\$
acetohydroxamic acid	Macrobid	\$\$\$
nalidixic acid	Lithostat	\$\$\$\$\$
nitrofurantoin	NegGram	\$\$\$\$\$!
	Furadantin	\$\$\$\$\$!!

1.8 ANTIVIRALS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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1.8.1 MISCELLANEOUS ANTIVIRALS

+amantadine	+Symmetrel, Symadine	\$
rimantadine	Flumadine	\$\$\$
+acyclovir	+Zovirax	\$\$\$\$\$
valacyclovir	Valtrex	\$\$\$\$\$!
famciclovir	Famvir	\$\$\$\$\$!!!
ganciclovir	Cytovene	\$\$\$\$\$!!!!

1.8.2 HIV/AIDS THERAPY

delavirdine	Rescriptor	\$\$\$\$\$!
didanosine (ddI)	Videx	\$\$\$\$\$!
lamivudine	Epivir	\$\$\$\$\$!
nevirapine	Viramune	\$\$\$\$\$!
stavudine	Zerit	\$\$\$\$\$!
zalcitabine (ddC)	HTVID	\$\$\$\$\$!
zidovudine (AZT)	Retrovir	\$\$\$\$\$!
indinavir	Crixivan	\$\$\$\$\$!!!
nefinavir	Viracept	\$\$\$\$\$!!!
ritonavir	Norvir	\$\$\$\$\$!!!
saquinavir	Invirase	\$\$\$\$\$!!!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

1.9 ANTIFUNGAL AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
griseofulvin, microcrystalline	Grifulvin V, Grisactin	\$
griseofulvin, ultramicrocrySTALLINE	Fulvicin U/F	\$
	Grisactin Ultra, Gris-PEG, Fulvicin P/G	\$
+nystatin	+Mycostatin, Nilstat	\$
clotrimazole	Mycellex troche	\$\$\$\$
ketoconazole	Nizoral	\$\$\$\$
ampho B oral susp	Fungizone	\$\$\$\$\$!
fluconazole	Diffucan	\$\$\$\$\$!
terbinafine oral	Lamisil	\$\$\$\$\$!
itraconazole	Sporanox	\$\$\$\$\$!!!
itraconazole soln	Sporanox	\$\$\$\$\$!!!
flucytosine	Ancobon	\$\$\$\$\$!!!!

1.10 VANCOMYCIN

GENERIC NAME	BRAND NAME	REL. COST VALUE
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vancomycin	Vancocin	\$\$\$\$\$!!!!
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1.11 MISCELLANEOUS ANTI-INFECTIVES

GENERIC NAME	BRAND NAME	REL. COST VALUE
--------------	------------	-----------------

1.11.1 MISCELLANEOUS ANTI-INFECTIVES

dapsone	Dapsone	\$
+neomycin	+Neomycin	\$
chloramphenicol	Chloromycetin	\$\$\$
+clindamycin	+Cleocin HCl	\$\$\$

1.11.2 ANTIPARASITICS

+metronidazole	+Flagyl, Protostat	\$
piperazine	Piperazine	\$
+pyrantel	+Antiminth	\$
iodoquinol	Yodoxin	\$\$
+mebendazole	+Vermox	\$\$\$
thiabendazole	Mintezol	\$\$\$
furazolidone	Furoxone	\$\$\$\$\$!
paromomycin sulfate	Humatin	\$\$\$\$\$!!!
ivermectin	Stromectol	\$\$\$\$\$!!!
oxamniquine	Vansil	\$\$\$\$\$!!!
praziquantel	Biltricide	\$\$\$\$\$!!!
pentamidine isethionate (inh)	Nebupent, Pentam	\$\$\$\$\$!!!!
atovaquone	Mepron	\$\$\$\$\$!!!!
diethylcarbamazine	Hetrazan	\$\$\$\$\$!!!!

+ Use generic; brand name listed for reference only.
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 † Dosage reduction may be required in the elderly.

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1.1.3. ANTIMALARIALS

primaquine	Primaquine	\$
pyrimethamine	Daraprim	\$
+quinine sulfate	+Quinam	\$
chloroquine	Aralen	\$\$
+hydroxychloroquine	+Plaquenil	\$\$
sulfadoxine/ pyrimethamine	Fansidar	\$\$
mefloquine	Lariam	\$\$
chloroquine/primaquine	Aralen/Primaquine	\$\$\$
quinacrine	Atabrine	\$\$\$\$\$!!!!

1.1.4. ANTIMYCOBACTERIALS

clofazimine	Lamprene	\$
INH/B6	Niazid B6	\$
+isoniazid	+INH	\$
pyrazinamide	Pyrazinamide	\$\$\$\$
+rifampin	+Rifadin	\$\$\$\$
ethambutol	Myambutol	\$\$\$\$\$
INH/rifampin	Rifamate	\$\$\$\$\$
aminosalicylic acid	Paser	\$\$\$\$\$!
cycloserine	Seromycin	\$\$\$\$\$!
ethionamide	Trecator-SC	\$\$\$\$\$!
INH/rifampin/PZA	Rifater	\$\$\$\$\$!
rifabutin	Mycobutin	\$\$\$\$\$!

1.1.5. AMINOGLYCOSIDES

+neomycin	+Mycifradin tabs	\$
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2. ANTINEOPLASTICS & IMMUNOSUPPRESSANT DRUGS

2.1 ANTINEOPLASTICS & IMMUNOSUPPRESSANT DRUGS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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All oral medications in this category are included in the formulary. The following are examples:

2.1.1. ALKYLATING AGENTS

busulfan	Myleran	\$\$\$
chlorambucil	Leukeran	\$\$\$\$
cyclophosphamide	Cytoxan, Neosar	\$\$\$\$\$!
melfhalan	Alkeran	\$\$\$\$\$!
uracil mustard	Uracil Mustard	\$\$\$\$\$!
lomustine	CoeNU	\$\$\$\$\$!!!!

2.1.2. ANTIMETABOLITES

+methotrexate	+Rheumatrex, Methotrexate	\$\$
+fluorouracil	+Aducril	\$\$\$
mercaptopurine	Purinethol	\$\$\$\$
+cytarabine	+Cytarabine, Cytosar-U	\$\$\$\$\$!
flouxuridine	FUDR	\$\$\$\$\$!
thioguanine	Thioguanine, 6-TG	\$\$\$\$\$!
fludarabine	Fludara	\$\$\$\$\$!!!!

+ Use generic; brand name listed for reference only.
▲ Use in the elderly is associated with increased risk.
↓ Dosage reduction may be required in the elderly.

**2.1.3. ANDROGENS, ESTROGENS,
HORMONES & RELATED DRUGS****2.1.3.1. ANDROGENS**

+fluoxymesterone	+Halotestin	\$\$
testolactone	Testac	\$\$\$\$\$!!

2.1.3.2. ESTROGENS

chlorotrianisene	Tace	\$\$
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2.1.3.3. HORMONES

+megestrol	+Megace	\$\$
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2.1.3.4. ANTIESTROGENS

tamoxifen	Nolvadex	\$\$\$\$
anastrozole	Arimidex	\$\$\$\$\$!
letrozole	Femara	\$\$\$\$\$!

2.1.3.5. ANTIANDROGENS

flutamide	Eulexin	\$\$\$\$\$!
nilutamide	Nilandron	\$\$\$\$\$!
bicalutamide	Casodex	\$\$\$\$\$!

2.1.5. IMMUNOSUPPRESSANT DRUGS

+azathioprine	+Imuran	\$\$\$
cyclosporine	Sandimmune	\$\$\$\$\$!
cyclosporine	Neoral	\$\$\$\$\$!
microemulsion		
mycophenolate mofetil	CellCept	\$\$\$\$\$!
tacrolimus	Prograf	\$\$\$\$\$!

2.1.6. MISCELLANEOUS ANTINEOPLASTIC DRUGS

+hydroxyurea	+Hydrea	\$\$\$
procarbazine	Matulane	\$\$\$
mitotane	Lysodren	\$\$\$\$\$!
estramustine	Emcyt	\$\$\$\$\$!!!!
all-trans retinoic acid,	Vesanoid	\$\$\$\$\$!!!!
tretinoin		
altretamine	Hexalen	\$\$\$\$\$!!!!
etoposide	VePesid, Toposide	\$\$\$\$\$!!!!

2.2. ADJUNCTIVE AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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2.2.1. ADJUNCTIVE AGENTS

medroxyprogesterone	Depo-Provera	\$\$
(inj)		
+folinic acid	+Leucovorin Cal	\$\$\$
levamisole	Ergasol	\$\$\$\$\$!
leuprotide (inj)	Lupron	\$\$\$\$\$!!!!
erythropoietin (inj)	Epogen, Procrit	\$\$\$\$\$!!!!
filgrastim (G-CSF) (inj)	Neupogen	\$\$\$\$\$!!!!
octreotide (inj)	Sandostatin	\$\$\$\$\$!!!!
sargramostim	Leukine	\$\$\$\$\$!!!!
(GM-CSF) (inj)		

+ Use generic; brand name listed for reference only.
▲ Use in the elderly is associated with increased risk.
↓ Dosage reduction may be required in the elderly.

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APPENDIX A

**3. AUTONOMIC & CNS DRUGS,
NEUROLOGY & PSYCH**

3.1 NARCOTIC ANALGESICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
3.1.1 NARCOTICS		
+methadone	+Dolophine	\$
MS oral concentrate	OMS	\$
+hydromorphone	+Dilaudid	\$\$
levorphanol	Levo Dromoran	\$\$
+codeine	+Codeine	\$\$\$
+meperidine	+Demerol	\$\$\$
morphine sulfate, soluble tabs	Morphine Sulfate	\$\$\$
opium	B&O Suppettes	\$\$\$\$\$
fentanyl transdermal	Duragesic	\$\$\$\$\$!
hydrocodone	Banacap HC	\$\$\$\$\$!
levomethadyl	ORLAAM	\$\$\$\$\$!
morphine sulfate, controlled release	MS Contin	\$\$\$\$\$!
morphine sulfate supp	RMS Supp	\$\$\$\$\$!
oxycodone	OxyContin, Roxicodone	\$\$\$\$\$!
fentanyl lozenges	Fentanyl Oralet	\$\$\$\$\$!!!!

3.1.2 COMBINATION NARCOTIC/ANALGESICS

+apap/butalbital/caffeine	+Fioricet, Esgic, Triad	\$
+apap/codeine	+Tylenol/codeine, Magesic, Phenaphen	\$
+asa/codeine	+Empirin/codeine	\$
+asa w oxycodone	+Percodan	\$
+asa/butalbital/caffeine	+Fiorinal, Fiorigen PF	\$
+hydrocodone/apap	+Vicodin, Lortab	\$
+apap/butalbital	+Phrenilin Forte, Axotal, Phrenilin	\$\$
+apap/oxycodone capsule	+Tylox	\$\$
+apap/oxycodone tablet	+Percocet, Roxicet	\$\$\$
asa/butalbital/caffeine/codeine	Fiorinal w/Codeine	\$\$\$\$\$!
asa/dihydrocodeine	Synalgos-DC, DHC Plus	\$\$\$\$\$!!

1 apap = acetaminophen 2 asa = aspirin

3.2 PROPOXYPHENE A

GENERIC NAME	BRAND NAME	REL. COST VALUE
+propoxyphene	+Darvon	\$
+propoxyphene HCl/apap ¹	+Wygesic	\$
+propoxyphene napsylate/apap	+Darvocet N-100	\$
+propoxyphene/asa/caffeine	+Propoxyphene Compound, Darvon Cpd-65	\$\$

+ Use generic; brand name listed for reference only.
 A Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

3.3 NON-NARCOTIC ANALGESICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
3.3.1 NSAIDs		
+fenoprofen	+Nalfon	\$
+ibuprofen	+Motrin, Rufen	\$
+indomethacin	+Indocin	\$
+meflofenamate	+Meclomen	\$
+naproxen	+Naprosyn	\$
+naproxen sod	+Anaprox, Anaprox DS, Naprelan	\$
+piroxicam	+Feldene	\$
+sulfindac	+Clinoril	\$
+diclofenac	+Voltaren	\$\$
+flurbiprofen	+Ansaid	\$\$
+ibuprofen suspension	+Children's Advil, Children's Motrin	\$\$
+indomethacin SR	+Indocin SR	\$\$
+tolmetin	+Tolectin	\$\$
+etodolac	+Lodine	\$\$
+ketoprofen	+Orudis	\$\$
+ketoprofen SR	+Oruvail	\$\$
nabumetone	Relafen	\$\$
oxaprozin	Daypro	\$\$
diclofenac potassium	Cataflam	\$\$\$\$\$
+ketorolac	+Toradol	\$\$\$\$\$
ketorolac (inj)	Toradol	\$\$\$\$\$!!!!

3.3.2 SALICYLATES

salicylamide	Saleta-D	\$
+salsalate	+Salflex	\$
+sodium salicylate	+Sodium Salicylate	\$
asa sustained release	Zorprin	\$\$
+choline magnesium salicylate	+Trilisate	\$\$
magnesium salicylate	Mobidin	\$\$
+diflunisal	+Dolobid	\$\$\$
salicylate salts	Arthropan	\$\$\$

3.3.3 MISCELLANEOUS ANALGESICS

tramadol	Ultram	\$\$\$
pentazocine/apap	Talacen	\$\$\$\$
+pentazocine/naloxone	+Talwin Nx	\$\$\$\$
pentazocine	Talwin	\$\$\$\$
buprenorphine (inj)	Buprenex	\$\$\$\$\$!!
butorphanol (inj)	Stadol	\$\$\$\$\$!!
butorphanol NS	Stadol NS	\$\$\$\$\$!!!!

3.3.4 NARCOTIC ANTAGONISTS

naltrexone	Trexan, ReVia	\$\$\$\$\$
+naloxone (inj)	+Narcan	\$\$\$\$\$!

+ Use generic; brand name listed for reference only.
 A Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

APPENDIX A

3.4 MIGRAINE & CLUSTER
HEADACHE THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
3.4.1 HEADACHE THERAPY		
+apap/butalbital/caffeine	+Floricet, Esigic, Triad	\$
+butalbital/apap	+Phrenilin Forte, Phrenilin	\$
ergoloid mesylates	Hydergine LC	\$
+asa/butalbital/caffeine	+Florinal, Fiorigen PF	\$\$
ergotamine	Ergostat, Ergomar	\$\$
+isomethoptene/dichloralphenazone/apap	+Midrin	\$\$
+ergotamine/caffeine	+Cafergot	\$\$\$\$
methysergide	Sansert	\$\$\$\$\$!
sumatriptan (nasal)	Imitrex	\$\$\$\$\$!
dihydroergotamine (inj)	D.H.E.45	\$\$\$\$\$!
sumatriptan (tabs)	Imitrex	\$\$\$\$\$!
sumatriptan (inj)	Imitrex	\$\$\$\$\$!!!!
3.4.2 ANTIVERTIGO & ANTIEMETIC DRUGS		
+meclizine	+Antivert, Meclivert, Vertin	\$
+promethazine	+Phenergan	\$
bucizine	Bucladin-S	\$\$
scopolamine	Transderm-Scop	\$\$
thiethylperazine	Torecan	\$\$
+trimethobenzamide	+Tigan	\$\$
+prochlorperazine	+Compazine	\$\$\$\$
promazine	Sparine	\$\$\$\$
+trimethobenzamide (supp)	+Tigan	\$\$\$\$
+trimethobenzamide (inj)	+Tigan	\$\$\$\$\$!
+prochlorperazine (supp)	+Compazine	\$\$\$\$\$!
+promethazine (supp)	+Phenergan	\$\$\$\$\$!
dronabinol	Marinol	\$\$\$\$\$!!!!
granisetron	Kytril	\$\$\$\$\$!!!!
ondansetron	Zofran	\$\$\$\$\$!!!!

3.5 ANTIPARKINSONISM AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+amantadine	+Symmetrel	\$
+benztropine	+Cogentin	\$
biperiden	Akineton	\$
+diphenhydramine	+Benadryl	\$
procyclidine	Kemadrin	\$
+trihexyphenidyl	+Artane	\$
+carbidopa-levodopa	+Sinemet	\$\$
+bromocriptine mesylate	+Parlodel	\$\$\$\$
carbidopa-levodopa CR	Sinemet CR	\$\$\$\$
+selegiline	+Eldepryl	\$\$\$\$
pramipexole	Mirapex	\$\$\$\$\$
levodopa	Dopar, Larodopa	\$\$\$\$\$!
pergolide mesylate	Permax	\$\$\$\$\$!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

3.6 ANTICONVULSANTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+carbamazepine	+Tegretol	\$
mephenytoin	Mesantoin	\$
mephobarbital	Mebaral	\$
+phenobarbital	+Phenobarbital, Solfoton	\$
phenytoin	Dilantin	\$
+primidone	+Mysoline	\$
+valproic acid	+Depakene	\$
+clonazepam	+Kloopin	\$\$
magnesium sulfate (inj)	Magnesium Sulfate	\$\$
phenacetamide	Phenurone	\$\$
trimethadione	Tridione	\$\$
divalproex sodium	Depakote	\$\$\$
+ethosuximide	+Zarontin	\$\$\$
methsuximide	Celontin	\$\$\$
paramethadione	Paradione	\$\$\$
phensuximide	Milontin	\$\$\$
ethotoin	Peganone	\$\$\$\$
gabapentin	Neurontin	\$\$\$\$
felbamate	Felbatol	\$\$\$\$\$!
lamotrigine	Lamictal	\$\$\$\$\$!
topiramate	Topamax	\$\$\$\$\$!
diazepam gel	Diazat	\$\$\$\$\$!!!!

3.7 MISCELLANEOUS
NEUROLOGICAL THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
donepezil	Aricept	\$\$\$\$\$
tacrine	Cognex	\$\$\$\$\$
midodrine	ProAmatine	\$\$\$\$\$!
glatiramer (inj)	Copaxone	\$\$\$\$\$!!!!
riluzole	Rilutek	\$\$\$\$\$!!!!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

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3.8 MUSCLE RELAXANTS & ANTISPASMODIC THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
3.8.1 MUSCLE RELAXANTS & ANTISPASMODIC THERAPY		
▲+carisoprodol	+Soma	\$
▲+chlorzoxazone	+Paraflex, Parafon Forte DSC	\$
▲+cyclobenzaprine	+Flexeril	\$
▲+diazepam	+Valium	\$
+meprobamate	+Miltown, Equanil	\$
▲+methocarbamol	+Robaxin	\$
▲+oxybutynin	+Ditropan	\$
+baclofen	+Lioresal	\$\$
▲metaxalone	Skelaxin	\$\$\$
+asa/orphenadrine	+Norgesic	\$\$\$\$
dantrolene	Dantrium	\$\$\$\$
+orphenadrine	+Norflex	\$\$\$\$
asa/carisoprodol/codaine	Soma Comp/Codeine	\$\$\$\$\$!

! Refer also to Anxiolytics (3.9.5)

3.8.2 MYASTHENIA GRAVIS

neostigmine (inj)	Prostigmin	\$\$
pyridostigmine (inj)	Mestinon	\$\$
amibenonium	Mytelase	\$\$\$\$\$

3.9 PSYCHOTHERAPEUTIC DRUGS

GENERIC NAME	BRAND NAME	REL. COST VALUE
--------------	------------	-----------------

3.9.1 HYPNOTIC AGENTS

+chloral hydrate	+Aquachloral	\$
↓+estazolam	+ProSom	\$
▲+flurazepam	+Dalmane	\$
↓+temazepam	+Restoril	\$
↓+triazolam	+Halcion	\$
↓zolpidem	Ambien	\$\$
quazepam	Doral	\$\$\$

3.9.2 ANTIDEPRESSANT AGENTS

3.9.2.1 TRICYCLICS

▲+amitriptyline	+Elavil, Endep	\$
↓+desipramine	+Norpramin, Pertofrane	\$
↓+doxepin	+Sinequan, Adapin	\$
↓+imipramine	+Tofranil	\$
↓+nortriptyline	+Pamelor, Aventyl	\$
↓+amoxapine	+Asendin	\$\$
↓+protriptyline	+Vivactil	\$\$
↓+clomipramine	+Anafranil	\$\$\$

3.9.2.2 MISCELLANEOUS ANTIDEPRESSANTS

↓+maprotiline	+Ludiomil	\$
↓+trazodone	+Desyrel	\$
↓bupropion	Wellbutrin	\$\$\$
mirtazapine	Remeron	\$\$\$
↓nefazodone	Serzone	\$\$\$
↓venlafaxine	Effexor	\$\$\$

▲ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 ↓ Dosage reduction may be required in the elderly.

3.9.2.3 MAO INHIBITORS

phenelzine	Nardil	\$\$
tranylcypromine	Parnate	\$\$\$

3.9.2.4 SELECTIVE SEROTONIN REUPTAKE INHIBITORS

↓paroxetine	Paxil	\$\$\$
↓sertraline	Zoloft	\$\$\$
↓fluoxetine	Prozac	\$\$\$\$
↓fluvoxamine	Luvox	\$\$\$\$

3.9.3 ANTIPSYCHOTICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
--------------	------------	-----------------

3.9.3.1 PHENOTHIAZINES

+chlorpromazine	+Thorazine	\$
+fluphenazine	+Prolixin, Permitil	\$
+perphenazine	+Trilafon	\$
+thioridazine	+Mellaril, Mellaril S	\$
acetophenazine	Tindal	\$\$
mesoridazine	Serenil	\$\$
+trifluoperazine	+Stelazine	\$\$

3.9.3.2 BUTYROPHENONES

+haloperidol	+Haldol	\$
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3.9.3.3 MISCELLANEOUS ANTIPSYCHOTICS

+thiothixene	+Navane	\$
pimozide	Orap	\$\$
+loxapine	+Loxitane, Loxitane C	\$\$\$
molindone	Moban	\$\$\$
risperidone	Risperdal	\$\$\$\$\$
clozapine	Clozaril	\$\$\$\$\$!
olanzapine	Zyprexa	\$\$\$\$\$!

3.9.4 MISCELLANEOUS

PSYCHOTHERAPEUTIC AGENTS

+diethylpropion	+Tenuate	\$
+lithium carb (capsule)	+Eskalith, Lithonate	\$
+lithium carb (tablet)	+Eskalith, Lithotabs	\$
+lithium citrate	+Lithium Citrate	\$
+phentermine	+Ionamin, Fastin	\$
benzphetamine	Didrex	\$\$
+methylphenidate	+Ritalin	\$\$
+perphenazine/ amitriptyline	+Triavil	\$\$
amphetamines ¹	Dexedrine, Desoxyn	\$\$\$
+chlordiazepoxide/ amitriptyline	+Limbital	\$\$\$
methamphetamine	Desoxyn	\$\$\$
permoline	Cylert	\$\$\$
+phendimetrazine	+Phenazine, Adiopost	\$\$\$
mazindol	Mazanol	\$\$\$\$
meprobamate/ bencytazine	Deprol	\$\$\$\$

1 For narcolepsy and attention deficit disorder only.

▲ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 ↓ Dosage reduction may be required in the elderly.

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3.9.5 ANXIOLYTICS

↓ +alprazolam	+Xanax	\$
▲ +chloridiazepoxide	+Librium	\$
↓ +clorazepate	+Tranxene, Gen-Xene	\$
↓ +diazepam	+Valium	\$
↓ +lorazepam	+Ativan	\$
+meprobamate	+Meprospan	\$
↓ +oxazepam	+Serax	\$
bupirone	BuSpar	\$\$\$\$
paraldehyde	Paral	\$\$\$\$

3.9.6 BARBITURATES

amobarbital/	Tuinal	\$
secobarbital		
mephobarbital	Mebaral	\$

**4. CARDIOVASCULAR,
HYPERTENSION & LIPIDS****4.1 ANTIARRHYTHMIC AGENTS**

GENERIC NAME	BRAND NAME	REL. COST VALUE
▲ +disopyramide	+Norpace	\$
+procainamide	+Pronestyl	\$
+quinidine 200 sulfate	+Quinidine Sulfate	\$
+quinidine gluconate	+Quinaglute	\$
+procainamide SR	+Procan SR, Procanbid Pronestyl SR	\$
▲ +disopyramide CR	+Norpace CR	\$\$
+quinidine 300 sulfate	+Quinora	\$\$
+quinidine ER	+Quinidex	\$\$
flecainide	Tambocor	\$\$\$
+mexiletine	+Mexilit	\$\$\$
morizine	Ehmorine	\$\$\$
tocainide	Tonocard	\$\$\$
propafenone	Rythmol	\$\$\$\$
quinidine	Cardioquin	\$\$\$\$
polygalacturonate		
amiodarone	Cordarone	\$\$\$\$\$
sotalol	Betapace	\$\$\$\$\$

4.2 CARDIAC GLYCOSIDES

GENERIC NAME	BRAND NAME	REL. COST VALUE
+digoxin	Lanoxicaps, +Lanoxin	\$

4.3 NITRATES

GENERIC NAME	BRAND NAME	REL. COST VALUE
--------------	------------	-----------------

4.3.1 RAPID ACTING NITRATES

nitroglycerin SL	Nitrostat	\$
nitroglycerin spray	Nitrolingual Spray	\$\$

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

4.3.2 LONG ACTING NITRATES

+isosorbide dinitrate	+Isordil	\$
nitroglycerin	Nitrogard	\$
nitroglycerin ointment	Nitrol, Nitro-Bid	\$
nitroglycerin (oral)	Nitrobid	\$
+isosorbide dinitrate SR	+Dilatrate-SR, Isordil Tembids	\$\$
isosorbide mononitrate	Imdur	\$\$
isosorbide mononitrate	Ismo	\$\$
isosorbide mononitrate	Monoket	\$\$
+transdermal	Nitro-Dur, Nitroglycerin patch	\$\$
	Transderm-Nitro, Deponit, Minitran, Nitrodisc	

4.4 COAGULATION THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
--------------	------------	-----------------

4.4.1 ANTICOAGULANTS

anisindione	Miradon	\$
dicumarol	Dicumarol	\$
+warfarin	+Coumadin	\$

4.4.2 ANTIPLATELET DRUGS

▲ +dipyridamole	+Persantine	\$
ticlopidine	Ticlid	\$\$\$\$

4.4.3 HEPARIN

+heparin (inj)	+Heparin	\$\$\$
enoxaparin (inj)	Lovenox	\$\$\$\$\$!!!!

4.4.4 VITAMIN K

phytonadione	Mephyton	\$
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4.4.5 HEMOSTATICS

aminocaproic acid	Amicar	\$\$
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4.4.6 MISCELLANEOUS COAGULATION AGENTS

+pentoxifylline	+Trental	\$\$
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+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

APPENDIX A

4.5 ANTIHYPERTENSIVE THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
4.5.1 THIAZIDE & RELATED DIURETICS		
amiloride	Midamor	\$
↓ +amiloride/HCTZ	+Moduretic	\$
bendroflumethiazide	Naturetin-S	\$
benzthiazide	Exaa	\$
+bumetanide	+Bumex	\$
↓ +chlorthalidone	+Hygroton	\$
deserpidine/HCTZ	Oreticyl	\$
deserpidine/ methylothiazide	Enduronyl	\$
ethacrynic acid	Edecrin	\$
+furosemide	+Lasix	\$
↓ +hydrochlorothiazide	+HydroDIURIL, Oretic, Esidrix	\$
+indapamide	+Lozol	\$
↓ +methylothiazide	+Euduron, Aquatensen	\$
metolazone	Zaroxolyn, Mykrox	\$
+spironolactone	+Aldactone	\$
↓ +spironolactone/ HCTZ	+Aldactazide	\$
torsemide	Demadex	\$
triamterene	Dyrenium	\$
↓ +triamterene/HCTZ	+Maxzide, Dyazide	\$
polythiazide	Renese	\$\$
4.5.2 BETA BLOCKERS		
+atenolol	+Tenormin	\$
betaxolol	Kerlone	\$
bisoprolol	Zebeta	\$
+metoprolol	+Lopressor	\$
metoprolol LA	Toprol XL	\$
+nadolol	+Corgard	\$
+pindolol	+Visken	\$
+propranolol	+Inderal	\$
+propranolol LA	+Inderal LA	\$
+timolol	+Blocadren	\$
+acebutolol	+Sectral	\$\$
carteolol	Cartrol	\$\$
labetalol	Normodyne, Trandate	\$\$
carvedilol	Coreg	\$\$\$\$

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 ↓ Dosage reduction may be required in the elderly.

4.5.3 CALCIUM CHANNEL BLOCKERS

+diltiazem	+Cardizem, +Tiazac	\$
felodipine	Plendil	\$
+nifedipine	+Procardia, Adalat	\$
nisoldipine	Sular	\$
+verapamil	+Calan, Isoptin	\$
+verapamil SR	+Calan SR, Isoptin SR	\$
amlodipine	Norvasc	\$\$
diltiazem CD	Cardizem CD	\$\$
+diltiazem SR	+Cardizem SR, +Dilacor XR	\$\$
isradipine	DynaCirc	\$\$
isradipine controlled release	DynaCirc CR	\$\$
nifedipine	Posicor	\$\$
nicardipine	Cardene	\$\$
nicardipine SR	Cardene SR	\$\$
nifedipine XL	Adalat CC, Procardia XL	\$\$
verapamil	Coversa-HS	\$\$
verapamil, long acting	Verelan	\$\$
bepidil	Vascor	\$\$\$\$
nimodipine	Nimotop	\$\$\$\$\$!!!!

4.5.4 ACE INHIBITORS

benazepril	Lotensin	\$
fosinopril	Monopril	\$
moexipril	Univasc	\$
trandolapril	Mavik	\$
+captopril	+Capoten	\$\$
enalapril	Vasotec	\$\$
lisinopril	Prinivil, Zestril	\$\$
quinapril	Accupril	\$\$
ramipril	Altace	\$\$

4.5.5 ADRENERGIC ANTAGONISTS & RELATED DRUGS

+clonidine	+Catapres	\$
+guanabenz	+Wytensin	\$
+methyldopa	+Aldomet	\$
+prazosin	+Minipress	\$
+reserpine	+Serpasil	\$
doxazosin	Cardura	\$\$
guanadrel	Hylorel	\$\$
guanethedine	Ismelin	\$\$
+guanfacine	+Tenex	\$\$
tamsulosin	Flomax	\$\$
terazosin	Hytrin	\$\$
clonidine transdermal	Catapres-TTS	\$\$\$\$

4.5.6 AGENTS FOR PHEOCHROMOCYTOMA

phenoxybenzamine	Dibenzyline	\$\$\$\$\$
metirosine	Demser	\$\$\$\$\$!
phentolamine	Regitine	\$\$\$\$\$!!!!

4.5.7 VASODILATORS

+hydralazine	+Aprezoline	\$
+minoxidil	+Loniten	\$
+papaverine	+Pavabid	\$

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 ↓ Dosage reduction may be required in the elderly.

APPENDIX A

4.5.8 OTHER ANTIHYPERTENSIVE COMBINATIONS

↓ benazepril/HCTZ	Lotensin HCT	\$
↓ +clonidine/ chlorothalidone	+Combpres	\$
↓ +hydralazine/HCTZ	+Aprezside	\$
hydralazine/ reserpine/HCTZ	SER-AP-ES, Unipres	\$
▲ +methyldopa/HCTZ	+Aldoril	\$
prazosin/polythiazide	Minizide	\$
↓ +propranolol/HCTZ	+Inderide	\$
reserpine/chlorothiazide	Diupres	\$
▲ +reserpine/HCTZ	+Hydropres	\$
↓ timolol/HCTZ	Timolide	\$
benazepril/amlodipine	Lotrel	\$\$
↓ bisoprolol/HCTZ	Ziac	\$\$
↓ +captopril/HCTZ	+Capozide	\$\$
enalapril/diltiazem	Toczem	\$\$
enalapril/felodipine extended release	Lexxel	\$\$
↓ enalapril/HCTZ	Vaseretic	\$\$
↓ lisinopril/HCTZ	Prinzide, Zestoretic	\$\$
↓ metoprolol/HCTZ	Lopressor HCT	\$\$
↓ nadolol/ bendroflumethiazide	Corzide	\$\$
reserpine/ hydroflumethiazide	Salutensin	\$\$
trandolapril/ verapamil extended release	Tarka	\$\$

4.5.9 ANGIOTENSIN II RECEPTOR BLOCKERS

losartan	Cozaar	\$\$
losartan/HCTZ	Hyzaar	\$\$
valsartan	Diovan	\$\$

4.6 LIPID/CHOLESTEROL LOWERING AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+gemfibrozil	+Lopid	\$
+nicotinic acid	+Niacin	\$
colestipol	Colestid	\$\$
dextrothyroxine	Choloxin	\$\$
fluvastatin	Lescol	\$\$
atorvastatin	Lipitor	\$\$\$
cholestyramine	Questran, Questran Light	\$\$\$
pravastatin	Pravachol	\$\$\$
simvastatin	Zocor	\$\$\$
lovastatin	Mevacor	\$\$\$\$

+ Use generic; brand name listed for reference only.
▲ Use in the elderly is associated with increased risk.
↓ Dosage reduction may be required in the elderly.

5. DERMATOLOGICALS/
TOPICAL THERAPY

5.1 TOPICAL CORTICOSTEROIDS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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5.1.1 TOPICAL CORTICOSTEROIDS — GROUP I
(Very High Potency)

betamethasone dipropionate .05% (augmented) gel, ointment, cream	Diprolene	\$\$\$\$
+clobetasol .05% cream, lotion, ointment	+Temovate	\$\$\$\$
halobetasol .05% cream, ointment	Ultravate	\$\$\$\$
diflorasone .05% cream	Psorcon, Florone	\$\$\$\$\$
diflorasone .05% ointment	Psorcon, Florone	\$\$\$\$\$

5.1.2 TOPICAL CORTICOSTEROIDS — GROUP II
(High Potency)

+betamethasone dipropionate .05% ointment	+Diprosone, Maxivate	\$\$
+desoximetasone 0.25% cream, ointment	+Topicort	\$\$
amcinonide .1% cream, lotion, ointment	Cyclocort	\$\$
+desoximetasone 0.05% gel	+Topicort	\$\$
+fluocinonide .05% gel, ointment, soln	+Lidex	\$\$
mometasone furoate 0.1% ointment	Elocon ointment	\$\$
halcinonide .025% cream	Halog	\$\$\$\$
halcinonide 0.1% cream, soln	Halog	\$\$\$\$
betamethasone dipropionate 0.5% (augmented) cream	Diprolene AF	\$\$\$\$\$

+ Use generic; brand name listed for reference only.
▲ Use in the elderly is associated with increased risk.
↓ Dosage reduction may be required in the elderly.

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5.1.3. TOPICAL CORTICOSTEROIDS — GROUP III

+betamethasone dipropionate .1% aerosol	+Diprosone Aerosol	\$
+betamethasone .dipropionate 0.05% cream, lotion	+Diprosone, Maxivate	\$
+betamethasone .valerate 0.1% ointment	+Valisone	\$
+fluocinonide 0.05% cream	+Lidex, Lidex E	\$
+triamcinolone acetoneide 0.5% cream, ointment	+Aristocort	\$
fluticasone propionate 0.005% ointment	Cutivate	\$\$\$
betamethasone dipropionate 0.05% lotion	Diprolene	\$\$\$\$
halcinonide 0.1% ointment	Halog	\$\$\$\$\$

5.1.4. TOPICAL CORTICOSTEROIDS — GROUP IV

(Medium Potency)		
+desoximetasone 0.05% cream	+Topicort LP	\$
+fluocinolone acetoneide 0.025% ointment	+Synalar	\$
+triamcinolone acetoneide 0.1% ointment	+Aristocort	\$
clocortolone pivalate 0.1% cream	Cloderm	\$\$
flurandrenolide .05% lotion, ointment	Cordran, Cordran SP	\$\$\$
flurandrenolide tape	Cordran Tape Patch	\$\$\$
hydrocortisone valerate 0.2% ointment	Westcort	\$\$\$
mometasone furoate 0.1% cream, lotion	Elocon	\$\$\$

5.1.5. TOPICAL CORTICOSTEROIDS — GROUP V

+betamethasone valerate +Valisone 0.1% cream		\$
+betamethasone valerate +Valisone 0.01% cream		\$
+fluocinolone acetoneide +Synalar 0.025% cream		\$
hydrocortisone buteprate 0.1%	Pandel	\$
prednicarbate	Dermatop Emollient	\$
+triamcinolone acetoneide 0.1% lotion	+Kenalog	\$
triamcinolone spray	Kenalog	\$
flurandrenolide 0.05% cream	Cordran SP	\$\$
fluticasone propionate 0.05% cream	Cutivate	\$\$\$
hydrocortisone butyrate 0.1% cream, ointment, soln	Locoid	\$\$\$
hydrocortisone valerate 0.2% cream	Westcort	\$\$\$
betamethasone	Uticort	\$\$\$\$\$!!!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 ↓ Dosage reduction may be required in the elderly.

5.1.6. TOPICAL CORTICOSTEROIDS — GROUP VI

(Low Potency)		
+betamethasone valerate +Valisone 0.1% lotion		\$
+fluocinolone acetoneide +Synalar 0.01% cream, soln		\$
+triamcinolone acetoneide 0.025% cream, ointment	+Aristocort	\$
+triamcinolone acetoneide 0.025% lotion	+Kenalog	\$
+triamcinolone acetoneide 0.1% cream	+Aristocort	\$
alclometasone dipropionate 0.05% cream, ointment	Aclovate	\$\$
+desonide 0.05% cream, ointment, lotion	+DesOwen, Desonide cream	\$\$

5.1.7. TOPICAL CORTICOSTEROIDS — GROUP VII

+hydrocortisone 2.5% cream, ointment	+Dermacort, Hytone	\$
+hydrocortisone suppos, cream	+Aausol HC	\$
dexamethasone 0.04% aerosol	Decaspray	\$\$
+hydrocortisone 2.5% lotion	+Hytone	\$\$\$

Also see 8.3.3. for other steroid containing topicals.

5.2 TOPICAL ANESTHETICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
doxepin	Zonalon	\$
+lidocaine	+Xylocaine, Viscous Xylocaine spray	\$
prilocaine/lidocaine	EMLA	\$\$\$\$\$
dyclonine	Dyclone	\$\$\$\$\$!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 ↓ Dosage reduction may be required in the elderly.

APPENDIX A

5.3 THERAPY FOR ACNE

GENERIC NAME	BRAND NAME	REL. COST VALUE
+benzoyl peroxide	+Benzoyl peroxide, Desquam-X, Benzac	\$
benzoyl peroxide	Triaz	\$
+benzoyl peroxide gel	+Persa-Gel, Persa-Gel W	\$
benzoyl peroxide/sulfur	BPO/Sulfur, Sulfoxyl Strong	\$
+erythromycin gel	+Emgel, Erygel	\$
erythromycin plegettes	Erycette, T-STAT	\$
+erythromycin T soln	+A/T/S, EryDerm, T-STAT	\$
+clindamycin topical	+Cleocin T	\$\$
sodium sulfacetamide lotion	Klaron	\$\$
tetracycline	Topicycline	\$\$
adapalene	Differin	\$\$\$
azelaic acid	Azelex	\$\$\$
benzoyl peroxide/erythromycin	Benzamycin 23	\$\$\$
metronidazole	MetroGel	\$\$\$
sulfacetamide/sulfur	Sulfacet R, Novacet	\$\$\$
tretinoin	Retin A	\$\$\$
tretinoin	Retin A micro	\$\$\$
benzoyl peroxide/erythromycin	Benzamycin 46	\$\$\$\$
moclocycline	Meclan	\$\$\$\$\$
isotretinoin	Accutane	\$\$\$\$\$!

5.4 TOPICAL ANTIBACTERIALS

GENERIC NAME	BRAND NAME	REL. COST VALUE
bacitracin	Baciguent	\$
+gentamicin cream, oint	+Garamycin	\$
chloramphenicol	Chloromycetin	\$
mupirocin	Bactroban	\$\$\$
neomycin/fluocinolone	Neosynalar	\$\$\$

+Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

5.5 TOPICAL ANTIFUNGALS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+nystatin topical	+Mycostatin	\$
+nystatin/triamcinolone	+Mycolog II	\$
sodium thiosulfate	Tinver	\$
amphotericin B	Fungizone	\$\$
clioquinol	Iodochlorhydroxyquin	\$\$
clotrimazole	Mycelex	\$\$
ketoconazole shampoo	Nizoral	\$\$
ciclopirox	Loprox	\$\$\$
econazole	Spectazole	\$\$\$
ketoconazole cream	Nizoral	\$\$\$
naftifine	Naftin	\$\$\$
oxiconazole	Oxistar	\$\$\$
clotrimazole/betamethasone	Lotrisone	\$\$\$\$
terbinafine cream	Lamisil	\$\$\$\$\$

5.6 TOPICAL ANTIVIRALS

GENERIC NAME	BRAND NAME	REL. COST VALUE
peniclovir	Denavir	\$\$\$\$
acyclovir ointment	Zovirax	\$\$\$\$\$

5.7 BURN THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
+silver sulfadiazine	+Silvadene, SSD	\$

5.8 TOPICAL ENZYMES

GENERIC NAME	BRAND NAME	REL. COST VALUE
trypsin	Granulex	\$

5.9 KERATOLYTICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
salicylic acid gel	Keralyt	\$

+Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

APPENDIX A

5.10 ANTIPSORIATIC/
ANTISEBORRHEIC

GENERIC NAME	BRAND NAME	REL. COST VALUE
+selenium sulfide 2.5%, 1%	+Selsun Rx	5
cloroxine	Capitrol	55
sulfacetamide lotion	Sebizon	55
anthralin	Dritho-scalp, Drithocrema	555
calcipotriene	Dovonex	5555!
tazarotene gel	Tazorac	5555!

5.11 TOPICAL SCABICIDES/
PEDICULICIDES

GENERIC NAME	BRAND NAME	REL. COST VALUE
benzyl benzoate lotion	Benzyl Benzoate	5
+lindane	+Lindane, Kwell	5
crothamiton	Eurax	55
permethrin	Elimite	5555

5.12 MISCELLANEOUS
DERMATOLOGICALS

GENERIC NAME	BRAND NAME	REL. COST VALUE
aluminum chloride	Drysol	5
collagenase	Collagenase Santyl	5
dihydroxyacetone	Vitadyne	5
doxepin	Zonalon	5
iodine	Iodine	5
mafenide	Sulfamylon	5
nitrofurazone	Furacin	5
fibrinolysin	Elastase	55
lactic acid	Lac-Hydrin	55
monobenzone	Benoquin	55
dextranomer	Debrisan	555
hydroquinone	Eldopaquin Forte, Eldoquin Forte	555
hydroquinone/sunscreen	Solaquin Forte	555
sulfains	Travase	555
fluorouracil	Efudex, Fluoroplex	5555
hexachlorophene	Septisol Foam	5555
imiquimod	Aldara	55555
podofilox	Condylox	55555
trioxsalen	Trisoralen	55555
masaprocol	Actinex	55555!
methoxsalen	Oxсорalen	55555!!
iodoquinol	Sebaquin	55555!!!!
podophyllum	Podofin	55555!!!!
sulfapyridine	Sulfapyridine	55555!!!!

+Use generic; brand name listed for reference only.
▲ Use in the elderly is associated with increased risk.
‡ Dosage reduction may be required in the elderly.

6. EAR, NOSE & THROAT
MEDICATIONS

6.1 INTRANASAL STEROIDS

GENERIC NAME	BRAND NAME	REL. COST VALUE
bclomethasone	Vancenase	55
pockethaler	pockethaler	
bclomethasone	Vancenase AQ, Vancenase DS, Beconase AQ	55
budesonide	Rhinocort	55
flunisolide	Nasalide	55
fluticasone	Flonase	55
dexamethasone	Dexacort Turbinaire	555
triamcinolone	Nasacort	555
triamcinolone acetonide	Nasacort AQ	555

6.2 MISCELLANEOUS OTIC
PREPARATIONS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+acetic acid	+V8Sol, Acetasol	5
acetic acid/al acetate	Domeboro Otic	5
+acetic acid w/HC	+V8Sol HC, Acetasol HC	5
+antipyrine/benzocaine	+Auralgan	5
chloramphenicol	Chloromycetin Otic	555
triethanolamine oleate	Cerumenex	555

6.3 OTIC STEROID/ANTIBIOTIC

GENERIC NAME	BRAND NAME	REL. COST VALUE
+neomycin/polymyxin/HC	+Cortisporin	55

! For patients allergic to neomycin, Tobrex ophthalmic or gentamicin are useful alternatives.

6.4 MISCELLANEOUS AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+chlorhexidine	+Peridex	5
+hydrocortisone	+HCA in Orabase	5
+triamcinolone in orabase	+Kenalog in Orabase	5
cromolyn nasal	Nasalacrom	55
ipratropium	Atrovent Nasal Spray	55
+lidocaine viscous	+Viscous Xylocaine	55

+Use generic; brand name listed for reference only.
▲ Use in the elderly is associated with increased risk.
‡ Dosage reduction may be required in the elderly.

APPENDIX A

7. ENDOCRINE/DIABETES**7.1 ANTITHYROID AGENTS**

GENERIC NAME	BRAND NAME	REL. COST VALUE
methimazole	Tapazole	\$
+propylthiouracil	+Propylthiouracil	\$

7.2 THYROID HORMONES

GENERIC NAME	BRAND NAME	REL. COST VALUE
desiccated thyroid	Thyroid, Thyroid SPT	\$
levothyroxine	Synthroid, Levoxine	\$
liothyronine	Cytomel	\$
liotrix	Thyrolar	\$

7.3 ADRENAL HORMONES

GENERIC NAME	BRAND NAME	REL. COST VALUE
flucnionide	Flucnionide	\$
fludrocortisone	Florinef	\$
+hydrocortisone	+Cortef, Hydrocortone	\$
+prednisone liquid	+Liquid Pred	\$
+prednisone tablet	+Deltason, Orasone, Meticorten	\$
+triamcinolone	+Aristocort, T-Cort	\$
+dexamethasone	+Decadron	\$\$
+methylprednisolone	+Medrol	\$\$
prednisolone syrup	Prelone	\$\$\$
betamethasone	Celestone	\$\$\$\$
paramethasone	Haldrone	\$\$\$\$

7.4 MISCELLANEOUS HORMONES

GENERIC NAME	BRAND NAME	REL. COST VALUE
7.4.1 ANDROGENS		
testosterone	Testopel	\$
testosterone propionate (inj)	Testex	\$
nandrolone decanoate	Deca-Durabolin	\$\$
fluoxymesterone	Halotestin	\$\$\$
methyltestosterone	Android	\$\$\$
methyltestosterone	Methyltestosterone, Testred	\$\$\$
testosterone, transdermal	Testoderm	\$\$\$
testosterone, transdermal	Androderm	\$\$\$\$
+danazol	+Danocrine	\$\$\$\$!
oxandrolone	Oxandrin	\$\$\$\$!

Refer to 11.3 for Estrogens & Progestins

- + Use generic; brand name listed for reference only.
- Δ Use in the elderly is associated with increased risk.
- ‡ Dosage reduction may be required in the elderly.

7.4.2 OVULATORY STIMULANTS

+clomiphene	+Clomid, Serophene	\$\$\$\$!
menotropin (inj)	Humegon, Pergonal	\$\$\$\$\$!!!!
urofolitropin (inj)	Fertinex, Metrodin	\$\$\$\$\$!!!!

7.4.3 MISCELLANEOUS HORMONES

lypressin	Diapid	\$
calcifediol	Calderol	\$\$
calcitriol	Rocaltrol	\$\$
calcitonin-salmon nasal spray	Miacalcin	\$\$\$
corticotropin	Acthar	\$\$\$
finasteride	Proscar	\$\$\$
aminoglutethimide	Cytadren	\$\$\$\$
cabergoline	Dostinex	\$\$\$\$
+calcitonin-salmon (inj)	+Miacalcin	\$\$\$\$!
desmopressin soln/spray	DDAVP Soln/Spray	\$\$\$\$!
desmopressin tabs	DDAVP	\$\$\$\$!
dihydrochysterol	Hytakerol, DHT	\$\$\$\$!
etidronate	Didronel	\$\$\$\$!
pergolide	Permax	\$\$\$\$!
tiludronate	Skelid	\$\$\$\$!
vasopressin (inj)	Pitressin	\$\$\$\$!
nafarelin acetate	Synarel	\$\$\$\$!!!!
alglucerase (inj)	Ceredase	\$\$\$\$!!!!
octreotide (inj)	Sandostatin	\$\$\$\$!!!!

7.4.4 GONADOTROPIN & RELATED AGENTS

chorionic gonadotropin (inj)	Profasi HP	\$\$\$\$!
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7.5 DIABETES THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
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7.5.1 INSULIN THERAPY

insulin (beef/pork) (inj)	Lilly Iletin	\$\$
insulin (human) (inj)	Humulin, Novolin	\$\$
insulin (beef/pork) (inj)	Novo-Nordisk	\$\$\$
insulin lispro (inj)	Humalog	\$\$\$

**7.5.2 ORAL HYPOGLYCEMIC AGENTS
FIRST GENERATION**

+acetohexamide	+Dymelor	\$
Δ+chlorpropamide	+Diabinese	\$
+tolbutamide	+Tolinase	\$
+tolazamide	+Orinase	\$

SECOND GENERATION

+glipizide	+Glucotrol	\$
glipizide ER	Glucotrol XL	\$
+glyburide	+Micronase, Glynase, DiaBeta	\$\$

OTHER

glimepiride	Amaryl	\$
acarbose	Precose	\$\$
metformin	Glucophage	\$\$
troglitazone	Rezulin	\$\$\$\$

7.5.3 GLUCOSE ELEVATING AGENTS

Glucagon (inj)	Glucagon Emergency Kit, Glucagon for Inj	\$\$\$\$!!!!
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- + Use generic; brand name listed for reference only.
- Δ Use in the elderly is associated with increased risk.
- ‡ Dosage reduction may be required in the elderly.

APPENDIX A

7.5.4 INSULIN SYRINGES

insulin syringes	BD Ass't Syrin	\$
insulin syringes	BD Syringes 28	\$
insulin syringes	BD Syringes 29	\$
insulin syringes	BD Ins Syr 30G	\$
insulin syringes	Lancets BD Ult	\$
insulin syringes	Lancets Monolet	\$
insulin syringes	Monoject Ass't	\$
insulin syringes	Monoject Syr 2	\$
insulin syringes	Needles and Sy	\$
insulin syringes	Sure-Dose 28GI	\$
insulin syringes	Sure-Dose 29GI	\$
insulin syringes	Terumo Ins Syr	\$
insulin syringes	NovoFine Ins N	\$\$

7.5.5 BLOOD GLUCOSE MONITORING STRIPS

blood glucose	Chemstrip K	\$
test strips	(test strip)	
blood glucose	Lancets	\$
test strips		
blood glucose	Soft Touch	\$
test strips		
blood glucose	Accu-Chek B1101	\$\$\$
test strips		
blood glucose	Chemstrip BG	\$\$\$
test strips	(test strip)	
blood glucose	Exactech	\$\$\$
test strips		
blood glucose	Glucofilm	\$\$\$
test strips		
blood glucose	Glucometer ELI	\$\$\$
test strips		
blood glucose	Glucometer ENC	\$\$\$
test strips		
blood glucose	Glucostix	\$\$\$
test strips		
blood glucose	One Touch	\$\$\$
test strips		
blood glucose	Prestige Test	\$\$\$
test strips		
blood glucose	Surestep	\$\$\$
test strips		
blood glucose	Tracer BG	\$\$\$
test strips		
blood glucose	Glucoscan	\$\$\$\$
test strips		
blood glucose	Medisense 2	\$\$\$\$
test strips		
blood glucose	Precision QID	\$\$\$\$
test strips		

7.5.5 BLOOD GLUCOSE MONITORING METERS

blood glucose	Accu-Chek Meter	\$
monitoring meters		
blood glucose	Exactech Meter	\$
monitoring meters		
blood glucose	Glucometer II	\$
monitoring meters		
blood glucose	One Touch II	\$
monitoring meters		
blood glucose	One Touch Prof	\$
monitoring meters		
blood glucose	Precision Meter	\$
monitoring meters		

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

8. GASTROENTEROLOGY

8.1 ULCER THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
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8.1.1 H. ANTAGONISTS

+cimetidine	+Tagamet	\$
+nizatidine	Axid	\$\$\$
+ranitidine	+Zantac	\$\$\$
+famotidine	Pepcid	\$\$\$\$

8.1.2 PROSTAGLANDINS

misoprostol	Cytotec	\$\$
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8.1.3 OTHER ULCER THERAPY

+sucralfate	+Carafate	\$\$\$
bismuth/metronidazole/ tetracycline	Tritec	\$\$\$\$
ranitidine bismuth citrate	Helidac	\$\$\$\$

8.1.4 PROTON PUMP INHIBITORS

lansoprazole	Prevacid	\$\$\$\$
omeprazole	Prilosec	\$\$\$\$\$

8.2 ANTIDIARRHEALS & ANTISPASMODICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
--------------	------------	-----------------

8.2.1 ANTIDIARRHEALS

+paregoric	+Paregoric USP, Kaodene w/Paregoric	\$
+diphenoxylate/atropine	+Lomotil, Logen	\$\$
opium preparations	Opium Tincture	\$\$\$\$\$!

8.2.2 ANTISPASMODICS

▲+dicyclomine	+Bentyl	\$
+glycopyrrolate	+Robinul	\$
▲hyoscyamine caps	Levsinex	\$
▲hyoscyamine oral	Levbid, Gastrosed	\$
▲hyoscyamine SL	Levsin	\$
methscopolamine	Pamine	\$
▲+propantheline	+Pro-Banthine	\$
clidinium	Quarzan	\$\$

8.2.3 COMBINATION ANTICHOLINERGICS

▲+atropine	+Donnatal,	\$
w/phenobarbital/ scopolamine/ hyoscyamine	Barbidonna, Chardonna	
+chloridiazepoxide/ clidinium	+Librax	\$

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

APPENDIX A

8.3 MISCELLANEOUS GASTROINTESTINAL AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
8.3.1 BILE ACIDS		
chenodiol	Chenix	\$\$\$\$
ursodiol	Actigall	\$\$\$\$\$!
8.3.2 DIGESTIVE ENZYMES		
pancrelipase	Pancrease	\$\$\$
pancrelipase	Ultrase	\$\$\$
pancreatin	Creon	\$\$\$\$\$
pancrelipase	Pancrease MT	\$\$\$\$\$!
pancrelipase	Ultrase MT	\$\$\$\$\$!!!
8.3.3 MISCELLANEOUS GASTROINTESTINAL AGENTS		
hydrocortisone 1%	Proctocort	\$
+metoclopramide	+Reglan	\$
+sulfasalazine	+Azulfidine	\$
hydrocortisone acetate	Hemorrhoidal HC	\$\$
+lactulose	+Constulose, +Enulose	\$\$
cisapride	Propulsid	\$\$\$
hydrocortisone foam	Cortifoam	\$\$\$
olsalazine	Dipentum	\$\$\$
pramoxine/HC	ProctoFoam-HC	\$\$\$
crosmoly oral	GastrocroM	\$\$\$\$\$
hydrocortisone enema	Cortenema	\$\$\$\$\$!
mesalamine	Asacol, Pentasa, Rowasa	\$\$\$\$\$!
8.3.4 ANTIEMETICS		
+meclizine	+Antivert	\$
+promethazine	+Phenergan	\$
scopolamine	Transderm-Scop	\$\$
+trimethobenzamide	+Tigan	\$\$
+prochlorperazine	+Compazine	\$\$\$\$
+trimethobenzamide (supp)	+Tigan	\$\$\$\$
+trimethobenzamide (inj)	+Tigan	\$\$\$\$\$!
+prochlorperazine (supp)	+Compazine	\$\$\$\$\$!!
+promethazine (supp)	+Phenergan	\$\$\$\$\$!!
granisetron	Kytril	\$\$\$\$\$!!!!
ondansetron	Zofran	\$\$\$\$\$!!!!
8.3.5 BOWEL EVACUANTS		
electrolyte solution	Colyte, GoLYTELY NuLYTELY	\$\$\$\$\$!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

9. BIOTECHNOLOGY DRUGS

GENERIC NAME	BRAND NAME	REL. COST VALUE
9.1.1 ERYTHROID STIMULANTS		
erythropoietin (inj)	Procrit, Epogen	\$\$\$\$\$!!!!
9.1.2 MYELOID STIMULANTS		
filgrastim (inj)	Neupogen	\$\$\$\$\$!!!!
sargramostim (inj)	Leukine	\$\$\$\$\$!!!!
9.1.3 INTERFERONS		
alpha 2a (inj)	Roferon A	\$\$\$\$\$!!!!
alpha 2b (inj)	Intron A	\$\$\$\$\$!!!!
alpha n3 (inj)	Alferon N	\$\$\$\$\$!!!!
beta 1a (inj)	Avonex	\$\$\$\$\$!!!!
beta 1b (inj)	Betaseron	\$\$\$\$\$!!!!
gamma 1b (inj)	Actimmune	\$\$\$\$\$!!!!
9.1.4 GROWTH HORMONES		
somatropin (inj)	Genotropin, Humatrope, Nutropin, Nutropin AQ, Protropin	\$\$\$\$\$!!!!

10. MUSCULOSKELETAL & RHEUMATOLOGY

GENERIC NAME	BRAND NAME	REL. COST VALUE
10.1 NSAIDs		
+fenoprofen	+Nalfon	\$
+ibuprofen	+Motrin, Rufen	\$
+indomethacin	+Indocin	\$
+mefenamate	+Meclofen	\$
+naproxen	+Naprosyn	\$
+naproxen sod	+Anaprox, Anaprox DS, Naprelan	\$
phenylbutazone	Butazolidin	\$
+piroxicam	+Feldene	\$
+sulindac	+Clinoril	\$
+diclofenac	+Voltaren	\$\$
+flurbiprofen	+Ansaid	\$\$
+ibuprofen suspension	+Children's Advil, Children's Motrin	\$\$
+indomethacin SR	+Indocin SR	\$\$
+tolmetin	+Tolectin	\$\$
+etodolac	+Lodine	\$\$\$
+ketoprofen	+Orudis	\$\$\$
+ketoprofen SR	+Oruvail	\$\$\$
nabumetone	Relafen	\$\$\$
oxaprozin	Daypro	\$\$\$
diclofenac potassium	Cataflam	\$\$\$\$\$
+ketorolac	+Toradol	\$\$\$\$\$
ketorolac (inj)	Toradol	\$\$\$\$\$!!!!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

APPENDIX A

10.1.2 SALICYLATES

salicylamide	Saleto-D	\$
+salsalate	+Salflex	\$
asa sustained release	Zorprin	\$\$
+choline magnesium salicylate	+Trilisate	\$\$
+diflunisal	+Dolobid	\$\$\$
salicylate salts	Arthropan	\$\$\$

10.2 GOUT THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
+allopurinol	+Zyloprim	\$
+colchicine	+Colchicine	\$
+probenecid	+Benemid	\$
+probenecid w/colchicine	+Col Benemid	\$

10.3 OTHER RHEUMATOLOGICALS

GENERIC NAME	BRAND NAME	REL. COST VALUE
--------------	------------	-----------------

10.3.1 CORTICOSTEROIDS

+hydrocortisone	+Cortef, Hydrocortone	\$
+prednisone	+Orasone, Deltasone	\$
+triamcinolone	+Aristocort	\$
+dexamethasone	+Decadron	\$\$
+methylprednisolone	+Medrol	\$\$
+prednisone liquid	+Liquid Pred	\$\$
prednisolone syrup	Prelone	\$\$\$
betamethasone	Celestone	\$\$\$\$
paramethasone	Haldrone	\$\$\$\$

10.3.2 MISCELLANEOUS RHEUMATOLOGICAL AGENTS

+sulfasalazine	+Azulfidine	\$
+methotrexate	+Rheumatrex, Methotrexate	\$\$
auranofin	Ridaura	\$\$\$
+azathioprine	+Imuran	\$\$\$
penicillamine	Cuprimine	\$\$\$
aurothiogluucose	Solganal	\$\$\$\$

10.3.3 MUSCLE RELAXANTS & ANTISPASMODIC THERAPY

+carisoprodol	+Soma	\$
+chlorzoxazone	+Paraflex, Parafon Forte DSC	\$
+cyclobenzaprine	+Flexeril	\$
+diazepam	+Valium	\$
+methocarbamol	+Robaxin	\$
+oxybutynin	+Ditropan	\$
+baclofen	+Lioresal	\$\$
+metaxalone	Skelaxin	\$\$\$
chlorphenesin	Maolate	\$\$\$\$
dantrolene	Dantrium	\$\$\$\$
+orphenadrine/asa/caffeine	+Norflex	\$\$\$\$

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

10.4 OSTEOPOROSIS THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
alendronate	Fosamax	\$\$
+calcitonin-salmon nasal spray	+Miacalcin	\$\$\$

11. OBSTETRIC & GYNECOLOGY

11.1 ORAL CONTRACEPTIVES & RELATED AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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1st GENERATION, Mono-phasic

ethinyl estradiol/ ethynodiol	Demulen	\$
ethinyl estradiol/ norethindrone	Estrostep FE	\$
ethinyl estradiol, norethindrone	Genora 1/35	\$
ethinyl estradiol, norethindrone	Loestrin	\$
+levonorgestrel/ ethinyl estradiol	Alesse, Levlén, Levora, Nordette	\$
+norethindrone/ ethinyl estradiol	Brevicon, Modicon, Ovcon	\$
+norethindrone/ ethinyl estradiol	N.E.E., Nelova, Ortho-Novum	\$
+norethindrone/ mestranol	Norinyl	\$
norgestrel/ ethinyl estradiol	Lo/Ovral	\$\$
norgestrel/ ethinyl estradiol	Ovral	\$\$

1st GENERATION, Bi-phasic

+norethindrone/ ethinyl estradiol	Jenest, Nelova, Ortho-Novum 10/11	\$
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1st GENERATION, Tri-phasic

levonorgestrel/ ethinyl estradiol	Tri-Levlén, Triphasil	\$
norethindrone/ ethinyl estradiol	Tri-Norinyl, Ortho-Novum 777	\$

2nd GENERATION, Mono-phasic

desogestrel/ ethinyl estradiol	Desogen, Ortho-Cept	\$
norgestimate/ ethinyl estradiol	Ortho-Cyclen	\$

2nd GENERATION, Tri-phasic

norgestimate/ ethinyl estradiol	Ortho Tri-Cyclen	\$
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+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

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11.1 PROGESTIN ONLY

Norethindrone	Micronor, Nor QD	\$
Norgestrel	Ovrette	\$\$

11.2 OXYTOCICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
methylergonovine	Methergine	\$\$\$
oxytocin spray	Syntocinon	\$\$\$\$\$!

11.3 ESTROGENS & PROGESTINS

GENERIC NAME	BRAND NAME	REL. COST VALUE
--------------	------------	-----------------

11.3.1 PROGESTINS

hydroxyprogesterone	Duralutin	\$
+medroxyprogesterone	+Provera	\$
norethindrone	Micronor, Nor QD	\$
norethindrone acetate	Norlutate	\$
medroxyprogesterone acetate	Depo-Provera	\$\$
norethindrone acetate	Aygestin, Norlutin	\$\$
norgestrel	Ovrette	\$\$
+progesterone inj.	+Gesterol 50	\$\$\$
progesterone vaginal suppos	Progesterone supp	\$\$\$\$\$!
progesterone gel	Crinone	\$\$\$\$\$!!

11.3.2 ESTROGENS

conjugated estrogens	Premarin	\$
esterified estrogens	Menest, Estratab	\$
esterified estrogens/ methyltestosterone	Estratest	\$
+estradiol	+Estrace	\$
estradiol transdermal	Climara, Vivelle, Estraderm, Alora, FemPatch	\$
+estropipate	+Ogen, Ortho-Est	\$
ethinyl estradiol	Estinyl	\$
chlorotrianisene	Tace	\$\$
conj estrogen vaginal cream	Premarin	\$\$
dieneestrol cream	Ortho Dieneestrol	\$\$
estradiol vaginal ring	Estring	\$\$
quingestrol	Estrovis	\$\$\$\$

11.3.3 ESTROGEN COMBINATIONS

conjugated estrogens/ medroxyprogesterone	Premphase, Prempro	\$
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+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

11.4 MISCELLANEOUS OB/GYN

GENERIC NAME	BRAND NAME	REL. COST VALUE
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11.4.1 DRUGS TO TREAT INFERTILITY/IVF AGENTS

chorionic gonadotropin (inj)	Profasi HP, APL	\$\$\$\$\$!
+clomiphene	+Clomid, Serophene	\$\$\$\$\$!
leuprolide (inj)	Lupron	\$\$\$\$\$!!!!
menotropin (inj)	Humegon, Pergonal	\$\$\$\$\$!!!!
urofollitropin (inj)	Fertinex, Metrodin Amp 2	\$\$\$\$\$!!!!

11.4.2 VAGINAL CLEANSER/ANTI-INFECTIVES

+triple sulfa	+Sultrin, Trysol	\$
acetic acid/oxyquinoline	Acid-Jel	\$\$\$
ricinoleic/glycerin		
+sulfanilamide vaginal	+AVC	\$\$\$
metronidazole vaginal gel	Metrogel-Vag	\$\$\$\$
clindamycin	Cleocin Vag	\$\$\$\$\$

11.4.3 VAGINAL ANTI-FUNGALS

butaconazole	Femstat	\$
+nystatin vaginal	+Nystatin, Mycostatin	\$
tioconazole	Vagistat-1	\$
tioconazole ointment	Vagistat	\$
clotrimazole	Mycelex-G	\$\$
terconazole	Terazol	\$\$\$\$\$
fluconazole oral	Diflucan	\$\$\$\$\$!
miconazole	Monistat 3, Monistat Dual Pak	\$\$\$\$\$!

11.4.4 SPECIALIZED OB/GYN DRUGS

+isoxsuprine	+Vasodilan	\$
terbutaline	Brethine, Bricanyl	\$\$
nafarelin acetate	Synarel	\$\$\$\$\$!!!!

12. OPHTHALMOLOGY**12.1 BETA-BLOCKERS**

GENERIC NAME	BRAND NAME	REL. COST VALUE
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metipranolol	OptiPranolol	\$
betaxolol	Betoptic, Betoptic S	\$\$
+levobunolol	+Betagan	\$\$
timolol hemihydrate	Betimol	\$\$
timolol maleate	Timoptic XE	\$\$
+timolol ophth	+Timoptic	\$\$

12.2 CHOLINESTERASE INHIBITOR MIOTICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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echothiophate	Phospholine Iodide	\$
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+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

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12.3 DIRECT ACTING MIOTICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
echothiophate	Phospholine Iodide	\$
physostigmine	Isopto Eserine	\$
+pilocarpine	+Pilocar, Ocusept Pilo-20, Pilagan	\$
pilocarpine gel	Pilopine HS	\$\$\$
acetylcholine	Miochol	\$\$\$\$\$!!!
carbachol	Miostat	\$\$\$\$\$!!!!!!

12.4 OTHER GLAUCOMA DRUGS

GENERIC NAME	BRAND NAME	REL. COST VALUE
carbachol	Isopto Carbachol	\$\$
demecarium	Humorsol	\$\$
doxolamide	Trusopt	\$\$
epinephrine/ pilocarpine	P1E1, P2E1, P3E1 P4E1, P6E1	\$\$
latanoprost	Xalatan	\$\$\$

12.5 ORAL DRUGS FOR GLAUCOMA

GENERIC NAME	BRAND NAME	REL. COST VALUE
+acetazolamide	+Diamox	\$
+methazolamide	+Neptazane	\$
dichlorphenamide	Daranide	\$\$

12.6 CYCLOPLEGIC MYDRIATICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+atropine sulfate	+Isopto Atropine, Atropine Sulfate S.O.P.	\$
+cyclopentolate	+Cyclogyl	\$
+dipivefrin	+Propine	\$
homatropine	Isopto Homatropine	\$
phenylephrine	AK-Nefrin	\$
scopolamine	Isopto Hyoscine	\$
+tropicamide	+Mydracyl	\$
epinephrine	Epinephrine	\$\$\$

12.7 NON-STEROIDAL ANTI-INFLAMMATORY AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
ketorolac	Acular	\$
+flurbiprofen	+Ocufen	\$\$
suprofen	Profenal	\$\$
diclofenac	Voltaren	\$\$\$

+ Use generic; brand name listed for reference only.
 a Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

12.8 VASOCONSTRICTOR DECONGESTANTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+naphazoline/antazoline	+Albalon	\$
phenylephrine	Neo-Synephrine	\$

12.9 ANTIBIOTICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+bacitracin	+Bacitracin	\$
bacitracin/neosporin/ polymyxin B/HC	AK-Spor HC	\$
+erythromycin	+Ilotycin	\$
+gentamicin	+Garamycin, Gentacidin	\$
+neomycin/polymyxin/ bacitracin ointment	+Neosporin	\$
+tobramycin	+Tobrex	\$
zinc sulfate	Eye-Sed	\$
polymyxin B/ trimethoprim	Polytrim	\$\$
ciprofloxacin	Ciloxan	\$\$\$
norfloxacin	Chibroxin	\$\$\$
ofloxacin	Ocuflox	\$\$\$
+chloramphenicol	+Chloroptic S.O.P.	\$\$\$\$
nactamycin	Natacyn	\$\$\$\$
polymyxin B	Polymyxin B	\$\$\$\$\$!
chlortetracycline	Autromycin	\$\$\$\$\$!!
polymyxin B	Aerosporin	\$\$\$\$\$!!

12.10 SULFONAMIDES

GENERIC NAME	BRAND NAME	REL. COST VALUE
+sodium sulfacetamide	+Bleph-10, Sulamyd, AK-Sulf	\$
sulfacetamide/ phenylephrine	Vasosulf	\$
sulfisoxazole	Gantrisin	\$\$

12.11 STEROIDS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+dexamethasone	+Decadron, Maxidex	\$
+prednisolone sodium phosphate	+Inflamase, Inflamase Forte	\$
+fluorometholone	+FML, FML Forte, FML SOP	\$\$
medrysone	HMS	\$\$
+prednisolone	+Pred-Mild, Pred-Forte	\$\$
rimexolone	Vexol	\$\$

+ Use generic; brand name listed for reference only.
 a Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

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12.12 STEROID-ANTIBIOTIC
COMBINATIONS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+neomycin/polymyxin/ dexamethasone	+Maxitrol, Dexacidin	\$
+neomycin/bacitracin/ polymyxin/HC	+Cortisporin	\$\$
+neomycin/ dexamethasone	+Neo-Decadron	\$\$
neomycin/polymyxin/ prednisolone	Poly-Pred	\$\$\$
tobramycin/ dexamethasone	TohraDex	\$\$\$

12.13 STEROID-SULFONAMIDE
COMBINATIONS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+sulfacetamide/ prednisolone	+Vasocidin	\$\$
sulfacetamide/ prednisolone	Blephamide	\$\$\$
sulfacetamide/ prednisolone	Metimyd	\$\$\$\$\$!

12.14 SYMPATHOMIMETICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+dipivefrin	+Propine	\$
brimonidine	Alphagan	\$\$
apraclonidine	Iopidine	\$\$\$
epinephrine borate	Eppy/N	\$\$\$
epinephrine HCl	Epifrin	\$\$\$

12.15 MISCELLANEOUS
OPHTHALMOLOGICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
proparacaine	AK-Taine	\$
tetracaine	Pontocaine	\$
silver nitrate	Silver Nitrate	\$\$
artificial tear insert	Lacrisert	\$\$\$
cromolyn	Crolom	\$\$\$
levocabastine	Livostin	\$\$\$
loodoxamide	Alomid	\$\$\$
olopatadine	Patanol	\$\$\$\$\$!
chymotrypsin	Catarase	\$\$\$\$\$!!!!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

12.16 ANTIYIRALS

GENERIC NAME	BRAND NAME	REL. COST VALUE
idoxuridine	Herplex	\$
vidarabine	Vira-A	\$\$\$\$
+trifluridine	+Viroptic	\$\$\$\$\$

13. RESPIRATORY, ALLERGY,
COUGH & COLD13.1 ANTIHISTAMINE &
ANTIALLERGENIC AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
13.1.1 ANTIHISTAMINES		
carbinoxamine	Clistin	\$
▲clemastine 2.68	Tavist 2.68	\$
▲+cyproheptadine	+Periactin	\$
▲+diphenhydramine	+Benadryl	\$
▲+hydroxyzine HCl	+Atarax	\$
▲+hydroxyzine pamoate	+Vistaril	\$
▲+promethazine	+Phenergan	\$
▲+tripelenamine	+PBZ, PBZ SR	\$
▲azatadine	Optimiq	\$\$
azelastine	Astelin	\$\$
cetirizine	Zyrtec, Zyrtec Syrup	\$\$
▲clemastine syrup	Tavist suspension	\$\$
▲dexchlorpheniramine	Polaramine	\$\$
fenofenadine	Allegra	\$\$
loratadine	Claritin, Claritin Reditabs	\$\$

13.1.2 ADRENERGICS

+epinephrine (inj)	+Epinephrine	\$\$\$
+epinephrine (inj)	+EpiPen, +EpiPen Jr.	\$\$\$\$\$!!

13.1.3 CORTICOSTEROIDS

+hydrocortisone	+Cortef, Hydrocortone	\$
+prednisone	+Deltasone, Orasone	\$
+prednisone liquid	+Liquid Pred	\$
+triamcinolone	+Aristocort	\$
+dexamethasone	+Decadron	\$\$
+methylprednisolone	+Medrol	\$\$
prednisolone syrup	Prelone	\$\$\$
betamethasone	Celestone	\$\$\$\$

13.2 COUGH & COLD THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
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13.2.1 ANTITUSSIVE COMBINATIONS

brompheniramine/ pseudoephedrine/ dextromethorphan	Myphetan DX	\$
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+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

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+codeine/guaifenesin	+Mytussin AC, Robitussin AC	\$
▲+codeine/phenylephrine/promethazine	+Promethazine V/C/Cod	\$
▲+promethazine/codeine	+Phenergan/Co	\$
+pseudoephedrine/codeine/guaifenesin	+Nuco-Tuss Exp Robitussin DAC	\$
▲+brompheniramine/codeine/phenylpropanolamine	+Bromanate DC, Poly-Histine CS	\$\$
▲+brompheniramine/dextromethorphan/phenylpropanolamine	+Delhistine DM, Poly-Histine DM	\$\$
▲+chlorpheniramine/phenylephrine/hydrocodone	+Histinex HC, Histussin HC	\$\$
codeine	Codeine Phosphate Soln	\$\$
+dextromethorphan/guaifenesin	+Guaifex DM,	\$\$
+homatropine/hydrocodone	+Hydromet, Hycodan	\$\$
▲hydrocodone/chlorpheniramine	Tussionex	\$\$
hydrocodone/pseudoephedrine/guaifenesin	Deconamine CX	\$\$
+benzonate	+Tessalon Perle	\$\$\$
+dextromethorphan/guaifenesin	Humibid DM	\$\$\$
+hydrocodone/phenylpropanolamine	+Codamine, Hycomin	\$\$\$
▲+pseudoephedrine/carbinoxamine/dextromethorphan	+Hycomin Pediatric	\$\$\$
pseudoephedrine/hydrocodone	+Rondec DM	\$\$\$
	Histussin D	\$\$\$
13.2.2 EXPECTORANT COMBINATIONS		
+guaifenesin/phenylpropanolamine	+Phenylfenesin LA	\$
potassium iodide	SSKI	\$
+guaifenesin	+Humibid LA	\$\$
+guaifenesin/phenylpropanolamine	+Exgest LA	\$\$
+phenylpropanolamine/guaifenesin/phenylephrine	+Entex LA	\$\$
+pseudoephedrine/guaifenesin	+Entex	\$\$
+pseudoephedrine/guaifenesin SR	+Duratuss	\$\$
pseudoephedrine/guaifenesin	+Guaifed	\$\$
	Syn Rx	\$\$\$
13.2.3 DECONGESTANT/ANTIHISTAMINES		
chlorpheniramine/phenylpropanolamine/methscopolamine	Extendryl SR	\$
▲+chlorpheniramine/phenyltoloxamine/phenylephrine/phenylpropanolamine	+Naldelate	\$

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 ↓ Dosage reduction may be required in the elderly.

▲+promethazine/phenylephrine/acrivastine/pseudoephedrine	+Phenergan VC	\$
▲+brompheniramine/pseudoephedrine	Semprex D	\$\$
phenylpropanolamine/chlorpheniramine/apap	+Bromfed Caps	\$\$
▲phenylpropanolamine/chlorpheniramine/phenylephrine	Duaducin	\$\$
▲+phenylpropanolamine/phenyltoloxamine/pyrilamine/pheniramine	Nolamine	\$\$
▲+pseudoephedrine/carbinoxamine	+Poly-Histine-D, Poly-Histine-D Ped	\$\$
▲+pseudoephedrine/chlorpheniramine	Novafed	\$\$
▲azatadine/pseudoephedrine	+Rondec	\$\$
lorazadine/pseudoephedrine	+Deconamine SR	\$\$
	Trinalin	\$\$\$
	Claritin D	\$\$\$

13.3 PULMONARY AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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13.3.1 XANTHINES

+aminophylline	+Aminophylline	\$
oxtriphylline	Cholellyl	\$
theophylline anhydrous	Bronkodyl, Elixophyllin, Theoclear, Aerolate, Theolair	\$
theophylline immediate release	Slo-Phyllin, Theolair, Quinbron T	\$
+theophylline timed release	+Aerolate, Slo-Phyllin Gyrocaps, Quibron T, Slo-bid Gyrocaps, Theo-Dur, Theochron, Theolair SR, T-Phyl, Uniphyll	\$

13.3.2 BETA AGONISTS ORAL

+albuterol tabs	+Proventil, Ventolin	\$
albuterol	Proventil Repetabs, Volmax ER	\$\$
+albuterol syrup	+Proventil, Ventolin	\$\$
+metaproterenol	+Metaprel, Alupent	\$\$
terbutaline	Brethine, Bricanyl	\$\$
+ephedrine	+Ephedrine	\$\$\$\$

13.3.3 BETA AGONISTS INHALERS

+albuterol for inhalation	+Proventil, Ventolin	\$
epinephrine	Epinephrine Mist	\$
+metaproterenol 5% soln for inhalation	+Metaprel, Alupent	\$
+metaproterenol soln 0.4%, 0.6% for inhalation	+Metaprel	\$

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 ↓ Dosage reduction may be required in the elderly.

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albuterol	Ventolin Rotacaps	\$S
+albuterol soln	+Proventil, Ventolin	\$S
bitolterol	Tormalate	\$S
isoproterenol	Isuprel Mistometer	\$S
isoproterenol/ - phenylephrine	Duo-Medihaler	\$S
metaproterenol aerosol	Alupent	\$S
pirbuterol	Maxair	\$S
+isoetharine	+Bronkosol,	\$SS
	Arm-a-med	
salmeterol	Serevent	\$SS

13.3.4 INHALED CORTICOSTEROIDS

bclomethasone	Beclovent, Vanceril	\$S
budesonide	Pulmicort	\$S
bclomethasone	Vanceril DS	\$SS
fluticasone	Flovent	\$SS
triamcinolone	Azmacort	\$SS
dexamethasone	Dexacort Respiraler	\$SSS
flunisolide	Aerobid, AeroBid M	\$SSS

13.3.5 INTRANASAL STEROIDS

bclomethasone	Beconase AQ,	\$S
	Vancenase AQ,	
	Vancenase AQ DS	
bclomethasone	Vancenase	\$S
pockethaler		
budesonide	Rhinocort	\$S
flunisolide	Nasalide	\$S
fluticasone	Flonase	\$S
dexamethasone	Dexacort Turbinaire	\$SS
triamcinolone	Nasacort	\$SS
triamcinolone acetonide	Nasacort AQ	\$SS

13.3.6 MISCELLANEOUS PULMONARY AGENTS

ipratropium/albuterol	Combivent	\$S
nedocromil	Tilade	\$S
zafirlukast	Accolate	\$S
atropine (inj)	Atropine Auto	\$SS
cromolyn for inhalation	Intal, Nasalcrom	\$SS
zileuton	Zyflo	\$SS
ipratropium	Atrovent inhal	\$SSS
+acetylcysteine	+Mucomyst	\$SSS!!!!
dornase alpha	Pulmozyme	\$SSS!!!!

14. UROLOGICALS**14.1 CHOLINERGIC STIMULANTS**

GENERIC NAME	BRAND NAME	REL. COST VALUE
+bethanechol	+Urecholine	\$

14.2 ANTICHOLINERGICS & ANTISPASMODICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+dicyclomine	+Bentyl	\$

+ Use generic; brand name listed for reference only.
 † Use in the elderly is associated with increased risk.
 ‡ Dosage reduction may be required in the elderly.

ahyoscyamine	Levsin, Levsinex,	\$
	Cystospaz	
+oxybutynin	+Ditropan	\$
+propantheline	+Pro-Banthine	\$
flavoxate	Urispas	\$SSS

14.3 URINARY ANESTHETICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
+phenazopyridine	+Pyridium	\$

14.4 MISCELLANEOUS UROLOGICALS

GENERIC NAME	BRAND NAME	REL. COST VALUE
doxazosin	Cardura	\$S
methenamine/phenyl- salicylate/stropine/ hyoscyamine/benzoic acid/methylene blue	Urised	\$S
terazosin	Hytrin	\$S
finasteride	Proscar	\$SS
citric acid/ d-gluconic acid	Renacidin	\$SSS
pentosan polysulfate/ sodium	Elmiron	\$SSS
alprostadil injection	Caverject	\$SSS!
alprostadil (supp)	Muse, Edex	\$SSS!!!

15. VITAMINS, HEMATINICS & ELECTROLYTES**15.1 VITAMINS & HEMATINICS**

GENERIC NAME	BRAND NAME	REL. COST VALUE
+ADC vit w/fl	+Vitamins A, D, C with fluoride	\$
+ergocalciferol	+Deltalin, Calciferol	\$
ferrous fumarate	Foostat	\$
ferrous gluconate	Simron	\$
ferrous sulfate	Fer-in-Sol	\$
fluorides	Pediaflor Drops	\$
+folic acid	+Folvite	\$
+MVI w/fl	+Tri-Vi-Flor, +Poly-Vi-Flor	\$
MVI prenatal	Prenate Ultra, Materna	\$
nicotinic acid	Niacin	\$
polysaccharide iron complex	Hytinic	\$
+sod fluoride	+Luride	\$
+vitamin A	+Aquasol-A	\$
+vitamin B12	+Cyanocobalamin	\$
beta-carotene	Solatene	\$S
calcifediol	Calderol	\$S

+ Use generic; brand name listed for reference only.
 † Use in the elderly is associated with increased risk.
 ‡ Dosage reduction may be required in the elderly.

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calcitriol	Rocaltol	SS
cyanocobalamin	Nascobal	SS
dihydrotychosterol	Hytakerol	SSSSS!
iron dextran	InFeD	SSSSS!

15.2 COAGULATION THERAPY

GENERIC NAME	BRAND NAME	REL. COST VALUE
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15.2.1 ANTICOAGULANTS

anisindione	Miradon	5
dicumarol	Dicumarol	5
+warfarin	+Coumadin	5

15.2.2 ANTIPLATELET DRUGS

+dipyridamole	+Persantine	5
ticlopidine	Ticlid	SSSS

15.2.3 HEPARIN

+heparin (inj)	+Heparin	SSS
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15.2.4 VITAMIN K

phytonadione	Mephyton	SSS
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15.2.5 HEMOSTATICS

aminocaproic acid	Amicar	SS
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15.2.6 MISCELLANEOUS COAGULATION AGENTS

+pentoxifylline	+Trental	SS
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15.3 ELECTROLYTES

GENERIC NAME	BRAND NAME	REL. COST VALUE
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+effervescent potassium	+Klor-Con/EF	5
+KCl 8 mEq, SR cap	+Micro-K 8 mEq	5
+KCl 8 mEq, SR tab	+Slow K	5
+KCl 10 mEq, SR cap	+Micro-K 10 mEq	5
+KCl 10 mEq, SR tab	+Kaon Cl-10, K-Tab,	5
	+K-Dur	
+KCl 10%, liquid	+Kayciel Elixir	5
potassium citrate	Urocit-K	5
+potassium gluconate	+Kaon	5
liquid		
+powdered potassium	+K-Lor, Klor-Con	5

15.4 MISCELLANEOUS VITAMINS, HEMATINICS & ELECTROLYTES

GENERIC NAME	BRAND NAME	REL. COST VALUE
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ammonium chloride		5
penicillamine	Cuprimine	SSS
citrate salts	Polycitra-K	SSSS
cellulose	Calcibind	SSSSS!
+sodium polystyrene sulfonate	+Kayexalate	SSSSS!
deferoxamine	Desferal	SSSSS!!
succimer	Chemet	SSSSS!!
dimercaprol	BAL in Oil	SSSSS!!!!

+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

16. DIAGNOSTICS & MISCELLANEOUS

16.1 MISCELLANEOUS AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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+disulfiram	+Antabuse	5
levocarnitine	Carnitor	SSSS
pilocarpine, oral	Salagen	SSSS
midodrine	ProAmatine	SSSSS!

16.2 SMOKING DETERRENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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bupropion	Zyban	SSS
nicotine nasal spray	Nicotrol NS	SSSSS
nicotine patch	Nicorette gum,	SSSSS!
	Nicorette DS	

16.4 MISCELLANEOUS AGENTS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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alpha 1-proteinase inhibitor (human)	Prolastin	SSSSS!!!!
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16.6 IRRIGATION SOLUTIONS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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acetic acid	Acetic Acid Irrigation	SSSSS!!!!
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16.7 ENZYMES

GENERIC NAME	BRAND NAME	REL. COST VALUE
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hyaluronidase (inj)	Wydase	SSSSS!
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16.9 LOCAL ANESTHETICS

GENERIC NAME	BRAND NAME	REL. COST VALUE
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lidocaine (top)	Lidocaine	5
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+ Use generic; brand name listed for reference only.
 ▲ Use in the elderly is associated with increased risk.
 † Dosage reduction may be required in the elderly.

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**Merck-Medco
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Complaint

127 F.T.C.

IN THE MATTER OF
SUMMIT TECHNOLOGY, INC.

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

Docket 9286. Complaint, March 24, 1998--Decision, Feb. 23, 1999

This consent order, among other things, prohibits the Massachusetts-based marketer of laser equipment for eye surgery from entering into, enforcing or maintaining any contract, agreement, joint venture or other combination with VISX, Inc., to fix, maintain or control any price or the terms or conditions associated with the purchase, license or use of any product, device or technology that uses a laser to perform any medical procedure, including ophthalmic surgery.

Participants

For the Commission: *Michael McNeely, Veronica Kayne, Chul Pak, Dana Abrahamsen, Jeremy Cubert, Joshua Newberg, Jacqueline Berman, Beverly Dodson, David von Nirschl, Daniel Ducore, William Baer, Louis Silvia and Curtis Wagner.*

For the respondent: *Michael Sohn and Mark Merley, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Summit Technology Inc. ("Summit"), a corporation, and VISX, Inc. ("VISX"), a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

BACKGROUND

1. Respondent Summit is a corporation organized, existing, and doing business under and by virtue of the laws of Massachusetts with its office and principal place of business located at 21 Hickory Drive, Waltham, Massachusetts.

2. Respondent VISX is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware with its office and principal place of business located at 3400 Central Expressway, Santa Clara, California.

3. Respondents maintain, and have maintained, a substantial course of business, including the acts and practices alleged herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. Photorefractive keratectomy ("PRK") is a form of eye surgery used to correct vision disorders. PRK uses specialized, computer-guided laser equipment to reshape the cornea.

5. Before VISX and Summit pooled their patents, each firm owned or controlled numerous patents related to PRK.

6. VISX and Summit are the only firms whose laser equipment has received marketing approval from the United States Food and Drug Administration ("FDA") for performing PRK. As a result, VISX and Summit are the only two firms legally able to market laser equipment to be used for PRK in the United States.

7. Except to the extent that VISX and Summit have restrained competition as alleged herein, they have been, and are now, in competition with each other in connection with the sale or lease of PRK equipment and the licensing of technology related to PRK.

THE PATENT POOL

8. On or about June 3, 1992, pursuant to a series of agreements hereinafter collectively referred to as the "PPP Agreement," VISX and Summit pooled most of their existing, as well as certain future, patents related to PRK in a newly created partnership, called Pillar Point Partners ("PPP"). VISX and Summit have pooled at least 25 patents, containing more than 500 method and apparatus claims, in PPP ("PPP Patents"). Notwithstanding these patents, in the absence of the PPP Agreement, VISX and Summit could have and would have competed with one another in the sale or lease of PRK equipment by using their respective patents, licensing them, or both. In addition, VISX and Summit would have engaged in competition with each other in connection with the licensing of technology related to PRK.

9. Under the PPP Agreement, PPP has the right to license the PPP Patents to persons engaged in the business of manufacturing PRK equipment, and VISX and Summit each have relinquished the right to unilaterally license to any such person any patent that either firm contributed to PPP.

10. Under the PPP Agreement, VISX and Summit each have the unilateral right and power to prevent PPP from licensing any of the

PPP Patents to other persons engaged in the business of manufacturing PRK equipment.

11. Under the PPP Agreement, PPP has licensed back to VISX and Summit all of the PPP Patents. Also under the PPP Agreement, VISX and Summit each may sell, lease or otherwise make available PRK equipment covered by the PPP Patents to laser users and may sublicense those users to perform PRK and related procedures.

12. With certain exceptions, under the PPP Agreement, VISX and Summit each must pay a fee to PPP each time any laser user performs a PRK procedure under any PPP Patents sublicensed by Summit or VISX. Under the PPP Agreement, the level of this Per-Procedure Fee can range from \$30 to \$250, and is set at the higher of the amounts separately proposed by VISX and Summit. Since receiving FDA approval to market their lasers, VISX and Summit have set this Per-Procedure Fee at \$250. Since receiving FDA approval to market their lasers, VISX and Summit each has charged its sublicensees a \$250 per-procedure fee, with certain minor exceptions. Under the PPP Agreement, all third party manufacturers that might be licensed by PPP would be required to pay this Per-Procedure Fee to PPP.

13. As a result of their agreement with respect to the Per-Procedure Fee under the PPP Agreement, VISX and Summit charged consumers significantly more than they would have been charged in the absence of the agreement. Based on the number of procedures performed in 1996, it is likely that this overcharge exceeded \$10.5 million. Based on estimates for procedures performed in 1997, it is likely that this overcharge exceeded \$30 million.

FRAUD AND INEQUITABLE CONDUCT

14. VISX is the firm that resulted from the November 26, 1990, acquisition of the former VISX, Inc. ("Old VISX"), by Taunton Technologies, Inc. ("Taunton"). After that acquisition, VISX caused four interference proceedings that were pending before the United States Patent and Trademark Office ("PTO") to be resolved. In each instance, VISX resolved a dispute between Old VISX and Taunton over patents and patent applications related to PRK, and each culminated in the grant or retention of patents that VISX later contributed to PPP. VISX then prosecuted patent applications that had been the subject of two of the interferences.

15. One of the interferences referred to in paragraph 14 was between Dr. Francis A. L'Esperance, Jr., and Dr. Stephen Trokel

("Trokel-L'Esperance Interference"). The Trokel-L'Esperance Interference arose in the following manner: On May 19, 1987, the PTO issued to Dr. L'Esperance U.S. Patent No. 4,665,913 ("913 patent"), which contained claims covering methods for performing PRK. That patent was held by Taunton. On December 15, 1983, Dr. Trokel filed an application for a patent that contained claims conflicting with claims in the '913 patent. Dr. Trokel assigned his rights under that application to Old VISX. On the basis of conflicts between the '913 patent and Dr. Trokel's application, the PTO declared the Trokel-L'Esperance interference on September 30, 1988. VISX resolved the Trokel-L'Esperance Interference by telling the PTO that Dr. Trokel had priority with respect to the claimed invention at issue in that interference. Subsequently, partially in reliance on VISX's determination of priority, a new patent, U.S. Patent No. 5,108,388, covering that claimed invention, was issued to Dr. Trokel.

16. During the prosecution of Dr. Trokel's patent, VISX, through its attorneys and on behalf of Dr. Trokel, withheld from the PTO, articles, patents, and patent applications that VISX, its attorneys and Dr. Trokel knew were material prior art. During the course of the Trokel-L'Esperance Interference, VISX, through its attorneys and on behalf of Dr. Trokel, was aware of the following material that constituted prior art: U.S. Patent application 894,520 [Blum]; U.S. Patent 4,784,135, [Blum]; German Patent DE 3,148,748 [Karp]; Keates et al., "Carbon Dioxide Laser Beam Control for Corneal Surgery," 12 *Ophthalmic Surgery* 117 (Feb. 1981); L. Girard, "Advanced Techniques in Ophthalmic Microsurgery," Volume Two *Corneal Surgery*, C.V. Mosby Company 1981.

17. Three of the interferences referred to in paragraph 14 were between Dr. L'Esperance and Dr. Charles Munnerlyn ("Munnerlyn-L'Esperance Interferences"). The Munnerlyn-L'Esperance Interferences arose in the following manner: The PTO had issued Dr. L'Esperance three patents that included claims covering methods for preparing the cornea before PRK is performed. Each of these patents were held by Taunton. On August 5, 1987, Dr. Munnerlyn filed an application for a patent related to PRK. Dr. Munnerlyn assigned his rights under that application to Old VISX. On August 1, 1989, based on conflicts between Dr. L'Esperance's three patents and Dr. Munnerlyn's patent application, the PTO declared the Munnerlyn-L'Esperance Interferences. VISX resolved one of the Munnerlyn-

L'Esperance Interferences by telling the PTO that Dr. Munnerlyn had priority with respect to the claimed invention at issue in that interference. Subsequently, partially in reliance on VISX's determination of priority, a new patent, U.S. Patent No. 5,163,934, covering that claimed invention, was issued to Dr. Munnerlyn. VISX resolved the other two Munnerlyn-L'Esperance Interferences by telling the PTO that Dr. L'Esperance had priority with respect to the claimed inventions at issue in those interferences, and he retained the claims in those two patents.

18. During the course of the interferences referred to in paragraph 14, Dr. L'Esperance intentionally did the following:

a. Fabricated, back-dated, and falsified his scientific records. In particular, in 1984 or thereafter, Dr. L'Esperance fabricated and falsified an entry in his scientific notebook dated August 15, 1980, which contains a detailed description of PRK, including citations to medical books. He actually wrote this notebook page in 1984 or later, and he and his adult son each signed the notebook page and falsified the dates of their signatures.

b. In response to a motion seeking the inspection of his scientific papers by an expert in altered documents, Dr. L'Esperance, through his attorneys, made misleading statements to the PTO about the authenticity of his scientific notebook.

c. Fabricated, back-dated, and falsified a diary page dated January 22, 1983 to establish when he had conceived of the inventions at issue in the Munnerlyn-L'Esperance Interferences. He did so in 1989 and included information on the diary page that was not known to him in 1983. His attorneys made false statements to the PTO by failing to fully inform it about the fabrication, back-dating, and falsification of the diary page.

19. During the course of the Trokel-L'Esperance Interference and the Munnerlyn-L'Esperance Interferences, and in resolving those interferences after the merger of Old VISX and Taunton, VISX knowingly and willfully misled the PTO about Dr. L'Esperance's fraudulent conduct, failed to disclose that conduct to the PTO and deceived the PTO about the bases for its resolution of the interferences and the true inventor of the inventions at issue.

20. The actions of Dr. Trokel, Dr. L'Esperance and VISX alleged in paragraphs 14-19 constituted inequitable conduct and willful fraud on the PTO.

21. VISX has collected royalties on, and brought lawsuits and threatened to bring lawsuits to enforce, one or more of the patents described in paragraphs 14-20.

THE RELEVANT MARKETS

22. The sale or lease of PRK equipment, including the licensing of patents for use in performing PRK, is a relevant line of commerce in which to analyze the effects of respondents' conduct.

23. The licensing of technology related to PRK is a relevant line of commerce in which to analyze the effects of respondents' conduct.

24. A relevant geographic area in which to analyze the effects of respondents' conduct is the United States.

VIOLATIONS OF SECTION FIVE OF THE FTC ACT

Count I

25. The acts and practices of respondents as alleged herein constitute a contract, combination or conspiracy in restraint of commerce, and have had, and continue to have, the purpose, effect, tendency and capacity to, among other things:

a. Raise, fix, stabilize and maintain the price that physicians must pay to perform PRK procedures;

b. Raise the cost of, prevent entry into and deter the sale or leasing of PRK equipment and the licensing of technology related to PRK; and

c. Deprive consumers of the benefits of competition in the sale and leasing of PRK equipment and the licensing of technology related to PRK.

26. The acts and practices of respondents as alleged herein were and are to the prejudice and injury of the public, will continue in the absence of the relief herein requested, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

Complaint

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Count II

27. The acts and practices of respondents as alleged herein constitute the willful acquisition and maintenance of a monopoly, or a conspiracy or attempt to monopolize, and had the purpose, effect, tendency and capacity to, among other things:

- a. Create, maintain or have a dangerous probability of creating, a monopoly in the sale or leasing of PRK equipment and the licensing of technology related to PRK;
- b. Raise, fix, stabilize and maintain the price that physicians must pay to perform PRK procedures;
- c. Raise the cost of, prevent entry into and deter the sale or leasing of PRK equipment and the licensing of technology related to PRK; and
- d. Deprive consumers of the benefits of competition in the sale and leasing of PRK equipment and the licensing of technology related to PRK.

28. The acts and practices of respondents as alleged herein were and are to the prejudice and injury of the public, will continue in the absence of the relief herein requested, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

Count III

29. The acts and practices of respondent VISX as alleged herein, which constitute the acquisition of a patent or patents by inequitable conduct in violation of Section 5 of the Federal Trade Commission Act, or by fraud in violation of Section 5 of the Federal Trade Commission Act, before the PTO, and the enforcement thereof, have had, and continue to have, the purpose, effect, tendency and capacity to, among other things:

- a. Unreasonably restrain trade in the sale or leasing of PRK equipment and the licensing of technology related to PRK;
- b. Raise, stabilize and maintain the price of PRK equipment and procedures;
- c. Raise the cost of, deter and prevent entry into the sale or leasing of PRK equipment and the licensing of technology related to PRK; and

d. Deprive consumers of the benefits of competition in the sale or leasing of PRK equipment and the licensing of technology related to PRK.

30. The acts and practices of respondent VISX as alleged herein were and are to the prejudice and injury of the public, will continue in the absence of the relief herein requested, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

SCHEDULE A
SUMMIT PRK PATENTS CONTRIBUTED TO PPP

PATENT NUMBER
4, 856, 513
4, 941, 093
4, 973, 330
4. 994, 058
5, 019, 074
5, 423, 801
5, 324, 281

Complaint

127 F.T.C.

SCHEDULE B
VISX PRK PATENTS CONTRIBUTED TO PPP

PATENT NUMBER
4, 665, 913
4, 669, 466
4, 718, 418
4, 721, 379
4, 729, 372
4, 732, 148
4, 770, 172
4, 773, 414
4, 798, 204
4, 903, 695
4, 911, 711
5,108, 388
5, 163, 934
5, 188, 631
5, 207, 668
5, 219, 343
5, 219, 344
5, 312, 320

DECISION AND ORDER

The Commission having heretofore issued its complaint charging respondent Summit Technology, Inc. ("Summit") with violation of Section 5 of the Federal Trade Commission Act, as amended, and Summit having been served with a copy of that complaint, together with a notice of contemplated relief; and

Summit, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Summit of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Summit 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of Massachusetts with its office and principal place of business located at 21 Hickory Drive, Waltham, Massachusetts.

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. The term "*PPP*" means Pillar Point Partners, the partnership formed between Summit Partner, Inc., and VISX Partner, Inc., on or about June 3, 1992.

B. The term "*Summit*" or "*respondent*" means Summit Technology, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, partnerships (including but not limited to Summit Partner, Inc.) and affiliates controlled by Summit Technology, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. The term "*VISX*" means VISX, Incorporated, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, partnerships (including but not limited to VISX Partner, Inc.) and affiliates controlled by VISX, Incorporated, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. The term "*Commission*" means the Federal Trade Commission.

E. The term "*person*" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

F. The term "*Formation Agreement*" means the agreement established in the document entitled "Formation Agreement Dated June 3, 1992," which was made and entered into on or about the 3rd day of June 1992, among Summit Technology, Inc., a Massachusetts corporation; VISX, Inc., a Delaware corporation; Summit Partner, Inc., a Delaware corporation; and VISX Partner, Inc., a Delaware corporation.

G. The term "*General Partnership Agreement*" means the agreement established in the document entitled "General Partnership Agreement of Pillar Point Partners Dated June 3, 1992," which was made and entered into on or about the 3rd day of June 1992, by and between Summit Partner, Inc., a Delaware corporation, and VISX Partner Inc., a Delaware corporation.

H. The term "*Per-Procedure Fee*" means any payment for the use of any product, device, method, patent, intellectual property, or technology, which payment depends in any way on the amount of use of, including the number of procedures performed using, the product, device, method, patent, intellectual property, or technology.

I. The term "*PRK*" means photorefractive keratectomy, an excimer laser-based form of eye surgery used to correct refraction disorders.

J. The term "*PRK equipment*" means any laser or other device that could be used in connection with performing PRK.

K. The term "*PPP Patents*" means all patents that have been contributed to PPP pursuant to Articles 2.3 and 2.4 of the Formation Agreement and Article 6.2 of the General Partnership Agreement, and all patents that have been contributed to PPP since June 3, 1992. The term "PPP Patents" includes but is not limited to all patents listed in Schedule A and Schedule B of this order.

L. The term "*Settlement and Dissolution Agreement*" means the June 4, 1998 Settlement and Dissolution Agreement between Summit Technology, Inc. and VISX, Incorporated. The Settlement and Dissolution Agreement is appended to this order in redacted form as Appendix I.

II.

It is further ordered, That respondent, directly or indirectly, or through any person or other device, in or in connection with activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, cease and desist, except as provided in paragraph III of this order or in the Settlement and Dissolution Agreement, from entering into, adhering to, participating in, enforcing or maintaining any contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination with VISX:

A. (1) To fix, construct, stabilize, standardize, raise, maintain, or otherwise affect or control any price, royalty or fee for, any aspect of any price, royalty or fee for, or the terms or conditions associated with, the purchase, license or use of any product, device, method, patent, intellectual property, or technology that uses or is used in conjunction with, or claims, covers, embodies or incorporates in whole or in part the use of, a laser to perform any medical procedure, including but not limited to ophthalmic surgery; or

(2) To establish, require, charge, collect or pay any Per-Procedure Fee;

B. (1) To restrict the right or ability of respondent or VISX to sell or license any product, device, method, patent, intellectual property, or technology that uses or is used in conjunction with, or claims, covers, embodies or incorporates in whole or in part the use of, a laser

to perform any medical procedure, including but not limited to ophthalmic surgery; or

(2) To grant respondent or VISX the right or ability to prevent the sale or license by respondent or VISX of any product, device, method, patent, intellectual property, or technology that uses or is used in conjunction with, or claims, covers, embodies or incorporates in whole or in part the use of, a laser to perform any medical procedure, including but not limited to ophthalmic surgery.

Provided, however, that nothing in this order shall prevent respondent from entering into or maintaining any contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination with VISX with respect to patents other than PPP Patents, if respondent notifies the Commission in writing at least forty-five (45) days prior to entering into, forming or participating in such contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination. Such notification shall include (1) a description of the patent or patents subject to or affected by the contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination, including a copy of each such patent, and (2) a copy of the document or documents that memorialize all of the terms and conditions of the contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination, unless such document or documents do not exist at the time of the notification, in which case respondent shall include a summary of the terms and conditions.

III.

It is further ordered, That respondent shall, no later than twenty (20) days from the date this order becomes final, license to VISX the patents that respondent contributed to, or agreed to contribute to, PPP, including but not limited to all patents listed in Schedule A of this order, and any divisions, reissues, re-examinations, continuations, continuations in part, renewals, extensions and additions thereof. Such license(s) shall be royalty-free and non-exclusive as set forth in the Settlement and Dissolution Agreement.

IV.

It is further ordered, That respondent shall take no action inconsistent with the dissolution of PPP or the disposition of the PPP Patents as set forth in the Settlement and Dissolution Agreement. Consistent with the Settlement and Dissolution Agreement, PPP may wind up its affairs, defend or settle litigation in which it is or becomes a defendant and complete the defense of any such litigation.

V.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final, respondent shall distribute by first-class mail a copy of this order (not including Appendix I) and the complaint to any person that requested a license to use any of the PPP Patents in the manufacture, assembly or sale of PRK equipment since June 3, 1992.

B. (1) Respondent shall allow any person ("Customer") with which respondent entered into any agreement that includes an obligation to pay a Per-Procedure Fee to license any of the PPP Patents ("Agreement Containing License") between June 3, 1992 and June 5, 1998, to stop using the laser system covered by the Agreement Containing License, without any penalty or continuing obligation to respondent under the Agreement Containing License or any other agreement with respondent, other than obligations already incurred for goods, assets or services previously provided by respondent, including any installment purchase or lease payments under any existing agreement for the purchase or lease of a laser system sold or leased by respondent.

(2) Provided, however, that any further use or disposition of the laser system shall continue to be governed by the Agreement Containing License and any other agreements relating to the use of the laser system, unless the Agreement Containing License or any other agreements are modified by mutual agreement of the Customer and respondent.

(3) Provided further that nothing in this paragraph V.B. shall be interpreted to prevent respondent from seeking any remedy against a Customer that continues to use any intellectual property, good, asset or service that was the subject of the Agreement Containing License

or any other agreements relating to the use of the laser system without complying with such agreement.

(4) Within twenty (20) days after the date this order becomes final, respondent shall distribute by first-class mail a copy of this order (not including Appendix I), the complaint, and a letter containing the following statement to any person to which respondent then licenses any of the PPP Patents under an Agreement Containing License that was entered between June 3, 1992 and June 5, 1998:

Summit and VISX have agreed to dissolve the Pillar Point Partners arrangement and have agreed with the FTC to an Order concerning Pillar Point Partners. The Order, among other things, prohibits Summit from agreeing with VISX on a Per-Procedure Fee.

You have entered into an agreement with Summit to license one or more of the Pillar Point Partners Patents (the "Agreement Containing License"). Under the Order with the FTC, Summit is obliged to give you the opportunity to stop using the laser system covered by the Agreement Containing License, without any penalty or continuing obligation to Summit under the Agreement Containing License or any other agreement with Summit, except as provided below.

Please note that the Order does not affect obligations you have already incurred for goods, assets or services previously provided by Summit, including any installment purchase or lease payments under any existing agreement for the purchase or lease of a laser system sold or leased to you by Summit.

Please note further that any further use or disposition of the laser system by you shall continue to be governed by the Agreement Containing License and any other agreements relating to the use of the laser system, unless the Agreement Containing License or any other agreements are modified by mutual agreement between you and Summit.

(5) Respondent shall refrain from taking any action to prevent or impede:

(a) Any person covered by paragraph V.B.(1) of this order from entering or attempting to enter into an agreement for the purchase, sale, license, use, lease, option, or other disposition of any product manufactured or assembled for use in PRK; or

(b) Any person from exercising any right it may have under paragraph V.B. of this order.

VI.

It is further ordered, That:

A. For a period of ten (10) years after the date this order becomes final, respondent shall distribute by first-class mail a copy of this

order (not including Appendix I) and the complaint in this matter to any person that requests a license of any of respondent's PPP Patents.

B. Respondent shall file within sixty (60) days after the date this order becomes final, annually thereafter for ten (10) years on the anniversary of the date this order became final, and at such other times as the Commission may require, a verified written report setting forth in detail the manner and form in which it has complied and is complying with the order.

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

D. For a period of ten (10) years after the date this order becomes final, respondent shall notify the Commission in writing forty-five (45) days prior to forming or participating in the formation of, or joining or participating in, any exclusive patent licensing arrangements, patent pool arrangements, partnerships or joint ventures if the arrangement, partnership or joint venture (1) involves United States patents that relate to the use, manufacture, marketing or sale of PRK equipment; and (2) includes any person engaged in the research, development, marketing or sale of PRK equipment. Such notification shall include a copy of the document or documents that memorialize all of the terms and conditions of the licensing arrangements, patent pool arrangements, partnerships or joint ventures, unless such document or documents do not exist at the time of the notification, in which case respondent shall include a summary of the terms and conditions.

E. For the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission: (1) access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and (2) upon five business days' notice to respondent, and without restraint or interference from it, to interview officers, directors, or employees of respondent in the presence of counsel representing said officers, directors or employees.

VII.

It is further ordered, That this order will terminate upon the expiration of the last to expire of the PPP Patents.

SCHEDULE A
SUMMIT PPP PATENTS

PATENT NUMBER
4, 856, 513
4, 941, 093
4,973,330
4. 994, 058
5, 019, 074
5, 423, 801
5, 324, 281

SCHEDULE B
VISX PPP PATENTS

PATENT NUMBER
4, 665, 913
4, 669, 466
4, 718, 418
4, 721, 379
4, 729, 372
4, 732, 148
4, 770, 172
4, 773, 414
4, 798, 204
4, 903, 695
4, 911, 711
5,108, 388
5, 163, 934
5, 188, 631
5, 207, 668
5, 219, 343
5, 219, 344
5, 312, 320
5,711,762

APPENDIX I

Appendix I

SETTLEMENT AND DISSOLUTION AGREEMENT

This Settlement and Dissolution Agreement is made and entered into this 4th day of June, 1998 (the "Effective Date"), between and among Summit Technology, Inc., a corporation organized under the laws of the Commonwealth of Massachusetts ("Summit"), Summit Partner, Inc., a corporation organized under the laws of the State of Delaware ("SPI"), VISX, Incorporated, a corporation organized under the laws of the State of Delaware ("VISX"), VISX Partner, Inc., a corporation organized under the laws of the State of Delaware ("VPI") and Pillar Point Partners, a Delaware general partnership whose general partners are SPI and VPI ("Pillar Point").

WITNESSETH:

WHEREAS, Summit and VISX caused Pillar Point to be formed in 1992 to resolve certain patent disputes and, in connection therewith, entered into a Formation Agreement dated June 3, 1992 ("Formation Agreement") and caused their affiliates SPI and VPI to enter into a Partnership Agreement of even date ("Partnership Agreement"); and

WHEREAS, in accordance with the provisions of the Formation Agreement and the Partnership Agreement, Summit and VISX, through SPI and VPI, each caused to be contributed to Pillar Point the exclusive licensing rights in and to certain of their patents containing claims covering methods and apparatus for performing ultraviolet laser corneal surgery in the United States and agreed automatically to contribute to Pillar Point similar rights in any subsequently issued patents under any U.S. patent application having a filing or priority date in whole or in part occurring on or before June 3, 1993, as well as rights in certain Precluding Patents (as defined in the Formation Agreement); and

WHEREAS, Summit and VISX each entered into License Back Agreements with Pillar Point ("License Back Agreements"), pursuant to which Pillar Point granted to each a non-exclusive license to the Pillar Point patents (the License Back, Formation and Partnership Agreements, together with all amendments thereto and the collateral documentation executed and delivered in connection therewith, are hereinafter collectively referred to as the "Pillar Point Agreements"); and

WHEREAS, on June 17, 1997, Summit and VISX entered into a settlement agreement (the "Azema Settlement Agreement"), pursuant to which the parties resolved certain patent disputes, released various claims, cross licensed certain of each other's foreign patents, covenanted not to sue each other for patent infringement, and caused the exclusive licensing rights to Summit's United States Azema Patents (as defined in the Azema Settlement Agreement) to be contributed to Pillar Point; and

WHEREAS, Pillar Point, Summit and VISX are involved in numerous disputes between and among themselves and with third parties relating to Pillar Point; and

WHEREAS, Summit and VISX desire to reach a final and complete settlement of all claims, disputes and lawsuits between them, dissolve Pillar Point, cross license patents and

APPENDIX I

exchange general releases, all in accordance with the terms and conditions of this Settlement and Dissolution Agreement;

NOW, THEREFORE, in consideration of the payments, releases, licenses, covenants and undertakings hereinafter set forth, Pillar Point, Summit and VISX agree as follows:

AGREEMENT:

1. Affiliates. For purposes of this Settlement and Dissolution Agreement, the term "Affiliate" means (a) any corporation, entity or person that now or in the future owns or acquires at least 85% of the shares entitled to vote of Summit or VISX or that otherwise acquires Summit or VISX by merger, consolidation, or acquisition of substantially all of the assets of Summit or VISX or (b) any corporation, entity or person with respect to which, now or in the future, Summit or VISX owns or acquires at least 85% of the shares entitled to vote of such corporation, entity or person or that is otherwise acquired by Summit or VISX by merger, consolidation or acquisition of substantially all of the assets of such corporation, person or entity. Under no circumstances shall a cooperative venture (as defined at Section 11, below) be deemed to qualify a third party as an Affiliate of VISX or Summit, absent compliance with the specific provisions of this Section 1. Hereinafter, references to Summit and VISX in this Settlement and Dissolution Agreement (including, for example, references to cross licenses granted between Summit and VISX) shall be deemed to include their respective Affiliates.

2. Patents. (a) For purposes of this Settlement and Dissolution Agreement, the term "Summit Patents" means all U.S. and foreign patents issued to Summit or in which Summit in the future acquires an ownership interest or the right to license others to practice the art embodied in the patent, and which relate to a method or apparatus for laser ablation of corneal tissue. (b) For purposes of this Settlement and Dissolution Agreement, the term "VISX Patents" means all U.S. and foreign patents issued to VISX or in which VISX in the future acquires an ownership interest or the right to license others to practice the art embodied in the patent, and which relate to a method or apparatus for laser ablation of corneal tissue. Without limitation, the Summit Patents and the VISX Patents include all of the Patents included or includable in Pillar Point by virtue of the Pillar Point Agreements.

3. Payment. In consideration for the settlement of litigation and releases described in Sections 8, 12 and 14, below, within one (1) business day of the Effective Date, VISX shall make a single lump sum cash payment to Summit in the amount of Thirty-Five Million Dollars (\$35,000,000), in good, immediately available funds, wired to the following account: BankBoston, Account #551-06959, ABA #011000390, 100 Federal Street, Boston, Massachusetts 02110 (or such other account as Summit may direct). In the event VISX fails to timely make the payment described in this Section 3, Summit shall have the option of either (i) terminating this Agreement and treating it as null and void or (ii) treating the Agreement as effective and suing VISX in the United States District Court for the District of Massachusetts or any other court of competent jurisdiction for breach of contract and/or to specifically enforce VISX's payment and other obligations hereunder. In the event of such suit, VISX (i) consents to the jurisdiction and venue

APPENDIX I

selected by Summit and (ii) shall be liable for all of Summit's costs of suit, including attorneys' fees.

4. Royalty-Free License to VISX. Pillar Point hereby grants to VISX an irrevocable, perpetual, non-exclusive, non-transferable, fully paid up license under the Summit Patents to make, have made, use, offer to sell, sell, lease and otherwise dispose of products that come within the claims of the Summit Patents, whether directly or indirectly through distributors or other resellers, and to perform and sublicense others to perform procedures using those products or which are covered by method claims of the Summit Patents, in the United States.

5. Royalty-Free License to Summit. Pillar Point hereby grants to Summit an irrevocable, perpetual, non-exclusive, non-transferable, fully paid up license under the VISX Patents, to make, have made, use, offer to sell, sell, lease and otherwise dispose of products that come within the claims of the VISX Patents, whether directly or indirectly through distributors or other resellers, and to perform and sublicense others to perform procedures using those products or which are covered by method claims of the VISX Patents, in the United States.

6. Dissolution of Pillar Point. Effective immediately following the grant of the licenses described in Sections 4 and 5, above ("Payment Date"), Pillar Point is hereby dissolved, and, subject only to the terms of this Agreement, the Pillar Point Agreements are terminated and all rights to license, prosecute, defend and otherwise deal in and with the VISX Patents shall revert back to VISX or its designee (subject to, among other terms of this Agreement, the terms of Section 5, above), and all rights to license, prosecute, defend and otherwise deal in and with the Summit Patents shall revert back to Summit or its designee (subject to, among other terms of this Agreement, the terms of Section 4, above). From and after the Payment Date, neither Summit nor VISX shall have any further payment or other obligation to Pillar Point in respect of equipment royalties, procedure royalties, or otherwise.

7. Winding Up and Termination of Pillar Point. Notwithstanding the provisions of Section 6, above, Pillar Point shall remain in existence after the Payment Date for the sole purpose of winding up its affairs, defending or settling remaining litigation in which it is or becomes a defendant and/or completing the defense of any such litigation. Except as specifically set forth below, liability for costs and expenses incurred by Pillar Point prior to dissolution, and for ongoing expenses of Pillar Point incurred in connection with the winding up activities described above, shall be allocated 60% to VISX and 40% to Summit. Rights to remaining Pillar Point assets, including cash, claims against third parties (such as patent infringement) and receivables held by Pillar Point which accrued prior to the Payment Date or which otherwise remain in Pillar Point after winding up, shall be allocated 60% to VISX and 40% to Summit. Until the Payment Date, the License Back Agreements will remain in force and the parties will remain liable for royalties to Pillar Point accruing prior thereto, provided that each party may calculate royalties using the same assumptions and contract interpretations as were used in the immediately prior month.

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8. [CONTINGENT LIABILITIES]

9. VISX Cross License. Summit hereby grants to VISX an irrevocable, perpetual, worldwide, non-exclusive, non-transferable, fully paid up license under the Summit Patents, and any divisions, reissues, re-examinations, continuations, continuations in part, renewals, extensions and additions thereto, to make, have made, use, offer to sell, sell, import, lease and otherwise dispose of products that come within the claims of the Summit Patents, whether directly or indirectly through distributors or other resellers, and to perform and sublicense others to perform procedures using those products or which are covered by method claims of the Summit Patents. As used herein, the term "non-transferable" is not intended to alter or diminish the parties' intention that their present or future Affiliates shall enjoy the benefits of the cross licenses described in this Agreement without necessity of further action (subject to Section 11 below).

10. Summit Cross License. VISX hereby grants to Summit an irrevocable, perpetual, worldwide, non-exclusive, non-transferable, fully paid up license under the VISX Patents and any divisions, reissues, re-examinations, continuations, continuations in part, renewals, extensions and additions thereto, to make, have made, use, offer to sell, sell, import, lease and otherwise dispose of products that come within the claims of the VISX Patents, whether directly or indirectly through distributors or other resellers, and to perform and sublicense others to perform procedures using those products or which are covered by method claims of the VISX Patents. As used herein, the term "non-transferable" is not intended to alter or diminish the parties' intention that their present or future Affiliates shall enjoy the benefits of the cross licenses described in this Agreement without necessity of further action (subject to Section 11 below).

11. [SUPPLEMENTATION OF PARAGRAPHS 1, 9 and 10]

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12. Dismissal of Litigation. Within five (5) days of the Effective Date, Summit, VISX and Pillar Point shall cause all of the Summit/VISX Litigation (as hereinafter defined) to be dismissed with prejudice, with each party to bear its own costs and attorneys' fees. As used herein, "Summit/VISX Litigation" means VISX Partner, Inc. v. Summit Partner, Inc., Santa Clara County Superior Court, Case No. CV 772057; VISX, Incorporated v. Pillar Point Partners, et al., Santa Clara County Superior Court, Case No. 770042; and VISX Partner, Inc., on behalf Pillar Point Partners, United States District Court, District Of Massachusetts, Case No. 96-11739-PBS. The term "Summit/VISX Litigation" includes all counterclaims, cross-claims and the like asserted in the foregoing actions.

13. Release by VISX. Except for Claims (as defined in this Paragraph 13) for breach of this Settlement and Dissolution Agreement, VPI, VISX, and Pillar Point, on behalf of themselves and their respective officers, directors, employees, representatives, predecessors, successors, agents, assigns and attorneys (together, the "VISX Releasers"), do hereby forever release and discharge SPI, Summit, and their respective officers, directors, employees, representatives, predecessors, successors, agents, assigns and attorneys (together, the "Summit Releasees"), from any and all actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, contracts, controversies, agreements, promises, damages, judgments, awards, executions, claims and demands whatsoever, including without limitation costs and attorneys' fees, in law, admiralty or equity, or as a result of any arbitration, whether known or unknown to any of the VISX Releasers (collectively, "Claims"), which the VISX Releasers, or any of them, ever had, now have or hereafter can, shall, or may have, whether in their own right or by assignment, transfer or grant from any other person, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the Effective Date, including, but not limited to, any Claims relating directly or indirectly to Pillar Point and the Pillar Point Agreements (including royalties and payments alleged to be due and owing thereunder), unfair trade practices, false or misleading advertising claims or otherwise.

14. Release by Summit. Except for (i) the possible claims relating to the Trokel Patents described in Section 8(a)(vi), above, below and in the Tolling Agreement, and (ii) Claims (as defined in this Paragraph 14) for breach of this Settlement and Dissolution Agreement, Pillar Point, SPI, Summit, and Summit's Affiliates, on behalf of themselves and their respective officers, directors, employees, representatives, predecessors, successors, agents, assigns and attorneys (together, the "Summit Releasers"), effective on the Payment Date do hereby forever release and discharge VPI, VISX and VISX's Affiliates, and their respective officers, directors, employees, representatives, predecessors, successors, agents, assigns and attorneys (together, the "VISX Releasees") from any and all actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, contracts, controversies, agreements, promises, damages, judgments, awards, executions, claims and demands whatsoever, including without limitation costs and attorneys' fees, in law, admiralty or equity, or as a result of any arbitration, whether known or unknown to any of the Summit Releasers (collectively, "Claims"), which the Summit Releasers, or any of them, ever had, now have or hereafter can, shall, or may have, whether in their own right or by assignment, transfer or grant from any other person, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the Effective Date, including, but not limited

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to, any Claims relating directly or indirectly to Pillar Point and the Pillar Point Agreements (including royalties and payments alleged to be due and owing thereunder or Claims of wrongful dissolution thereof).

15. Covenants Not to Sue. (a) Summit hereby covenants never to sue or threaten to sue VISX or VISX's distributors, customers, or users and never to make any claim whatsoever against VISX or VISX's distributors, customers or users anywhere in the world, for any alleged infringement of any patent (whenever issued) which relates to a method or apparatus for laser ablation of corneal tissue, or for any alleged infringement of any patent owned by Summit as of the Effective Date and which relates to refractive correction of the eye, on the basis of the manufacture, use, offer to sell, sale, sublicense to customers or users, lease or other disposition of products that come within the claims of such patents; (b) VISX hereby covenants never to sue or threaten to sue Summit or Summit's distributors, customers, or users and never to make any claim whatsoever against Summit or Summit's distributors or customers, anywhere in the world, for any alleged infringement of any patent (whenever issued) which relates to a method or apparatus for laser ablation of corneal tissue, or for any alleged infringement of any patent owned by VISX as of the Effective Date and which relates to refractive correction of the eye, on the basis of the manufacture, use, offer to sell, sale, sublicense to customers or users, lease or other disposition of products that come within the claims of such patents.

16. Admissibility. Nothing in this Settlement and Dissolution Agreement shall be construed as an admission by any party of any liability of any kind to the other party. This Settlement and Dissolution Agreement shall not be admissible as evidence against any party hereto or its Affiliates in any proceeding other than in a proceeding to enforce an obligation of a party hereunder or as proof of the dissolution of Pillar Point.

17. Notices. Any notice given pursuant to this Settlement and Dissolution Agreement shall be in writing and, except as otherwise expressly provided herein, shall be deemed to have been duly delivered if delivered in person or by certified or registered or overnight express mail, postage and mailing expense prepaid, or by facsimile transmission with hard copy to follow by regular mail, and, if given or rendered to Summit or its Affiliates addressed to:

Summit Technology, Inc.
21 Hickory Drive
Waltham, Massachusetts 02154
Attention: Chief Executive Officer

or if given or rendered to VISX or its Affiliates addressed to:

VISX, Incorporated
3400 Central Expressway
Santa Clara, California 95051
Attention: Chief Executive Officer

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Either party may specify a different address by notifying the other in writing of such different address.

18. Severability. If any provision of this Settlement and Dissolution Agreement, or the application of such provision to any person or circumstance, shall be held to be invalid or unenforceable, the remainder of this Settlement and Dissolution Agreement, or the application of such provision to such persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, provided that such invalid or unenforceable provisions shall be replaced by valid and enforceable provisions which will achieve as far as possible the economic and business intentions of the parties to this Settlement and Dissolution Agreement.

19. Summit Acknowledgment. Summit hereby warrants and represents that (a) it has read and understood the terms of this Settlement and Dissolution Agreement; (b) it has the full right and authority (i) to enter into this Settlement and Dissolution Agreement, (ii) to grant the licenses, releases, covenants and undertakings recited herein on its own behalf and on behalf of each Summit Affiliate, and (iii) to enter into the agreements recited herein on its own behalf and on behalf of each Summit Affiliate; and (c) there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions set forth in this Settlement and Dissolution Agreement.

20. VISX Acknowledgment. VISX hereby warrants and represents that (a) it has read and understood the terms of this Settlement and Dissolution Agreement; (b) it has the full right and authority (i) to enter into this Settlement and Dissolution Agreement, (ii) to grant the licenses, releases, covenants and undertakings recited herein on its own behalf and on behalf of each VISX Affiliate, and (iii) to enter into the agreements recited herein on its own behalf and on behalf of each VISX Affiliate; and (c) there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions set forth in this Settlement and Dissolution Agreement.

21. Integration. Except as otherwise specifically set forth herein, this Settlement and Dissolution Agreement, together with its Exhibits, represents the entire agreement and understanding between and among the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous discussions, agreements and understandings relating thereto. Specifically, except as otherwise expressly provided herein, each of the following agreements is expressly terminated and superseded as of the Effective Date by operation of this Settlement and Dissolution Agreement.

Formation Agreement dated June 3, 1992 among
VISX, Summit, VPI, and SPI

General Partnership Agreement, dated June 3, 1992, between SPI
and VPI

License-back to Summit Agreement dated June 3, 1992

License-back to VISX Agreement dated June 3, 1992

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Contribution Agreement between SPI and Pillar Point dated June 3, 1992

Contribution Agreement between VPI and Pillar Point dated June 3, 1992

The following sections of the Azema Settlement Agreement: 4 (Definition of Affiliate); 9(b) (License to VISX); 10(b) (License to Summit); 11(a) and 12(a) (Covenants Not to Sue); and 24 (Integration).

Tolling Agreement dated February 12, 1998, between Summit and VISX

It is the intent of the parties that the Joint Defense Agreement among them relating to the Third Party Litigation shall survive execution of this Settlement Agreement. This Settlement and Dissolution Agreement may not be varied or modified other than by a writing executed on behalf of each of the parties hereto. With the exception of transfers of rights to present or future Affiliates (which occurs without necessity of further action), neither VISX nor Summit shall assign, transfer, or delegate any of its rights, duties and obligations under this Settlement and Dissolution Agreement without the express written consent of the other party, which consent shall not be unreasonably withheld.

22. Strict Performance. The failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Settlement and Dissolution Agreement or to exercise any right or remedy consequent upon a breach thereof shall not constitute waiver of any such breach or any other covenant, duty, agreement or condition.

23. Indemnification. Each of Summit and VISX (for purposes of this Paragraph 23, each a "Licensee") shall indemnify, defend and hold harmless the other party and its successors and assigns (for purposes of this Paragraph 23, each a "Licensor") from and against any loss, damage, cost or expense of whatsoever kind or nature (including reasonable attorneys' fees and professional expenses) incurred by the Licensor by reason of any product liability claim arising out of the manufacture, use, sale, lease, license or other disposition of products manufactured or marketed by Licensee or any Licensee Affiliate or any distributor of Licensee or any Licensee Affiliate and licensed hereunder. The foregoing indemnification and agreement to defend and hold harmless shall include, without limitation, any cost or expense incurred or to be incurred by the Licensor or any Licensor Affiliate by reason of its having been or being made a party or being threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in connection with any actual or alleged act or omission in connection with any such manufacture, use, sale, lease, license or other disposition of products manufactured or assembled by Licensee or any Licensee Affiliate or performance of any procedures using those products. The foregoing indemnification and agreement to defend and hold harmless

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shall not extend to any acts or omissions by or on behalf of the Licensor or its Affiliates in bad faith or as a result of negligence. A party claiming indemnification shall not be entitled to indemnification with respect to any action to which it consented in writing or any claim as to which it did not give written notice to the party from which indemnification is sought within ninety (90) days after having received notice of such claim. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. In the event any claim for indemnification arises from a claim of a third party, the party from whom indemnification is sought shall have the right to defend against such third party claim and, in such event, the party seeking indemnification shall cooperate with all reasonable requests in the defense thereof at the expense of the party from whom indemnification is sought.

24. No Agency. Nothing in this Settlement Agreement shall be deemed to appoint or authorize any party to act as an agent of the other party or to assume or incur any liability or obligation in the name or on behalf of the other party.

25. Labels. (a) VISX shall affix to each product covered by one or more of the Summit Patents that is sold, licensed, leased or otherwise disposed of after the Effective Date a label reasonably requested by Summit listing the applicable Summit Patent(s). The purpose of the label is to provide notice of the Summit Patents to other parties to establish or support a claim by Summit against any such other party of damages due to infringement. Summit and VISX agree that any such label will not be introduced into evidence, produced, relied upon, or used in any way in any proceeding between Summit and VISX, except in a proceeding related to enforcement of the terms of this Settlement and Dissolution Agreement; (b) Summit shall affix to each product covered by one or more of the VISX Patents that is sold, licensed, leased or otherwise disposed of after the Effective Date a label reasonably requested by VISX listing the applicable VISX Patent(s). The purpose of the label is to provide notice of the VISX Patents to other parties to establish or support a claim by VISX against any such other party of damages due to infringement. Summit and VISX agree that any such label will not be introduced into evidence, produced, relied upon, or used in any way in any proceeding between Summit and VISX, except in a proceeding related to enforcement of the terms of this Settlement and Dissolution Agreement.

26. Governing Law. This Settlement and Dissolution Agreement shall be governed by the laws of the State of Delaware. The terms of this Settlement and Dissolution Agreement may be enforced in any court of competent jurisdiction. Both parties hereby acknowledge and submit to the jurisdiction of the Federal District Court for the District of Delaware to hear and resolve any dispute over terms of the Settlement and Dissolution Agreement, to protect and enforce the parties' rights hereunder, to rectify the contract if necessary, and to order specific performance, injunction or similar equitable relief.

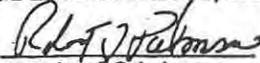
27. Counterparts. This Settlement and Dissolution Agreement may be executed in separate counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

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28. Public Statements. Summit and VISX agree that neither of them shall make any public statements about this Settlement and Dissolution Agreement or its terms, except as may be set forth in the joint press release referred to below or as required by applicable securities laws. VISX and Summit shall be permitted to disclose the terms of this Settlement and Dissolution Agreement to the Federal Trade Commission, and to any other person or entity if ordered to do so by a court of competent jurisdiction, and VISX and Summit shall be permitted to issue a joint press release, after the Effective Date, announcing the fact that they have settled outstanding disputes and agreed to dissolve Pillar Point Partners and the general terms of the Agreement.

WHEREFORE, the parties hereto, having been duly authorized to do so, have caused this Settlement and Dissolution Agreement to be executed as of the date first above written.

SUMMIT TECHNOLOGY, INC.

By: 
 Name: Robert J. Palmisano
 Title: Chief Executive Officer

SUMMIT PARTNER, INC.

By: 
 Name: Robert J. Palmisano
 Title: Chief Executive Officer

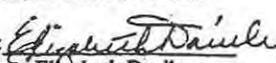
By: 
 Name: James Lightman
 Title: Secretary

PILLAR POINT PARTNERS

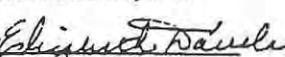
By: SUMMIT PARTNER, INC.
 ITS GENERAL PARTNER

By: 
 Name: Robert J. Palmisano
 Title: Chief Executive Officer

VISX, INCORPORATED

By: 
 Name: Elizabeth Davila
 Title: Executive Vice President
 Chief Operating Officer

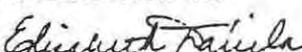
VISX PARTNER, INC.

By: 
 Name: Elizabeth Davila
 Title: Vice President

By: 
 Name: Katrina Church
 Title: Secretary

PILLAR POINT PARTNERS

By: VISX PARTNER, INC.
 ITS GENERAL PARTNER

By: 
 Name: Elizabeth Davila
 Title: Vice President

Decision and Order

127 F.T.C.

IN THE MATTER OF

VISX, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9286. Complaint,* March 24, 1998--Decision, Feb. 23, 1999*

This consent order, among other things, prohibits the California-based marketer of laser equipment for eye surgery from entering into, enforcing or maintaining any contract, agreement, joint venture or other combination with Summit Technology, Inc., to fix, maintain or control any price or the terms or conditions associated with the purchase, license or use of any product, device or technology that uses a laser to perform any medical procedure, including ophthalmic surgery.

Participants

For the Commission: *Michael McNeely, Veronica Kayne, Chul Pak, Dana Abrahamsen, Jeremy Cubert, Joshua Newberg, Jacqueline Berman, Beverly Dodson, David von Nirschl, Daniel Ducore, Louis Silvia and Curtis Wagner.*

For the respondent: *Susan Creighton and Ron Shulman, Wilson, Sonsini, Goodrich & Rosati, Palo Alto, CA. and Joseph Simons, Rogers & Wells, Washington, D.C.*

DECISION AND ORDER

The Commission having heretofore issued its complaint charging respondent VISX, Inc. ("VISX") with violation of Section 5 of the Federal Trade Commission Act, as amended, and VISX having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

* Complaint previously published at 127 FTC 208 (1999).

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, and having duly considered the comment filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware with its office and principal place of business located at 3400 Central Expressway, Santa Clara, California.
2. The Federal Trade Commission has jurisdiction of the subject matter set forth in Counts I and II of the complaint in 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. The term "*PPP*" means Pillar Point Partners, the partnership formed between Summit Partner, Inc., and VISX Partner, Inc., on or about June 3, 1992.

B. The term "*VISX*" or "*respondent*" means VISX, Incorporated, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, partnerships (including but not limited to VISX Partner, Inc.) and affiliates controlled by VISX, Incorporated, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. The term "*Summit*" means Summit Technology, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, partnerships (including but not limited to Summit Partner, Inc.) and affiliates controlled by Summit Technology, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. The term "*Commission*" means the Federal Trade Commission.

E. The term "*person*" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

F. The term "*Formation Agreement*" means the agreement established in the document entitled "Formation Agreement Dated June 3, 1992," which was made and entered into on or about the 3rd day of June 1992, among Summit Technology, Inc., a Massachusetts corporation; VISX, Inc., a Delaware corporation; Summit Partner, Inc., a Delaware corporation; and VISX Partner, Inc., a Delaware corporation.

G. The term "*General Partnership Agreement*" means the agreement established in the document entitled "General Partnership Agreement of Pillar Point Partners Dated June 3, 1992," which was made and entered into on or about the 3rd day of June 1992, by and between Summit Partner, Inc., a Delaware corporation, and VISX Partner Inc., a Delaware corporation.

H. The term "*Per-Procedure Fee*" means any payment for the use of any product, device, method, patent, intellectual property, or technology, which payment depends in any way on the amount of use of, including the number of procedures performed using, the product, device, method, patent, intellectual property, or technology.

I. The term "*PRK*" means photorefractive keratectomy, an excimer laser-based form of eye surgery used to correct refraction disorders.

J. The term "*PRK equipment*" means any laser or other device that could be used in connection with performing PRK.

K. The term "*PPP Patents*" means all patents that have been contributed to PPP pursuant to Articles 2.3 and 2.4 of the Formation Agreement and Article 6.2 of the General Partnership Agreement, and all patents that have been contributed to PPP since June 3, 1992. The term "PPP Patents" includes but is not limited to all patents listed in Schedule A and Schedule B of this order.

L. The term "*Settlement and Dissolution Agreement*" means the June 4, 1998 Settlement and Dissolution Agreement between Summit Technology, Inc. and VISX, Incorporated. The Settlement and Dissolution Agreement is appended to this order in redacted form as Appendix I.

II.

It is further ordered, That respondent, directly or indirectly, or through any person or other device, in or in connection with activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, cease and desist, except as

provided in paragraph III of this order or in the Settlement and Dissolution Agreement, from entering into, adhering to, participating in, enforcing or maintaining any contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination with Summit:

A. (1) To fix, construct, stabilize, standardize, raise, maintain, or otherwise affect or control any price, royalty or fee for, any aspect of any price, royalty or fee for, or the terms or conditions associated with, the purchase, license or use of any product, device, method, patent, intellectual property, or technology that uses or is used in conjunction with, or claims, covers, embodies or incorporates in whole or in part the use of, a laser to perform any medical procedure, including but not limited to ophthalmic surgery; or

(2) To establish, require, charge, collect or pay any Per-Procedure Fee;

B. (1) To restrict the right or ability of respondent or Summit to sell or license any product, device, method, patent, intellectual property, or technology that uses or is used in conjunction with, or claims, covers, embodies or incorporates in whole or in part the use of, a laser to perform any medical procedure, including but not limited to ophthalmic surgery; or

(2) To grant respondent or Summit the right or ability to prevent the sale or license by respondent or Summit of any product, device, method, patent, intellectual property, or technology that uses or is used in conjunction with, or claims, covers, embodies or incorporates in whole or in part the use of, a laser to perform any medical procedure, including but not limited to ophthalmic surgery.

Provided, however, that nothing in this order shall prevent respondent from entering into or maintaining any contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination with Summit with respect to patents other than PPP Patents, if respondent notifies the Commission in writing at least forty-five (45) days prior to entering into, forming or participating in such contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination. Such notification shall include (1) a description of the patent or patents subject to or affected by the contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination, including a copy of

each such patent, and (2) a copy of the document or documents that memorialize all of the terms and conditions of the contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination, unless such document or documents do not exist at the time of the notification, in which case respondent shall include a summary of the terms and conditions.

III.

It is further ordered, That respondent shall, no later than twenty (20) days from the date this order becomes final, license to Summit the patents that respondent contributed to, or agreed to contribute to, PPP, including but not limited to all patents listed in Schedule B of this order, and any divisions, reissues, re-examinations, continuations, continuations in part, renewals, extensions and additions thereof. Such license(s) shall be royalty-free and non-exclusive as set forth in the Settlement and Dissolution Agreement.

IV.

It is further ordered, That respondent shall take no action inconsistent with the dissolution of PPP or the disposition of the PPP Patents as set forth in the Settlement and Dissolution Agreement. Consistent with the Settlement and Dissolution Agreement, PPP may wind up its affairs, defend or settle litigation in which it is or becomes a defendant and complete the defense of any such litigation.

V.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final, respondent shall distribute by first-class mail a copy of this order (not including Appendix I) and the complaint to any person that requested a license to use any of the PPP Patents in the manufacture, assembly or sale of PRK equipment since June 3, 1992.

B. (1) Respondent shall allow any person ("Customer") with which respondent entered into any agreement that includes an obligation to pay a Per-Procedure Fee to license any of the PPP Patents ("Agreement Containing License") between June 3, 1992 and June 5, 1998, to stop using the laser system covered by the Agreement Containing License, without any penalty or continuing obligation to respondent under the Agreement Containing License or

any other agreement with respondent, other than obligations already incurred for goods, assets or services previously provided by respondent, including any installment purchase or lease payments under any existing agreement for the purchase or lease of a laser system sold or leased by respondent.

(2) Provided, however, that any further use or disposition of the laser system shall continue to be governed by the Agreement Containing License and any other agreements relating to the use of the laser system, unless the Agreement Containing License or any other agreements are modified by mutual agreement of the Customer and respondent.

(3) Provided further that nothing in this paragraph V.B. shall be interpreted to prevent respondent from seeking any remedy against a Customer that continues to use any intellectual property, good, asset or service that was the subject of the Agreement Containing License or any other agreements relating to the use of the laser system without complying with such agreement.

(4) Within twenty (20) days after the date this order becomes final, respondent shall distribute by first-class mail a copy of this order (not including Appendix I), the complaint, and a letter containing the following statement to any person to which respondent then licenses any of the PPP Patents under an Agreement Containing License that was entered between June 3, 1992 and June 5, 1998:

VISX and Summit have agreed to dissolve the Pillar Point Partners arrangement and have agreed with the FTC to an Order concerning Pillar Point Partners. The Order, among other things, prohibits VISX from agreeing with Summit on a Per-Procedure Fee.

You have entered into an agreement with VISX to license one or more of the Pillar Point Partners Patents (the "Agreement Containing License"). Under the Order with the FTC, VISX is obliged to give you the opportunity to stop using the laser system covered by the Agreement Containing License, without any penalty or continuing obligation to VISX under the Agreement Containing License or any other agreement with VISX, except as provided below.

Please note that the Order does not affect obligations you have already incurred for goods, assets or services previously provided by VISX, including any installment purchase or lease payments under any existing agreement for the purchase or lease of a laser system sold or leased to you by VISX.

Please note further that any further use or disposition of the laser system by you shall continue to be governed by the Agreement Containing License and any other agreements relating to the use of the laser system, unless the Agreement Containing License or any other agreements are modified by mutual agreement between you and VISX.

(5) Respondent shall refrain from taking any action to prevent or impede:

(a) Any person covered by paragraph V.B.(1) of this order from entering or attempting to enter into an agreement for the purchase, sale, license, use, lease, option, or other disposition of any product manufactured or assembled for use in PRK; or

(b) Any person from exercising any right it may have under paragraph V.B. of this order.

VI.

It is further ordered, That:

A. For a period of ten (10) years after the date this order becomes final, respondent shall distribute by first-class mail a copy of this order (not including Appendix I) and the complaint in this matter to any person that requests a license of any of respondent's PPP Patents.

B. Respondent shall file within sixty (60) days after the date this order becomes final, annually thereafter for ten (10) years on the anniversary of the date this order became final, and at such other times as the Commission may require, a verified written report setting forth in detail the manner and form in which it has complied and is complying with the order.

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

D. For a period of ten (10) years after the date this order becomes final, respondent shall notify the Commission in writing forty-five (45) days prior to forming or participating in the formation of, or joining or participating in, any exclusive patent licensing arrangements, patent pool arrangements, partnerships or joint ventures if the arrangement, partnership or joint venture (1) involves United States patents that relate to the use, manufacture, marketing or sale of PRK equipment; and (2) includes any person engaged in the research, development, marketing or sale of PRK equipment. Such notification shall include a copy of the document or documents that memorialize all of the terms and conditions of the licensing arrangements, patent

pool arrangements, partnerships or joint ventures, unless such document or documents do not exist at the time of the notification, in which case respondent shall include a summary of the terms and conditions.

E. For the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission: (1) access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and (2) upon five business days' notice to respondent, and without restraint or interference from it, to interview officers, directors, or employees of respondent in the presence of counsel representing said officers, directors or employees.

VII.

It is further ordered, That this order will terminate upon the expiration of the last to expire of the PPP Patents.

SCHEDULE A SUMMIT PPP PATENTS

PATENT NUMBER
4, 856, 513
4, 941, 093
4,973,330
4. 994, 058
5, 019, 074
5, 423, 801
5, 324, 281

Decision and Order

127 F.T.C.

SCHEDULE B
VISX PPP PATENTS

PATENT NUMBER
4, 665, 913
4, 669, 466
4, 718, 418
4, 721, 379
4, 729, 372
4, 732, 148
4, 770, 172
4, 773, 414
4, 798, 204
4, 903, 695
4, 911, 711
5,108, 388
5, 163, 934
5, 188, 631
5, 207, 668
5, 219, 343
5, 219, 344
5, 312, 320
5,711,762

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Appendix I

SETTLEMENT AND DISSOLUTION AGREEMENT

This Settlement and Dissolution Agreement is made and entered into this 4th day of June, 1998 (the "Effective Date"), between and among Summit Technology, Inc., a corporation organized under the laws of the Commonwealth of Massachusetts ("Summit"), Summit Partner, Inc., a corporation organized under the laws of the State of Delaware ("SPI"), VISX, Incorporated, a corporation organized under the laws of the State of Delaware ("VISX"), VISX Partner, Inc., a corporation organized under the laws of the State of Delaware ("VPI") and Pillar Point Partners, a Delaware general partnership whose general partners are SPI and VPI ("Pillar Point").

WITNESSETH:

WHEREAS, Summit and VISX caused Pillar Point to be formed in 1992 to resolve certain patent disputes and, in connection therewith, entered into a Formation Agreement dated June 3, 1992 ("Formation Agreement") and caused their affiliates SPI and VPI to enter into a Partnership Agreement of even date ("Partnership Agreement"); and

WHEREAS, in accordance with the provisions of the Formation Agreement and the Partnership Agreement, Summit and VISX, through SPI and VPI, each caused to be contributed to Pillar Point the exclusive licensing rights in and to certain of their patents containing claims covering methods and apparatus for performing ultraviolet laser corneal surgery in the United States and agreed automatically to contribute to Pillar Point similar rights in any subsequently issued patents under any U.S. patent application having a filing or priority date in whole or in part occurring on or before June 3, 1993, as well as rights in certain Precluding Patents (as defined in the Formation Agreement); and

WHEREAS, Summit and VISX each entered into License Back Agreements with Pillar Point ("License Back Agreements"), pursuant to which Pillar Point granted to each a non-exclusive license to the Pillar Point patents (the License Back, Formation and Partnership Agreements, together with all amendments thereto and the collateral documentation executed and delivered in connection therewith, are hereinafter collectively referred to as the "Pillar Point Agreements"); and

WHEREAS, on June 17, 1997, Summit and VISX entered into a settlement agreement (the "Azema Settlement Agreement"), pursuant to which the parties resolved certain patent disputes, released various claims, cross licensed certain of each other's foreign patents, covenanted not to sue each other for patent infringement, and caused the exclusive licensing rights to Summit's United States Azema Patents (as defined in the Azema Settlement Agreement) to be contributed to Pillar Point; and

WHEREAS, Pillar Point, Summit and VISX are involved in numerous disputes between and among themselves and with third parties relating to Pillar Point; and

WHEREAS, Summit and VISX desire to reach a final and complete settlement of all claims, disputes and lawsuits between them, dissolve Pillar Point, cross license patents and

APPENDIX I

exchange general releases, all in accordance with the terms and conditions of this Settlement and Dissolution Agreement;

NOW, THEREFORE, in consideration of the payments, releases, licenses, covenants and undertakings hereinafter set forth, Pillar Point, Summit and VISX agree as follows:

AGREEMENT:

1. Affiliates. For purposes of this Settlement and Dissolution Agreement, the term "Affiliate" means (a) any corporation, entity or person that now or in the future owns or acquires at least 85% of the shares entitled to vote of Summit or VISX or that otherwise acquires Summit or VISX by merger, consolidation, or acquisition of substantially all of the assets of Summit or VISX or (b) any corporation, entity or person with respect to which, now or in the future, Summit or VISX owns or acquires at least 85% of the shares entitled to vote of such corporation, entity or person or that is otherwise acquired by Summit or VISX by merger, consolidation or acquisition of substantially all of the assets of such corporation, person or entity. Under no circumstances shall a cooperative venture (as defined at Section 11, below) be deemed to qualify a third party as an Affiliate of VISX or Summit, absent compliance with the specific provisions of this Section 1. Hereinafter, references to Summit and VISX in this Settlement and Dissolution Agreement (including, for example, references to cross licenses granted between Summit and VISX) shall be deemed to include their respective Affiliates.

2. Patents. (a) For purposes of this Settlement and Dissolution Agreement, the term "Summit Patents" means all U.S. and foreign patents issued to Summit or in which Summit in the future acquires an ownership interest or the right to license others to practice the art embodied in the patent, and which relate to a method or apparatus for laser ablation of corneal tissue. (b) For purposes of this Settlement and Dissolution Agreement, the term "VISX Patents" means all U.S. and foreign patents issued to VISX or in which VISX in the future acquires an ownership interest or the right to license others to practice the art embodied in the patent, and which relate to a method or apparatus for laser ablation of corneal tissue. Without limitation, the Summit Patents and the VISX Patents include all of the Patents included or includable in Pillar Point by virtue of the Pillar Point Agreements.

3. Payment. In consideration for the settlement of litigation and releases described in Sections 8, 12 and 14, below, within one (1) business day of the Effective Date, VISX shall make a single lump sum cash payment to Summit in the amount of Thirty-Five Million Dollars (\$35,000,000), in good, immediately available funds, wired to the following account: BankBoston, Account #551-06959, ABA #011000390, 100 Federal Street, Boston, Massachusetts 02110 (or such other account as Summit may direct). In the event VISX fails to timely make the payment described in this Section 3, Summit shall have the option of either (i) terminating this Agreement and treating it as null and void or (ii) treating the Agreement as effective and suing VISX in the United States District Court for the District of Massachusetts or any other court of competent jurisdiction for breach of contract and/or to specifically enforce VISX's payment and other obligations hereunder. In the event of such suit, VISX (i) consents to the jurisdiction and venue

APPENDIX I

selected by Summit and (ii) shall be liable for all of Summit's costs of suit, including attorneys' fees.

4. Royalty-Free License to VISX. Pillar Point hereby grants to VISX an irrevocable, perpetual, non-exclusive, non-transferable, fully paid up license under the Summit Patents to make, have made, use, offer to sell, sell, lease and otherwise dispose of products that come within the claims of the Summit Patents, whether directly or indirectly through distributors or other resellers, and to perform and sublicense others to perform procedures using those products or which are covered by method claims of the Summit Patents, in the United States.

5. Royalty-Free License to Summit. Pillar Point hereby grants to Summit an irrevocable, perpetual, non-exclusive, non-transferable, fully paid up license under the VISX Patents, to make, have made, use, offer to sell, sell, lease and otherwise dispose of products that come within the claims of the VISX Patents, whether directly or indirectly through distributors or other resellers, and to perform and sublicense others to perform procedures using those products or which are covered by method claims of the VISX Patents, in the United States.

6. Dissolution of Pillar Point. Effective immediately following the grant of the licenses described in Sections 4 and 5, above ("Payment Date"), Pillar Point is hereby dissolved, and, subject only to the terms of this Agreement, the Pillar Point Agreements are terminated and all rights to license, prosecute, defend and otherwise deal in and with the VISX Patents shall revert back to VISX or its designee (subject to, among other terms of this Agreement, the terms of Section 5, above), and all rights to license, prosecute, defend and otherwise deal in and with the Summit Patents shall revert back to Summit or its designee (subject to, among other terms of this Agreement, the terms of Section 4, above). From and after the Payment Date, neither Summit nor VISX shall have any further payment or other obligation to Pillar Point in respect of equipment royalties, procedure royalties, or otherwise.

7. Winding Up and Termination of Pillar Point. Notwithstanding the provisions of Section 6, above, Pillar Point shall remain in existence after the Payment Date for the sole purpose of winding up its affairs, defending or settling remaining litigation in which it is or becomes a defendant and/or completing the defense of any such litigation. Except as specifically set forth below, liability for costs and expenses incurred by Pillar Point prior to dissolution, and for ongoing expenses of Pillar Point incurred in connection with the winding up activities described above, shall be allocated 60% to VISX and 40% to Summit. Rights to remaining Pillar Point assets, including cash, claims against third parties (such as patent infringement) and receivables held by Pillar Point which accrued prior to the Payment Date or which otherwise remain in Pillar Point after winding up, shall be allocated 60% to VISX and 40% to Summit. Until the Payment Date, the License Back Agreements will remain in force and the parties will remain liable for royalties to Pillar Point accruing prior thereto, provided that each party may calculate royalties using the same assumptions and contract interpretations as were used in the immediately prior month.

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8. [CONTINGENT LIABILITIES]

9. VISX Cross License. Summit hereby grants to VISX an irrevocable, perpetual, worldwide, non-exclusive, non-transferable, fully paid up license under the Summit Patents, and any divisions, reissues, re-examinations, continuations, continuations in part, renewals, extensions and additions thereto, to make, have made, use, offer to sell, sell, import, lease and otherwise dispose of products that come within the claims of the Summit Patents, whether directly or indirectly through distributors or other resellers, and to perform and sublicense others to perform procedures using those products or which are covered by method claims of the Summit Patents. As used herein, the term "non-transferable" is not intended to alter or diminish the parties' intention that their present or future Affiliates shall enjoy the benefits of the cross licenses described in this Agreement without necessity of further action (subject to Section 11 below).

10. Summit Cross License. VISX hereby grants to Summit an irrevocable, perpetual, worldwide, non-exclusive, non-transferable, fully paid up license under the VISX Patents and any divisions, reissues, re-examinations, continuations, continuations in part, renewals, extensions and additions thereto, to make, have made, use, offer to sell, sell, import, lease and otherwise dispose of products that come within the claims of the VISX Patents, whether directly or indirectly through distributors or other resellers, and to perform and sublicense others to perform procedures using those products or which are covered by method claims of the VISX Patents. As used herein, the term "non-transferable" is not intended to alter or diminish the parties' intention that their present or future Affiliates shall enjoy the benefits of the cross licenses described in this Agreement without necessity of further action (subject to Section 11 below).

11. [SUPPLEMENTATION OF PARAGRAPHS 1, 9 and 10]

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12. Dismissal of Litigation. Within five (5) days of the Effective Date, Summit, VISX and Pillar Point shall cause all of the Summit/VISX Litigation (as hereinafter defined) to be dismissed with prejudice, with each party to bear its own costs and attorneys' fees. As used herein, "Summit/VISX Litigation" means VISX Partner, Inc. v. Summit Partner, Inc., Santa Clara County Superior Court, Case No. CV 772057; VISX, Incorporated v. Pillar Point Partners, et al.; Santa Clara County Superior Court, Case No. 770042; and VISX Partner, Inc., on behalf Pillar Point Partners, United States District Court, District Of Massachusetts, Case No. 96-11739-PBS. The term "Summit/VISX Litigation" includes all counterclaims, cross-claims and the like asserted in the foregoing actions.

13. Release by VISX. Except for Claims (as defined in this Paragraph 13) for breach of this Settlement and Dissolution Agreement, VPI, VISX, and Pillar Point, on behalf of themselves and their respective officers, directors, employees, representatives, predecessors, successors, agents, assigns and attorneys (together, the "VISX Releasers"), do hereby forever release and discharge SPI, Summit, and their respective officers, directors, employees, representatives, predecessors, successors, agents, assigns and attorneys (together, the "Summit Releasees"), from any and all actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, contracts, controversies, agreements, promises, damages, judgments, awards, executions, claims and demands whatsoever, including without limitation costs and attorneys' fees, in law, admiralty or equity, or as a result of any arbitration, whether known or unknown to any of the VISX Releasers (collectively, "Claims"), which the VISX Releasers, or any of them, ever had, now have or hereafter can, shall, or may have, whether in their own right or by assignment, transfer or grant from any other person, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the Effective Date, including, but not limited to, any Claims relating directly or indirectly to Pillar Point and the Pillar Point Agreements (including royalties and payments alleged to be due and owing thereunder), unfair trade practices, false or misleading advertising claims or otherwise.

14. Release by Summit. Except for (i) the possible claims relating to the Trokel Patents described in Section 8(a)(vi), above, below and in the Tolling Agreement, and (ii) Claims (as defined in this Paragraph 14) for breach of this Settlement and Dissolution Agreement, Pillar Point, SPI, Summit, and Summit's Affiliates, on behalf of themselves and their respective officers, directors, employees, representatives, predecessors, successors, agents, assigns and attorneys (together, the "Summit Releasers"), effective on the Payment Date do hereby forever release and discharge VPI, VISX and VISX's Affiliates, and their respective officers, directors, employees, representatives, predecessors, successors, agents, assigns and attorneys (together, the "VISX Releasees") from any and all actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, contracts, controversies, agreements, promises, damages, judgments, awards, executions, claims and demands whatsoever, including without limitation costs and attorneys' fees, in law, admiralty or equity, or as a result of any arbitration, whether known or unknown to any of the Summit Releasers (collectively, "Claims"), which the Summit Releasers, or any of them, ever had, now have or hereafter can, shall, or may have, whether in their own right or by assignment, transfer or grant from any other person, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the Effective Date, including, but not limited

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to, any Claims relating directly or indirectly to Pillar Point and the Pillar Point Agreements (including royalties and payments alleged to be due and owing thereunder or Claims of wrongful dissolution thereof).

15. Covenants Not to Sue. (a) Summit hereby covenants never to sue or threaten to sue VISX or VISX's distributors, customers, or users and never to make any claim whatsoever against VISX or VISX's distributors, customers or users anywhere in the world, for any alleged infringement of any patent (whenever issued) which relates to a method or apparatus for laser ablation of corneal tissue, or for any alleged infringement of any patent owned by Summit as of the Effective Date and which relates to refractive correction of the eye, on the basis of the manufacture, use, offer to sell, sale, sublicense to customers or users, lease or other disposition of products that come within the claims of such patents; (b) VISX hereby covenants never to sue or threaten to sue Summit or Summit's distributors, customers, or users and never to make any claim whatsoever against Summit or Summit's distributors or customers, anywhere in the world, for any alleged infringement of any patent (whenever issued) which relates to a method or apparatus for laser ablation of corneal tissue, or for any alleged infringement of any patent owned by VISX as of the Effective Date and which relates to refractive correction of the eye, on the basis of the manufacture, use, offer to sell, sale, sublicense to customers or users, lease or other disposition of products that come within the claims of such patents.

16. Admissibility. Nothing in this Settlement and Dissolution Agreement shall be construed as an admission by any party of any liability of any kind to the other party. This Settlement and Dissolution Agreement shall not be admissible as evidence against any party hereto or its Affiliates in any proceeding other than in a proceeding to enforce an obligation of a party hereunder or as proof of the dissolution of Pillar Point.

17. Notices. Any notice given pursuant to this Settlement and Dissolution Agreement shall be in writing and, except as otherwise expressly provided herein, shall be deemed to have been duly delivered if delivered in person or by certified or registered or overnight express mail, postage and mailing expense prepaid, or by facsimile transmission with hard copy to follow by regular mail, and, if given or rendered to Summit or its Affiliates addressed to:

Summit Technology, Inc.
21 Hickory Drive
Waltham, Massachusetts 02154
Attention: Chief Executive Officer

or if given or rendered to VISX or its Affiliates addressed to:

VISX, Incorporated
3400 Central Expressway
Santa Clara, California 95051
Attention: Chief Executive Officer

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Either party may specify a different address by notifying the other in writing of such different address.

18. Severability. If any provision of this Settlement and Dissolution Agreement, or the application of such provision to any person or circumstance, shall be held to be invalid or unenforceable, the remainder of this Settlement and Dissolution Agreement, or the application of such provision to such persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, provided that such invalid or unenforceable provisions shall be replaced by valid and enforceable provisions which will achieve as far as possible the economic and business intentions of the parties to this Settlement and Dissolution Agreement.

19. Summit Acknowledgment. Summit hereby warrants and represents that (a) it has read and understood the terms of this Settlement and Dissolution Agreement; (b) it has the full right and authority (i) to enter into this Settlement and Dissolution Agreement, (ii) to grant the licenses, releases, covenants and undertakings recited herein on its own behalf and on behalf of each Summit Affiliate, and (iii) to enter into the agreements received herein on its own behalf and on behalf of each Summit Affiliate; and (c) there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions set forth in this Settlement and Dissolution Agreement.

20. VISX Acknowledgment. VISX hereby warrants and represents that (a) it has read and understood the terms of this Settlement and Dissolution Agreement; (b) it has the full right and authority (i) to enter into this Settlement and Dissolution Agreement, (ii) to grant the licenses, releases, covenants and undertakings recited herein on its own behalf and on behalf of each VISX Affiliate, and (iii) to enter into the agreements recited herein on its own behalf and on behalf of each VISX Affiliate; and (c) there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions set forth in this Settlement and Dissolution Agreement.

21. Integration. Except as otherwise specifically set forth herein, this Settlement and Dissolution Agreement, together with its Exhibits, represents the entire agreement and understanding between and among the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous discussions, agreements and understandings relating thereto. Specifically, except as otherwise expressly provided herein, each of the following agreements is expressly terminated and superseded as of the Effective Date by operation of this Settlement and Dissolution Agreement.

Formation Agreement dated June 3, 1992 among
VISX, Summit, VPI, and SPI

General Partnership Agreement, dated June 3, 1992, between SPI
and VPI

License-back to Summit Agreement dated June 3, 1992

License-back to VISX Agreement dated June 3, 1992

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Contribution Agreement between SPI and Pillar Point dated June 3, 1992

Contribution Agreement between VPI and Pillar Point dated June 3, 1992

The following sections of the Azema Settlement Agreement: 4 (Definition of Affiliate); 9(b) (License to VISX); 10(b) (License to Summit); 11(a) and 12(a) (Covenants Not to Sue); and 24 (Integration).

Tolling Agreement dated February 12, 1998, between Summit and VISX

It is the intent of the parties that the Joint Defense Agreement among them relating to the Third Party Litigation shall survive execution of this Settlement Agreement. This Settlement and Dissolution Agreement may not be varied or modified other than by a writing executed on behalf of each of the parties hereto. With the exception of transfers of rights to present or future Affiliates (which occurs without necessity of further action), neither VISX nor Summit shall assign, transfer, or delegate any of its rights, duties and obligations under this Settlement and Dissolution Agreement without the express written consent of the other party, which consent shall not be unreasonably withheld.

22. Strict Performance. The failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Settlement and Dissolution Agreement or to exercise any right or remedy consequent upon a breach thereof shall not constitute waiver of any such breach or any other covenant, duty, agreement or condition.

23. Indemnification. Each of Summit and VISX (for purposes of this Paragraph 23, each a "Licensee") shall indemnify, defend and hold harmless the other party and its successors and assigns (for purposes of this Paragraph 23, each a "Licensor") from and against any loss, damage, cost or expense of whatsoever kind or nature (including reasonable attorneys' fees and professional expenses) incurred by the Licensor by reason of any product liability claim arising out of the manufacture, use, sale, lease, license or other disposition of products manufactured or marketed by Licensee or any Licensee Affiliate or any distributor of Licensee or any Licensee Affiliate and licensed hereunder. The foregoing indemnification and agreement to defend and hold harmless shall include, without limitation, any cost or expense incurred or to be incurred by the Licensor or any Licensor Affiliate by reason of its having been or being made a party or being threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in connection with any actual or alleged act or omission in connection with any such manufacture, use, sale, lease, license or other disposition of products manufactured or assembled by Licensee or any Licensee Affiliate or performance of any procedures using those products. The foregoing indemnification and agreement to defend and hold harmless

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shall not extend to any acts or omissions by or on behalf of the Licensor or its Affiliates in bad faith or as a result of negligence. A party claiming indemnification shall not be entitled to indemnification with respect to any action to which it consented in writing or any claim as to which it did not give written notice to the party from which indemnification is sought within ninety (90) days after having received notice of such claim. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. In the event any claim for indemnification arises from a claim of a third party, the party from whom indemnification is sought shall have the right to defend against such third party claim and, in such event, the party seeking indemnification shall cooperate with all reasonable requests in the defense thereof at the expense of the party from whom indemnification is sought.

24. No Agency. Nothing in this Settlement Agreement shall be deemed to appoint or authorize any party to act as an agent of the other party or to assume or incur any liability or obligation in the name or on behalf of the other party.

25. Labels. (a) VISX shall affix to each product covered by one or more of the Summit Patents that is sold, licensed, leased or otherwise disposed of after the Effective Date a label reasonably requested by Summit listing the applicable Summit Patent(s). The purpose of the label is to provide notice of the Summit Patents to other parties to establish or support a claim by Summit against any such other party of damages due to infringement. Summit and VISX agree that any such label will not be introduced into evidence, produced, relied upon, or used in any way in any proceeding between Summit and VISX, except in a proceeding related to enforcement of the terms of this Settlement and Dissolution Agreement; (b) Summit shall affix to each product covered by one or more of the VISX Patents that is sold, licensed, leased or otherwise disposed of after the Effective Date a label reasonably requested by VISX listing the applicable VISX Patent(s). The purpose of the label is to provide notice of the VISX Patents to other parties to establish or support a claim by VISX against any such other party of damages due to infringement. Summit and VISX agree that any such label will not be introduced into evidence, produced, relied upon, or used in any way in any proceeding between Summit and VISX, except in a proceeding related to enforcement of the terms of this Settlement and Dissolution Agreement.

26. Governing Law. This Settlement and Dissolution Agreement shall be governed by the laws of the State of Delaware. The terms of this Settlement and Dissolution Agreement may be enforced in any court of competent jurisdiction. Both parties hereby acknowledge and submit to the jurisdiction of the Federal District Court for the District of Delaware to hear and resolve any dispute over terms of the Settlement and Dissolution Agreement, to protect and enforce the parties' rights hereunder, to rectify the contract if necessary, and to order specific performance, injunction or similar equitable relief.

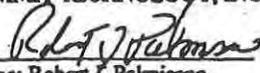
27. Counterparts. This Settlement and Dissolution Agreement may be executed in separate counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

APPENDIX I

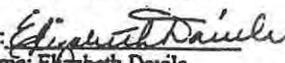
28. **Public Statements.** Summit and VISX agree that neither of them shall make any public statements about this Settlement and Dissolution Agreement or its terms, except as may be set forth in the joint press release referred to below or as required by applicable securities laws. VISX and Summit shall be permitted to disclose the terms of this Settlement and Dissolution Agreement to the Federal Trade Commission, and to any other person or entity if ordered to do so by a court of competent jurisdiction, and VISX and Summit shall be permitted to issue a joint press release, after the Effective Date, announcing the fact that they have settled outstanding disputes and agreed to dissolve Pillar Point Partners and the general terms of the Agreement.

WHEREFORE, the parties hereto, having been duly authorized to do so, have caused this Settlement and Dissolution Agreement to be executed as of the date first above written.

SUMMIT TECHNOLOGY, INC.

By: 
Name: Robert J. Palmisano
Title: Chief Executive Officer

VISX, INCORPORATED

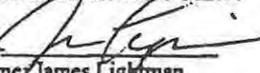
By: 
Name: Elizabeth Davila
Title: Executive Vice President
Chief Operating Officer

SUMMIT PARTNER, INC.

By: 
Name: Robert J. Palmisano
Title: Chief Executive Officer

VISX PARTNER, INC.

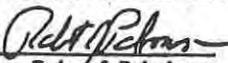
By: 
Name: Elizabeth Davila
Title: Vice President

By: 
Name: James Lightman
Title: Secretary

By: 
Name: Katrina Church
Title: Secretary

PILLAR POINT PARTNERS

By: SUMMIT PARTNER, INC.
ITS GENERAL PARTNER

By: 
Name: Robert J. Palmisano
Title: Chief Executive Officer

PILLAR POINT PARTNERS

By: VISX PARTNER, INC.
ITS GENERAL PARTNER

By: 
Name: Elizabeth Davila
Title: Vice President

IN THE MATTER OF
COLUMBIA RIVER PILOTS

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

Docket C-3854. Complaint, March 1, 1999--Decision, March 1, 1999

This consent order, among other things, prohibits Columbia River Pilots ("COLRIP"), an association of marine pilots in Oregon, from imposing any restrictions or penalties on its members who leave the association to compete with COLRIP, unless the pilots have been members of COLRIP for less than five years or have failed to give COLRIP 90 days notice of their intention to leave. The consent order also prohibits the respondent from allocating customers with any competing pilotage group, limiting any competing pilotage group's size, or restricting exclusive dealing contracts or rate proposals. In addition, the consent order requires the respondent to amend its constitution, bylaws and standard of conduct to conform to the requirements of this order.

Participants

For the Commission: *Shane Woods, John Kirkwood, Robert Schroeder, Charles Harwood, Anne Schenof, Roberta Baruch, William Baer, Denis Breen and John Simpson.*

For the respondent: *Kevin Davis, Portland, OR.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Columbia River Pilots (hereafter "respondent") has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

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

(A) "*Columbia and Willamette River Pilotage Ground*" or "*the Grounds*" is one of the pilotage grounds designated by the State of Oregon, and refers specifically to the Columbia and Willamette Rivers and their tributaries from the lowermost dock or wharf at the Port of Astoria to the head of navigation.

(B) "*Marine pilot*" means an individual licensed by the State of Oregon to assist the master of a vessel on the Grounds.

PAR. 2. Respondent is an unincorporated association whose members are marine pilots or corporations owned by marine pilots. Respondent is organized and does business under the laws of the State of Oregon, and has its offices at 13225 N. Lombard, Portland, Oregon.

PAR. 3. Respondent is engaged in the business of facilitating the provision of services by marine pilots, including, but not limited to, dispatching marine pilots and collecting and distributing marine pilots' fees. In addition, respondent is licensed by the Oregon Board of Maritime Pilots to provide training to individuals seeking to become marine pilots.

PAR. 4. Respondent's acts and practices, including the acts and practices alleged herein, are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

MARINE PILOTAGE ON THE GROUNDS

PAR. 5. In order to operate on the Grounds, large commercial vessels engaged in foreign trade are required by the State of Oregon to obtain the assistance of a licensed marine pilot. To obtain a marine pilot's license for the Grounds, an individual is required by the State to complete a multi-year training program overseen by Oregon's Board of Maritime Pilots ("the Board") and administered by pilot organizations licensed by the Board to provide training. Oregon law limits the number of pilots but does not limit the number of pilot organizations licensed for the Grounds. Oregon law also expressly protects competition in marine pilotage by prohibiting the Board from passing any rule that significantly reduces competition among licensees or pilot organizations existing on January 1, 1991, without first finding the rule is essential to safety.

PAR. 6. The Board sets the fees that may be charged for pilotage services; and those fees, once set, are not subject to competition. Before the Board sets fees for pilotage, individuals and businesses providing, purchasing or otherwise having an interest in pilotage services may submit competing rate proposals for the Board to consider.

PAR. 7. Service competition among marine pilots may affect the cost of pilotage and shipping because marine pilots make decisions concerning, among other things, the number of tug boats used to move a vessel, the number of hours before and after high tide when a vessel may be moved, and the amount of product that may be loaded onto a vessel.

RESPONDENT'S MONOPOLY

PAR. 8. From approximately the 1950's to late 1989, and since late 1995, respondent has been the only pilot organization on the Grounds, and every marine pilot has been a member of respondent.

PILOTAGE COMPETITION ON THE GROUNDS

PAR. 9. On October 25, 1989, two of respondent's approximately 40 marine pilots resigned from respondent and formed Lewis & Clark Pilotage, Inc. ("L&C"). L&C signed an exclusive contract with ConAgra, Inc., the owner of one of the largest grain elevators on the West Coast. Vessels calling at ConAgra's facility accounted for about 10% of the pilotage revenues on the Grounds, approximately twice the revenues earned by L&C's pilots when they were with respondent.

PAR. 10. The competition produced by L&C's entry had immediate benefits for purchasers of pilotage services and purchasers of shipping services. Within months, L&C's improved service enabled ConAgra to increase the rate at which it funneled grain through its elevators by more than 10%.

PAR. 11. Respondent responded by adopting practices similar to those of L&C -- dispatching pilots more quickly, and moving longer and deeper vessels, under a broader range of conditions, with fewer tugs. These practices served to reduce shipping costs for respondent's customers.

RESPONDENT'S ACTIONS TO MAINTAIN ITS MONOPOLY

PAR. 12. After L&C's formation, respondent protected its near-monopoly by:

(a) Interpreting its existing pension plan to deny any accrued pension benefits to any member who resigns and then competes with respondent.

(b) Modifying its conditions for membership to require that any marine pilot resigning from respondent must refrain from piloting on

the Grounds for six months. Under Oregon law, the pilot then would be required to obtain additional training before resuming pilotage. At the time that respondent imposed this new condition, respondent was the dominant provider of such training.

(c) Modifying its conditions for membership to require that any member who resigns and then competes with respondent must pay respondent \$200,000.

(d) Supporting modification of the stock purchase agreement for a corporation whose shareholders are members of respondent to require that a pilot terminating his membership for any reason other than death, disability, or retirement forfeit his right to profit from any increased value of his stock in the corporation.

PAR. 13. The acts or practices described in paragraph twelve were not justified on efficiency grounds.

PAR. 14. L&C was unable to obtain significant business beyond its exclusive contract with ConAgra. On January 8, 1991, L&C filed an antitrust suit against respondent.

PAR. 15. On December 22, 1991, respondent and L&C settled their lawsuit. The settlement agreement substantially restored respondent's monopoly by prohibiting L&C from seeking or accepting business from any of respondent's existing customers, from hiring more than one additional marine pilot, from entering into any new exclusive dealing contracts, from proposing any dispatch or rotation rule without respondent's permission, and from proposing or supporting any rate structure that did not have the "essential features" of the existing rate structure.

PAR. 16. Respondent and L&C submitted the settlement agreement to the Oregon Board of Maritime Pilots for its approval. The Board neither approved nor disapproved of the settlement, nor did it make any findings concerning whether the settlement is essential to safety.

PAR. 17. Respondent's new rules protected respondent from additional competition, either from L&C or from any other pilot group, by imposing penalties so prohibitive that no other pilot would leave respondent to compete with it. The settlement agreement also significantly limited L&C's ability to compete. At the end of 1994, one of L&C's founders retired from pilotage, leaving L&C with one pilot. After L&C's remaining founder retired in 1995, L&C went out of business; and respondent regained its monopoly.

NATURE AND EFFECTS OF RESPONDENT'S CONDUCT

PAR. 18. By engaging in the acts and practices described in paragraph twelve, and by acting on its own and as a combination of and in conspiracy with its members, respondent has unreasonably restrained competition in and has monopolized the market for marine pilotage on the Columbia and Willamette River Pilotage Ground. Respondent's settlement agreement described in paragraph fifteen also constituted an agreement that unreasonably restrained competition on the Grounds.

PAR. 19. The purpose, effect, tendency or capacity of respondent's acts and practices described in paragraphs twelve and fifteen is and has been to monopolize the market for marine pilotage on the Grounds, to restrict competition in that market, and to make it more difficult for new competition to develop in that market, thus depriving consumers of more efficient and less expensive pilotage and shipping services.

PAR. 20. The conspiracies, acts and practices described in paragraphs twelve and fifteen constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such conspiracies, acts and practices, or the effects thereof, are occurring or may recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of respondent Columbia River Pilots ("COLRIP"), and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent 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, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined 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 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. COLRIP is an unincorporated association whose members are marine pilots or corporations owned by marine pilots. Respondent is organized and does business under the laws of the State of Oregon, and has its offices at 13225 N. Lombard, Portland, Oregon.

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. "*COLRIP*" means Columbia River Pilots, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by COLRIP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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

C. "*Columbia and Willamette River Pilotage Ground*" or "*the Grounds*" is one of the pilotage grounds designated by the State of Oregon, and refers specifically to the Columbia and Willamette Rivers and their tributaries from the lowermost dock or wharf at the Port of Astoria to the head of navigation.

D. "*Marine pilot*" means an individual licensed by the State of Oregon to assist the master of a vessel on the Grounds, but does not include a pilot trainee or apprentice.

II.

It is further ordered, That COLRIP, directly, indirectly, or through any corporate or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, cease and desist from:

A. Imposing any restrictions or penalties of any kind on COLRIP marine pilots who leave COLRIP, or who notify COLRIP of their intention of leaving COLRIP, to provide pilotage in competition with COLRIP; provided, however, that this subparagraph does not apply to restrictions or penalties on marine pilots who have been members of COLRIP for less than five (5) years, nor does this subparagraph apply to restrictions or penalties that are imposed on a marine pilot for failure to give at least ninety (90) days' advance notice of departure from COLRIP;

B. Entering into, or attempting to enter into, any agreement or understanding (other than agreements or understandings with COLRIP members, trainees or apprentices limited to performance of their pilotage duties with COLRIP and to the term of their membership, apprenticeship or training program with COLRIP), either express or implied, with any other provider or potential provider of marine pilotage on the Columbia and Willamette River Pilotage Ground:

(1) To divide, apportion or otherwise allocate customers, routes or any other aspect of the market for marine pilotage;

(2) To limit the number of marine pilots associated with any provider or potential provider of marine pilotage or otherwise restrict the amount of marine pilotage any provider or potential provider of marine pilotage may provide;

(3) To restrict the ability of any other provider or potential provider of marine pilotage to enter into exclusive dealing contracts with any customer; or

(4) To restrict the ability of any provider or potential provider of marine pilotage to submit proposals, recommendations or any other communication to the Oregon Board of Maritime Pilots.

III.

It is further ordered, That COLRIP shall, within sixty (60) days after the date on which this order becomes final, amend its constitution, bylaws, standards of conduct, codes of ethics, membership rules, and any other statements of policy or agreements, to conform to the requirements of paragraph II of this order.

IV.

It is further ordered, That COLRIP, directly, indirectly, or through any corporate or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, shall not prevent any COLRIP marine pilot from recommending or otherwise supporting an applicant for a Certificate as a Pilot Apprentice Trainee or an applicant for a marine pilot license. Nothing in this paragraph is intended to interfere with COLRIP's right to recommend certain applicants over others, nor to interfere with COLRIP's obligation as a training organization to evaluate the performance of apprentices and trainees and to make recommendations about licensure.

V.

It is further ordered, That COLRIP shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute a copy of the complaint, the order, and the notice set out in Appendix A to the order, to each of its officers, members, marine pilot trainees, and employees, and a copy of the complaint, the order, and the notice set out in Appendix B to the order, to the Columbia River Steamship Operators Association; and

B. For a period of ten (10) years after the date on which this order becomes final, furnish a copy of the complaint, the order, and the notice set out in Appendix A to the order, to any new officers at the time they are elected, any new members at the time they become members, any new marine pilot trainees at the time they become trainees, and any new employees at the time they are hired.

VI.

It is further ordered, That COLRIP shall:

A. Sixty (60) days after the date on which this order becomes final, annually for the next ten (10) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with paragraphs II, III, IV and V of this order;

B. For a period of ten (10) years from the date this order becomes final, notify the Commission at least thirty (30) days prior to any proposed change in respondent COLRIP, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect its compliance obligations arising out of this order; and

C. For a period of ten (10) years after the date on which this order becomes final, notify the Commission within thirty (30) days after the respondent forms, participates in the formation of, or joins any joint venture for the provision of marine pilotage on the Columbia and Willamette River Pilotage Ground. This paragraph does not require notification when a marine pilot joins COLRIP as a member of COLRIP.

VII.

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

A. Access, during office hours and in the presence of counsel, to any facilities and access 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 days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent in the presence of counsel.

VIII.

It is further ordered, That this order shall terminate on March 1, 2019.

APPENDIX A

Appendix A

[COLRIP Letterhead]

As you may be aware, Columbia River Pilots ("COLRIP") has entered into a consent order with the Federal Trade Commission. This order provides that COLRIP may not:

1. prevent any member from leaving COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground;
2. penalize any member who leaves COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground, except for members who have been members for less than five (5) years or who fail to give COLRIP ninety days notice of their departure; or
3. agree or attempt to agree with any provider of marine pilotage on the Columbia River Pilotage Ground (other than agreements or understandings with COLRIP members, trainees or apprentices limited to performance of their pilotage duties with COLRIP and to the term of their membership, apprenticeship or training program with COLRIP) concerning:
 - a. the customers COLRIP or another provider will serve;
 - b. the amount of marine pilotage COLRIP or another provider will provide;
 - c. the number of marine pilots COLRIP or another provider may include;
 - d. the exclusivity of any contract for marine pilotage; or
 - e. the content of any communication to the Oregon Board of Maritime Pilotage.

To comply with these prohibitions, COLRIP has modified certain of its governing documents.

In sum, the order leaves COLRIP members with five or more years of membership free to decide for themselves, without interference from COLRIP, whether they wish to leave COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground, and prevents COLRIP from seeking an agreement with any marine pilot who leaves COLRIP that would limit the marine pilot's ability to compete with COLRIP.

For more specific information, you should refer to the order itself, a copy of which is enclosed.

[Name and title of COLRIP Official]

Enclosure

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Decision and Order

APPENDIX B

Appendix B

[COLRIP Letterhead]

As you may be aware, Columbia River Pilots ("COLRIP") has entered into a consent order with the Federal Trade Commission. This order provides that COLRIP may not:

1. prevent any member from leaving COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground;
2. penalize any member who leaves COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground, except for members who have been members for less than five (5) years or who fail to give COLRIP 90 days notice of departure; or
3. agree or attempt to agree with any provider of marine pilotage on the Columbia River Pilotage Ground (other than agreements or understandings with COLRIP members, trainees or apprentices limited to performance of their pilotage duties with COLRIP and to the term of their membership, apprenticeship or training program with COLRIP) concerning:
 - a. the customers COLRIP or another provider will serve;
 - b. the amount of marine pilotage COLRIP or another provider will provide;
 - c. the number of marine pilots COLRIP or another provider may include;
 - d. the exclusivity of any contract for marine pilotage; or
 - e. the content of any communication to the Oregon Board of Maritime Pilotage.

In sum, the order leaves COLRIP members with five or more years of membership free to decide for themselves, without interference from COLRIP, whether they wish to leave COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground, and prevents COLRIP from seeking any agreement with any marine pilot who leaves COLRIP that would limit the marine pilot's ability to compete with COLRIP. Consistent with the order, should any COLRIP member elect to leave COLRIP to compete for marine pilotage, you are free to hire that marine pilot instead of COLRIP to meet your pilotage needs.

For more specific information, you should refer to the order itself, a copy of which is enclosed.

[Name and title of COLRIP Official]

Enclosure

Complaint

127 F.T.C.

IN THE MATTER OF
ASOCIACION DE FARMACIAS REGION
DE ARECIBO, INC., ET AL.

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

Docket C-3855. Complaint, March 2, 1999--Decision, March 2, 1999

This consent order, among other things, prohibits an association of approximately 125 pharmacies operating in northern Puerto Rico and one of its officers from jointly negotiating prices or other terms for pharmacies and jointly boycotting, threatening to boycott, or refusing to provide pharmacy goods and services to any payer or provider.

Participants

For the Commission: *Gary Schorr, Steven Osnowitz, Michael Kades, Patricia Allen, David Pender, Anne Schenof, Daniel Ducore, William Baer, Louis Silvia and Peter Gulyn.*

For the respondents: *Eric Tulla, San Juan, Puerto Rico.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Asociacion de Farmacias de Region Arecibo ("respondent AFRA") and Ricardo L. Alvarez Class ("respondent Alvarez") have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. This complaint concerns the respondents' agreement to set the price and other terms and conditions under which they would participate in "the Reform," the Puerto Rican program established under the Puerto Rico Health Insurance Administration Act of 1993, Act No. 72, Article II, to provide care to Puerto Rico's indigents. The Government of Puerto Rico established the Reform in order to provide high quality health care, including pharmacy goods and services, to its indigents.

RESPONDENTS

PAR. 2. Respondent AFRA is a nonprofit corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its principal place of business at Suite 336, GPO Box 3016, Manati, Puerto Rico.

PAR. 3. Respondent Alvarez is an owner of Empresas Alvasie, which operates Farmacia Elda in Manati, Puerto Rico. He served as AFRA's President from its inception until March 1997, and is currently AFRA's treasurer. Respondent Alvarez's principal place of business is located at Barrio Cantera Carr. #2, Km. 44.5, Manati, Puerto Rico.

JURISDICTION

PAR. 4. Respondent AFRA exists and operates in substantial part for the pecuniary benefit of its members. By virtue of its purposes and activities, respondent AFRA is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. The acts and practices of respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

THE REFORM

PAR. 6. The government of Puerto Rico established the Reform in order to ensure that all island residents have access to quality health care, including pharmacy services, regardless of financial condition and capacity to pay. The Reform is financed by the Commonwealth, Federal Medicaid funds, other applicable Federal funds, contributions by employers and individual employees, and income from privatization funds (such as leases and sales of government-owned health care facilities). To date, the Reform has been implemented throughout much of Puerto Rico, although it is not yet in place in San Juan and its environs, or Ponce. The reform currently covers approximately 1.1 million individuals, 29% of Puerto Rico's total population. When fully operational, the Reform is expected to cover approximately 2 million individuals, over 50% of Puerto Rico's population.

PAR. 7. The law implementing the Reform created the Administración de Seguros de Salud ("ASES"), a public corporation, and charged it with implementing and administering the Reform. ASES divided Puerto Rico into seven regions. With respect to each region, ASES solicits bids from payers to administer the Reform, and to organize and provide services for beneficiaries. ASES then selects one payer per region. That payer then contracts with health care providers, including hospitals, physicians, pharmacies, and dentists.

PAR. 8. After reviewing bids from several payers, ASES selected Triple-S to administer the North Region of the Reform upon the Reform's inception in the Region on April 1, 1995. The North Region consists of the municipalities of Arecibo, Barceloneta, Camuy, Ciales, Florida, Hatillo, Lares, Manati, Morovis, Quebradillas, Utuado, and Vega Baja. The combined population of these municipalities is approximately 434,000, of which 260,000, are beneficiaries under the Reform.

AFRA'S MEMBERSHIP

PAR. 9. All of respondent AFRA's members are pharmacies located in the North Region of the Reform. During the time period during which the acts and practices described in paragraphs fourteen through twenty-one below took place, respondent AFRA's membership included the vast majority of pharmacies operating in the North Region. For much of this time period, respondent AFRA had approximately 125 members, constituting approximately 80% of the pharmacies in the North Region, and at least 64% of the pharmacies in each municipality in the Region.

PAR. 10. Except to the extent that competition has been restrained as alleged herein, some or all of the members of respondent AFRA have been, and are now, in competition among themselves and with other pharmacies in the North region.

PAR. 11. Except to the extent that competition has been restrained as alleged herein, respondent Alvarez, through his ownership of Empresas Alvasie, which operates Farmacia Elda, has been, and is now, in competition with at least some of AFRA's member pharmacies and other pharmacies in the North region.

PAR. 12. Absent agreements among competing pharmacies on the price and other terms upon which they will provide services to third-party payers, competing pharmacies decide individually whether

to enter into contracts with third-party payers, and on the terms and conditions under which they are willing to enter into such contracts.

ANTICOMPETITIVE CONDUCT

PAR. 13. In engaging in the acts and practices described in paragraphs fourteen through twenty-one below, respondent AFRA has acted as a combination of its members and has conspired with at least some of its members including respondent Alvarez.

PAR. 14. Respondent AFRA was formed on November 22, 1994, as a vehicle for its members to deal concertedly with third party payers. Pursuant to a provision in its Articles of Incorporation, and upon agreement of its members, AFRA negotiated on behalf of its members with health plans. In furtherance of this agreement, in December 1994, each AFRA member signed an agreement designating AFRA as its bargaining agent.

PAR. 15. Respondent Alvarez was instrumental in the formation and activities of respondent AFRA. As respondent AFRA's President from its inception until March 1997, respondent Alvarez directed respondent AFRA's efforts to set price and other terms and conditions for participation in the Reform, and provided the leadership necessary to unite otherwise competing pharmacies.

PAR. 16. From approximately January 1995 to the present, respondent AFRA, under the leadership of respondent Alvarez, conspired to fix the terms and conditions, including terms of financial compensation, under which its members would contract with Triple-S and thereby participate in the Reform.

PAR. 17. Beginning in January 1995, respondent AFRA negotiated on behalf of its members with Triple-S the terms and conditions of member participation in the Reform. Specifically, respondent AFRA sought to increase compensation for its members, and to require Triple-S to contract with all its members that sought to do so. Respondent Alvarez was respondent AFRA's principal spokesperson and negotiator in discussions with Triple-S.

PAR. 18. On January 13, 1995, respondent AFRA's members met to discuss the payment terms pursuant to which they would participate in the Reform. Respondent AFRA's members prepared a proposed dispensing fee schedule. Respondent Alvarez exhorted respondent AFRA's members to refuse to sign contracts with Triple-S until advised to do so by respondent AFRA, and directed delegates

from each municipality to spread the word to pharmacies in their respective towns not to sign contracts with Triple-S.

PAR. 19. On January 15, 1995, respondent Alvarez and other AFRA members met with Triple-S, and presented AFRA's proposed dispensing fee schedule. Thereafter, Triple-S raised the dispensing fee for generic pharmaceuticals by one dollar, and AFRA members agreed that they would provide services when the Reform began in the North Region on April 1, 1995.

PAR. 20. In March 1996, Triple-S announced a new price schedule that lowered reimbursement to AFRA's member pharmacies. In response, respondent Alvarez requested a meeting with Triple-S, at which he demanded that Triple-S rescind the new price schedule. When Triple-S refused to rescind the price schedule, respondent Alvarez enlisted AFRA's attorneys to contact Triple-S and threaten legal action. Thereafter, Triple-S raised the dispensing fee paid to pharmacies in the North Region, but kept its new price schedule for pharmaceuticals in place.

PAR. 21. In May 1996, respondent AFRA's members, under respondent Alvarez's leadership and guidance, threatened to withhold services under the Reform as of June 10, 1996, because Triple-S had refused to accede to all of its demands concerning the terms of pharmacy compensation. Specifically, although Triple-S had agreed to raise the dispensing fee paid to pharmacies as demanded by respondent AFRA, Triple-S remained unwilling to comply with respondent AFRA's demands to raise its price schedule for pharmaceuticals. Upon receiving the boycott threat, Triple-S acceded to respondent AFRA's demands and raised the prices it paid to pharmacies for pharmaceuticals, thus averting the threatened boycott. The new fee schedule implemented by Triple-S amounted to a 22% increase over the level of prices paid to AFRA's members under the March 1996 fee schedule. Respondent Alvarez organized and presided over the meeting at which AFRA's members voted to threaten to boycott Triple-S, and composed the letter in which respondent AFRA communicated the boycott threat to Triple-S.

PAR. 22. The individual members of respondent AFRA have not integrated their businesses in any economically significant way, nor have they created any efficiencies that might justify the acts and practices described in paragraphs fourteen through twenty-one.

EFFECTS

PAR. 23. The purpose, tendency, effects, or capacity of respondents' acts and practices as described in paragraphs fourteen through twenty-one are and have been to restrain trade unreasonably and hinder competition in the provision of pharmacy goods and services in the North Region of the Reform in Puerto Rico, in the following ways, among others:

- (a) To restrain competition among pharmacies;
- (b) To fix the compensation and other terms and conditions upon which pharmacies would deal with Triple-S and participate in the Reform, thereby raising the cost of pharmacy goods and services to be furnished to beneficiaries of the Reform;
- (c) To deprive the Commonwealth of Puerto Rico, payers, and consumers of the benefits of competition among pharmacies.

PAR. 24. The combination or conspiracy and the acts and practices of respondents AFRA and Alvarez, as herein alleged, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The violation or the effects thereof, as herein alleged, will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondents, named in the caption above, and the respondents having been furnished thereafter with a copy of the draft complaint which the Bureau of Competition 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 of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purpose 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 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 the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent 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 AFRA is a nonprofit corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its principal place of business located at Suite 336, GPO Box 3016, Manati, Puerto Rico.

2. Respondent Alvarez, an individual, is an owner of Empresas Alvasie which operates Farmacia Elda in Manati, Puerto Rico, and is AFRA's former President and current Treasurer. Respondent Alvarez's principal place of business is located at Barrio Cantera Carr. #2, Km. 44.5, Manati, Puerto Rico.

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

ORDER

I.

It is ordered, That, for the purposes of this order, the following definitions shall apply:

A. "*AFRA*" means Asociacion de Farmacias Region de Arecibo, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by the Asociacion de Farmacias Region de Arecibo, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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

C. "*Payer*" means any person that purchases, reimburses for, or otherwise pays for all or part of any health care services for itself or for any other person. Payer includes, but is not limited to, any health insurance company; preferred provider organization; prepaid hospital, medical, or other health service plan; health maintenance organization; government health benefits program; employer or other person

providing or administering self-insured health benefits programs; and patients who purchase health care for themselves.

D. "*Person*" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

E. "*Provider*" means any person that supplies health care goods or services to any other person, including, but not limited to, physicians, pharmacies, dentists, hospitals, and clinics.

F. "*Participating pharmacy*" means any pharmacy that is a member of AFRA.

G. "*Qualified risk-sharing joint arrangement*" means an arrangement to provide services in which (1) the arrangement does not restrict the ability, or facilitate the refusal, of pharmacy providers participating in the arrangement to deal with payers individually or through any other arrangement, and (2) all pharmacy providers participating in the arrangement share substantial financial risk from their participation in the arrangement through: (a) the provision of services to payers at a capitated rate; (b) the provision of services for a predetermined percentage of premium or revenue from payers; (c) the use of significant financial incentives (*e.g.*, substantial withholds) for its participating providers, as a group, to achieve specified cost-containment goals; or (d) the provision of a complex or extended course of treatment that requires the substantial coordination of care by different types of providers offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors.

H. "*Qualified clinically-integrated joint arrangement*" means an arrangement to provide services in which (1) the arrangement does not restrict the ability, or facilitate the refusal, of pharmacy providers participating in the arrangement to deal with payers individually or through any other arrangement, and (2) all pharmacy providers participating in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the pharmacies participating in the arrangement, in order to control costs and ensure quality of the services provided through the arrangement.

I. "*Reimbursement*" means any payment, whether cash or non-cash, or other benefit received for the provision of pharmacy goods and services.

II.

It is further ordered, That each respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of pharmacy goods and services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, cease and desist from:

A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding to:

1. Negotiate on behalf of any participating pharmacies with any payer or provider;
2. Deal or refuse to deal with, or boycott or threaten to boycott, any payer or provider;
3. Determine any terms, conditions, or requirements upon which pharmacies deal with any payer or provider, including, but not limited to, terms of reimbursement; or
4. Restrict the ability of participating pharmacies to deal with payers individually or through any arrangement outside AFRA.

B. Encouraging, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited if the person were subject to this order.

Provided that nothing in this order shall be construed to prohibit any agreement or conduct by either respondent that is reasonably necessary to form, facilitate, manage, operate, or participate in:

- (a) A qualified risk-sharing joint arrangement; or
- (b) A qualified clinically integrated joint arrangement, if the applicable respondent has provided the prior notification(s) as required by this paragraph (b). Such prior notification must be filed with the Secretary of the Commission at least thirty (30) days prior to forming; facilitating; managing; operating; participating in; or taking any action, other than planning, in furtherance of any joint arrangement requiring such notice ("first waiting period"), and shall include for such arrangement the identity of each participant, the location or

area of operation, a copy of the agreement and any supporting organizational documents, a description of its purpose or function, a description of the nature and extent of the integration expected to be achieved and the anticipated resulting efficiencies, an explanation of the relationship of any agreement on reimbursement to furthering the integration and achieving the expected efficiencies, and a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from such agreement(s). If, within the first waiting period, a representative of the Commission makes a written request for additional information, the applicable respondent shall not form; facilitate; manage; operate; participate in; or take any action, other than planning, in furtherance of such joint arrangement until thirty (30) days after substantially complying with such request for additional information ("second waiting period") or such shorter waiting period as may be granted by letter from the Bureau of Competition. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided further that nothing in this order shall be construed to prohibit respondent Alvarez from negotiating with any payer or provider on behalf of pharmacies that he:

(a) Owns; or

(b) Operates pursuant to a contract, provided that respondent Alvarez submits written notification and a copy of the contract to the Commission within ten (10) days of entering into any such contract and refrains from negotiations with any payer or provider for at least thirty (30) after providing such notice.

Provided further that nothing contained in this order shall be construed to prevent any respondent or respondents from engaging in the bona fide exercise of rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding.

III.

It is further ordered, That respondent AFRA shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint, as well as certified Spanish translations thereof to each person who, at any time since November 22, 1994, has been an officer, director, manager, employee, or participating pharmacy in AFRA.

B. Within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint, as well as certified Spanish translations thereof to each payer or provider who, at any time since November 22, 1994, has communicated with AFRA concerning any desire, willingness, or interest in contracting for pharmacy goods and services with AFRA members.

C. For a period of five (5) years after the date this order becomes final:

1. Distribute by first-class mail a copy of this order and the accompanying complaint, as well as certified Spanish translations thereof, to each new AFRA member within thirty (30) days of his or her initial participation, and

2. Annually publish in any official annual report or newsletter sent to all participating pharmacies, a copy of this order and the complaint, as well as certified Spanish translations thereof, with such prominence as is given to regularly featured articles. If no such annual report or newsletter is sent to participating pharmacies, AFRA shall annually, on the anniversary of the date this order becomes final as to AFRA, distribute a copy of this order and the complaint, as well as certified Spanish translations thereof, by first-class mail, or at a formal meeting of AFRA, to all participating pharmacies.

IV.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final, each respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order.

B. One (1) year from the date this order becomes final, annually for the next five (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require,

each 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 and III of this order.

V.

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

VI.

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

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

B. Upon five business days' notice to a respondent and without restraint or interference from that respondent, to interview that respondent, or officers, directors, employees, or other representatives of that respondent.

VII.

It is further ordered, That this order shall terminate on March 2, 2019.

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IN THE MATTER OF
NEW VISION INTERNATIONAL, INC., ET AL.

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

Docket C-3856. Complaint, March 3, 1999--Decision, March 3, 1999

This consent order, among other things, prohibits an Arizona-based multi-level marketing company, that sells nutritional supplements, its affiliated company and their officers from making unsubstantiated advertising claims for a combination of supplements they called "God's Recipe," that the respondents promote in the prevention, treatment, cure or mitigation of Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder or their symptoms. Also, the consent order prohibits the misrepresentation of testimonials or endorsements for the product.

Participants

For the Commission: *Matthew Gold, Sylvia Kundig, and Jeffrey Klurfeld.*

For the respondents: *Barry Cutler and Julia Oas, Baker & Hostetler, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that New Vision International, Inc., and NVI Promotions, L.L.C., corporations, and Jason P. Boreyko and Benson K. Boreyko, 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 a proceeding by it in respect thereof would be in the public interest, alleges:

1. Respondent New Vision International, Inc. ("New Vision") is an Arizona corporation with its principal office or place of business at 7762 East Gray Road, Suite 500, Scottsdale, AZ.
2. Respondent NVI Promotions, L.L.C., is an Arizona corporation with its principal office or place of business at 7762 East Gray Road, Suite 500, Scottsdale, AZ.
3. Respondent Jason P. Boreyko 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.

4. Respondent Benson K. Boreyko 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. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed nutritional supplement products, and audiotapes and other promotional materials for these products, and have engaged in the recruitment of distributors for the products. The respondents have dominated, controlled, furnished the means, instrumentalities, services and facilities for and/or condoned or approved the acts and practices referred to below.

6. Respondents have developed a multilevel marketing plan to sell New Vision products through distributors to consumers. The marketing plan allows distributors to earn money by selling the products at a suggested mark-up to consumers. Distributors also recruit and train other individuals to be distributors in the respondents' marketing plan. Distributors earn money based on purchases from New Vision made by these recruits and others who they, in turn, recruit to be distributors.

7. Respondents have established the marketing plan, and recruited distributors, for the purpose of promoting, selling, or otherwise distributing New Vision products. Among other things, New Vision provides each new distributor with a sales kit that contains brochures, order forms, and other materials identifying New Vision, that are intended to be, and are, used by distributors in their sales efforts. NVI Promotions, L.L.C., sells promotional materials, including brochures, audiotapes, and custom printed cassette labels, to New Vision distributors. These promotional materials are intended to be, and are, used by distributors in their sales and recruitment efforts.

8. Respondents have advertised, promoted, offered for sale, sold, and distributed various nutritional supplements, including: (a) "PC Grape Seed Extract with an Herbal Blend;" (b) "Essential Minerals;" and (c) "Multi-Enzymes with Alfalfa/Barley Sprouts." In some of their promotional materials, respondents collectively refer to these products as "God's Recipe," and tout them as a natural alternative to the prescription drug Ritalin for children suffering from Attention Deficit Disorder or Attention Deficit/Hyperactivity Disorder ("ADD/ADHD"). These products are "'foods' and/or 'drugs,'" within

the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

9. 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.

10. Respondents have disseminated or have caused to be disseminated advertisements for God's Recipe, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements:

A. "The problem: Johnny isn't staying up with the rest of the children, he's getting into fights at recess and he's just not listening. The teacher has seen it hundreds of times: ADD (Attention Deficit Disorder) - the most common form of treatment: Ritalin. Parents trusting the advice of well-meaning professionals are unknowingly starting their children on a cycle of chemical dependency. Is there an alternative? The good news is yes, and this tape will outline what has become known as 'God's recipe' as well as letting you hear from some doctors on this very subject. God's recipe is made up of three very exciting, natural health products. The three products you'll hear about on this tape are colloidal minerals, OPC grape seed extract containing ginkgo biloba, and a multi-enzyme product. This combination is making a huge difference in the lives of thousands of children and is a natural approach that works....

One out of every three is going to drop out of school and if they carry this into adulthood, the national statistics are that one out of every ten will attempt suicide, so my recommendation is a couple of ounces of colloidal minerals each day for these children. We believe that the anti-oxidant is very important to help clean up the free radical damage that is going on inside their little brains and we combine that with ginkgo biloba and then we think that the multi-enzymes to help them metabolize that sugar that they're going to get -- we just can't seem to eliminate enough of it -- is very important....

I've learned a lot tonight and I very much appreciate your being willing to share all of this. I think one of the things that I'd like to kind of end with here is Zoanne said, "Thank God." And it seems to me that we have properly titled what we're doing and the success of this formulation, this combination of natural nutritional supplements with eight, 10, 15 calls I get a day and the hundreds and hundreds of parents and children now that are benefitting from this, we really can, I think, in good consciousness call it God's recipe. And what most of us are doing is two ounces of these colloidal minerals spread during the day, maybe first thing in the morning and then sometime mid to late afternoon, 40 milligrams of this Proanthocyanidin, preferably one that comes from grape seed extract in combination with Ginkgo Biloba and we think that you should take those roughly at the same time that you take the mineral supplementation and then lastly, because there is no question that sugar is a major culprit in ADHD and ADD, we need to eliminate sugar as much as possible from all of our diets, but particularly from the diets of those that are very sensitive and impacted negatively by sugar and in order to help ease the problem of the sugar that we are unable to eliminate, these multi-

enzyme capsules are phenomenal because as Dr. Chris has told us tonight, they assist mightily in metabolizing the sugar and getting that whole digestive process and the reaction of digesting sugar under control so that we don't get the mood swings and the metabolic swings. So we call that God's recipe. Hopefully, with the information that you have been kind enough to share with us tonight, the recipe will spread and the resultant blessing will occur to as many people as possible. So, I would just say, again, thank you."

(Exhibit A, Transcript of tape entitled "God's Recipe - The Natural Alternative to Ritalin.")

B. "Former Executive VP with Days Inn of America wants to rid the world of Ritalin, substitute good nutrition and dietary supplements in its place...

I attended a lecture by Dr. Kris Van Oeveren last year, at which time he stated that in his practice, he often dealt with children who were ADHD. In many cases (but not all), it was his opinion that these children were unable to adequately process sugar or glucose, and if you added a good multi-enzyme supplement (one containing sufficient gluco-amylase) to their diets, that the problems would disappear, or as a minimum, be greatly reduced....

Having watched my son suffer through the anguish and destruction of being on Ritalin for six years of his life, I was absolutely dumbstruck! I thought, "Are you trying to tell me that I could have avoided putting my son (and my family) through that nightmare from hell by simply giving him a 100% natural supplement? I don't believe it!" But the guilt and sadness of those memories with my son and the family during his formative years of ages six through twelve would not let this stunning disclosure subside from my consciousness. I decided to test this idea with friends from Memphis, who had a son, on Ritalin, and not doing well at all. In fact, he was the same age as my son when our drug odyssey began....

Back to my friends in Tennessee. They agreed to have their son's pediatrician monitor the reduction of Ritalin over a 30 day period, combined with the addition of certain natural nutritional supplements. At the end of this test period, they reported that the Ritalin was no longer being taken and that there had been no negative changes in behavior....

Now, hundreds and perhaps many thousands of cases later, parents are hearing glowing reports of their children's outstanding performances in the academic environment as well as the social environments in which they are asked to participate. In fact, while I have no certified statistical evidence to support this conclusion other than anecdotal, I have not had a single report back to me that even one single child has had to return to Ritalin after trying a combination of three natural nutritional supplements which I call 'God's Recipe.'"

(Exhibit B, "Well Being Journal," Vol V, No. 4, July/August 1996 (Included in "Attention Deficit Hyperactivity Disorder" pamphlet.))

C. "God's Recipe

- 1.) 2 ounces of Colloidal Minerals.
- 2.) 40 milligrams of highly effective antioxidant - OPC capsule combined with Ginkgo Biloba.
- 3.) Multi-enzyme capsule with every meal and with every significant snack, as well as the elimination of as much sugar as possible from the diet.

* See back page for more information

[Back Page]

Information on our "God's Recipe" Products

1.) Colloidal Minerals

These are minerals in a delicious liquid form that children of all ages really enjoy. The minerals are extremely easy for the body to absorb as they are extracted from plant source deposits of vegetation origin. In fact, the absorption rate in the body of these minerals is much greater than elemental minerals taken in tablet form. There are over 60 minerals in every 32 ounce bottle.

2.) Antioxidant with Ginkgo Biloba:

This antioxidant is OPC and is derived from the original patented grape seed extract. It has 50 times more antioxidant potency than vitamin E, and 20 times more than vitamin C. In combination with Ginkgo Biloba and other herbs, it can have a very positive impact on one's health.

3.) Multi-Enzymes

As the basis of all metabolic activity, enzymes are the driving force of our body's more than **150,000** biochemical reactions. Enzymes are very important for effectively metabolizing sugars, an activity of critical importance to ADHD control. A balanced blend of enzymes and minerals maximizes the assimilation of nutrients.

WHEN TO TAKE GOD'S RECIPE

Take one ounce of Colloidal Minerals and 1 capsule (20 milligrams) of the Antioxidant with Ginkgo Biloba first thing in the morning, and both again mid-to-late afternoon. Take 1 capsule of Multi-Enzymes with each meal and with each significant snack. Eliminate sugar throughout the day and evening.

We wish you and your family the best. If you have any questions, or would like to place an order, please call us at:..."

(Exhibit C, Excerpted from "Attention Deficit Hyperactivity Disorder" pamphlet.)

D. GOD'S RECIPE TESTIMONIALS

Good evening Mr. James: This is Shondra W. I had talked to you about a month ago to get information from you about how I could get my son off of Ritalin. And I just wanted you to know that I have had him completely off Ritalin for the past five days and I couldn't be more pleased with the way he is doing, he is doing so well. He is such a pleasure to be with now. And he is feeling better himself, he doesn't even want foods with sugar. And I just wanted to tell you 'Thank You and I really appreciate all of your help. (Shondra W, Texas)

Dear Max: We started about four and a half months ago and this has been the greatest four and a half months my son and I have ever had, ever. My son is 6 ½ years old. He was being brought to my work by the school principle because he was such a severe discipline problem that he was under consideration to be 'kicked out' of first grade. I was accused by the school of not being strict enough with my son, not disciplining him enough. It was right after that meeting with the school teachers and counselors that I started him on the program (God's Recipe) and we have had perfect behavior since then. He won an award pin for his perfect behavior and he

won an all expense paid vacation from the principle for perfect behavior for four straight months. His teacher says that she wishes that she could get this (God's Recipe) for every kid in class. This is the best thing that has ever happened to us. I thank God that we have this. I really, really do! (Zoanne, California)" (Exhibit D, Excerpted from "Attention Deficit Hyperactivity Disorder" pamphlet.)

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

A. God's Recipe can cure, prevent, treat or mitigate Attention Deficit Disorder or its symptoms.

B. God's Recipe can cure, prevent, treat or mitigate Attention Deficit Hyperactivity Disorder or its symptoms.

C. God's Recipe is an effective alternative treatment to the prescription drug Ritalin for Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder.

D. Testimonials from consumers appearing in the advertisements for God's Recipe reflect the typical or ordinary experience of members of the public whose children have used the product.

12. Through the means described in paragraph ten, 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.

13. 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 twelve was, and is, false or misleading.

14. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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TAPE: 'GOD'S RECIPE - THE NATURAL ALTERNATIVE TO RITALIN-

[music]

Parents across America are receiving phone calls from their children's teachers not to praise their progress in class, but to inform them there is a problem with Johnny. The problem? Johnny isn't staying up with the rest of the children, he's getting into fights at recess and he's just not listening. The teacher has seen it hundreds of times: ADD (Attention Deficit Disorder) - the most common form of treatment: Ritalin. Parents trusting the advice of well-meaning professionals are unknowingly starting their children on a cycle of chemical dependency. Is there an alternative? The good news is yes, and this tape will outline what has become known as God's Recipe, as well as letting you hear from some doctors on this very subject. God's Recipe is made up of three very exciting, natural health products. The three products you'll hear about on this tape are colloidal minerals, OPC grape seed extract containing ginkgo biloba, and a multi-enzyme product. This combination is making a huge difference in the lives of thousands of children and is a natural approach that works. Let us start this learning adventure with a well-known radio show broadcasted weekly, hosted by Dr. Joel Wallach.

[music]

Thank you and welcome to the Wellness Hour. This is Dr. Joel Wallach, your host, a physician and a veterinarian. I can tell you a lot of my patients say I treat them like dogs, but they seem to get better. We're going to talk about ADD/ADHD, hyperactivity, learning disabilities and all kinds of related disorders. I would be famous for this up in Portland, Oregon where I practiced for 12 years. I used to see literally hundreds and hundreds; maybe as many as thousands of parents who'd bring their children to me who had these problems and, of course, this was in the '70's and early '80's. People were just learning about Ritalin and all the teachers

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would like to put the students on Ritalin -- we're talking about 6, 7, 8, 9 and 10-year olds -- they would want to put them on Ritalin. I think a psychiatrist gave lectures to the teachers so they were very aware of Ritalin and, when a child was disruptive in the class, the first thing they would do is say to the parent, "Put the kid on Ritalin." And if the parent refused, the teachers would turn the parents over to the social services in Oregon, which were really hot to do something and they would then take on the parents and they'd say look, if you don't turn the kid over to be put on Ritalin, the first thing that's going to happen is we're going to make the child a ward of the state and the state will make sure that the kid gets Ritalin because it is good for the kid. And this is all based on the teachers' assessment of what was going on in the classroom.

Well, what I got famous for was taking these kids and having them draw their favorite animal or plane or flower or house or whatever it might be prior to having breakfast in the morning. Then having whatever usual breakfast they would have; it could be sugar frosted flakes, something like Pop Tarts, syrup on their Eggos, apple juice, grape juice, Sunny Delight, these kinds of things. Then go to school and about an hour and a half later do their same drawing again and then compare the two. And what we found out was that a six-year-old who could draw a giraffe that looked obviously like a giraffe after an hour and half following a high-sugar breakfast would draw a giraffe that would look much like a schmoo. For those of you who are old enough to remember what a schmoo looked like, it was a pillowcase with eyes on it. So, we would recognize that this kid was sensitive to sugar and, of course, we have talked about this many times on this show, there are people who are sensitive to sugar in all forms, whether it is natural, processed, corn syrup, honey, molasses, and people are sensitive to sugar--just like they are to alcohol. There are good alcoholics--people who, for instance, if they have a drink, they might go to sleep. This is at one extreme end, they go to sleep, there's people in the middle, who drink

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alcohol and just kinda get giddy and loud and boisterous and, at the other end of the scale, they become violent. The same thing is true with sugar. Some people when they take in sugar get sleepy and drowsy. Some people when they take in sugar get agitated and boisterous and then some people when they take in sugar get violent. And ADD/ADHD is somewhere in between those two extremes because these kids or adults even get disruptive, irritable and they can be involved in domestic violence; certainly, they are not going to learn how to read, write and do math, they are going to experiment with cigarettes, alcohol and drugs as they get older trying to find something to satisfy their cravings to be successful at, because when you have ADD/ADHD it's very difficult to be a positive performer. And so what we did was take these kids and young adults totally off of all sugar, natural and processed, supplement them with three trace minerals preferably in the colloidal form. This was lithium, chromium and vanadium and low and behold, usually within 24 to 72 hours, there was a significant benefit. The parents and teachers immediately recognized this and then, within weeks, the kid would go from the bottom of the class to the top of the class. It has nothing to do with intelligence and we actually saved thousands of kids from being put on Ritalin and today's -- welcome, Max James!

Max James: Thank you, sir, good morning.

Dr. Wallach: Good morning. And obviously, you've had a lot of personal experience. I was reading your materials. Why don't you share with our listeners how you got involved, a real estate agent basically and somebody with a military background. How did you get involved with ADD?

Max James: Yes, I have a wonderful son and when he reached the age of six years and headed off to the first grade after about two weeks in school, we got what turned out to be a perennial call from the school teacher saying we have a major problem with your son disrupting

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the class. He's two weeks behind academically, got quite a problem. He's the playground bully and you need to come talk with him. We were absolutely stunned. Our son had no behavioral problems at home, was the nicest little guy you ever want to meet in your life so we thought perhaps there was an error, that maybe it was the wrong child. In any event, fortunately we had a very bright and progressive first grade teacher who suggested that if that were the case, what she'd like to do is have the school psychologist test him and they did so and a couple of weeks later called us and said they believed that he had a learning disability at that time. This was in the late sixties. They called it hyperkinesis or hyperkinetic behavior and suggested that we go to Stanford University and have further psychological tests done. We did so and they determined that indeed he was ADHD and was going to be incapable of getting a normal education if we didn't do something to render him some assistance. The intelligence exams that they gave him indicated that he had an extremely high IQ but simply was not able to utilize it and produce the results. So we were given three choices, Dr. Wallach. They said number one, you can institutionalize him and --

Dr. Wallach: This is a six-year old?

Max James: This is a six-year old. I said, well, that's interesting. I mean, what kind of institution you're talking about and having seen the Jack Nichols movie "One Flew Over The Cuckoos Nest" --

Dr. Wallach: Exactly.

Max James: I had visions of horror and they said, well, he'll be in with quite a variety of children with learning disabilities up to the medical level of moron and that just didn't seem appropriate for my son, given that we had no problems with his social behavior in the home setting, in the family setting. I said, what's my next choice? And they said, well, you could try

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nutrition and I said great, fantastic. What do we do? And their response was you've got to remove all sugar. You've got to remove red food dye. No more peanuts. No more this, no more that, no more --

Dr. Wallach: Wait a minute. You said this is in the 1960's?

Max James: Yes, late sixties. Probably '68, '69.

Dr. Wallach: Okay.

Max James: I said, well, you know, I -- I think that we might be able to do that at home. It sounds like quite a challenge, but what do I do about his meals at school and what do I do about vacation and camp and visits and friend's home and birthday parties. What's the third choice? Anyway, they said, well we highly recommend the third choice. It's the drug of choice. It's Ritalin and Ritalin is safe, it's a mild drug and they explained it and so that was the recommendation and that's what we did. The results were immediate and wonderful. Suddenly the handwriting which had been virtually illegible became not only legible but quite artistic, and I had thought that the handwriting problem was probably genetic. I couldn't write. My handwriting was terrible.

Dr. Wallach: Uh-huh.

Max James: So in any event, he suddenly started using three syllable words which his older sister had difficulty at that point understanding and then the body made the adjustment and a lot of that went away and constant battles with the appropriate dosage finally settled in and we proceeded on a six-year odyssey of my son on the drug that is more popularly called speed. The problem in my mind with Ritalin is that it works. He certainly was able to get an education, but the problem with Ritalin also is the side effects and in this case were, in my mind, devastating.

Dr. Wallach: Parents who are just exhausted with a hyperkinetic child or one with ADD

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or ADHD, they get this relief from this drug Ritalin. Suddenly, they can all go to sleep and suddenly they can go on with their lives because the kid's under control and things seem to be going well and the education's going good. And they think they've solved the problem. This is why the medical profession and teachers can get parents kind of coerced into this because suddenly the major portions of the problems go away and they can say, phew, finally, we get some relief here and we can go on with everybody's lives. Let me ask you something. Did they tell you to still with the child on Ritalin to take him off of sugar and supplement him with some trace minerals?

Max James: There's certainly no suggestion of trace minerals, no.

Dr. Wallach: But they did say it would help to get him off of sugar?

Max James: Yes, they did. Yes, they did. The benefits of the Ritalin of course were that he became perfectly adjusted in the classroom, but the side effects, Dr. Wallach, are what have created my passion to see if I can find a better alternative.

Dr. Wallach: Sure. Well, what were the side effects that you saw in your son?

Max James: For six years my son was on Ritalin and they required a drug holiday which is we took him off on the weekends and obviously during holidays and the summers. And when he came off the drug there were withdrawals. The symptoms of drug withdrawal, as well as what's now popularly called "Ritalin rebound," so that about late Sunday afternoon behavioral problems really were abundant. Huge blue circles under the eyes from the abuse of this drug. Lips that were constantly chapped and bleeding because he was so dehydrated from this drug that he was constantly licking the lips and that created problems.

Dr. Wallach: Uh-huh.

Max James: Depression, moodiness and withdrawal --

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Dr. Wallach: Well, these blue circles under the eyes. We call them allergic shiners.

Max James: Okay.

Dr. Wallach: You know, allergic shiners, and invariably there's something that they're eating either sugar in one form or another or maybe even dairy can cause that on occasion and it's one of the signals that the child's in trouble when you see these blue, purple marks under the eyes that we call allergic shiners.

Max James: Well, it was clear to us that he was in trouble from a growth potential physically at the age of 12, he weighed 50 pounds.

Dr. Wallach: My goodness.

Max James: And when he finished the sixth grade at 50 pounds, we sent him back to the farm in Tennessee back to my parents. And, of course, went off the Ritalin and he got on those good natural foods back there at my dad's farm and garden, and then an environment that was free without the pressures of the school room and the classroom, and Dr. Wallach, he had a sixty percent weight gain in 30 days. Went from 50 pounds to 80 pounds and never went back on Ritalin.

Dr. Wallach: Isn't that amazing?

Max James: Absolutely amazing. He was able to go through the rest of his secondary education and in fact had an opportunity to redevelop and rebuild his self-esteem with a special program that at one time was provided by the University of the Pacific here to help children with these problems and he went on and got a college education and is a well-adjusted young adult today. But never back on Ritalin. I would hope that no one would ever have to go through that with their son.

Dr. Wallach: Okay. So what have you been doing all these years since your son has

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gotten off of Ritalin? It says here that you're a tireless worker in helping people and going into the media and making sure that people know about this problem. Tell us some of your experiences.

Max James: Well, a little over a year ago, I was sitting in a lecture on nutrition and a Dr. Kris Van Oeveren indicated that in his practice he dealt with a lot of children that were diagnosed as ADHD. And his experience was that many of them, not all, were unable to process or metabolize sugar and that if you gave them a good multi-enzyme the problem would often disappear. Well, I sat in this audience in total shock. I mean, I was stunned that I could have perhaps avoided putting my son through all of that pain and agony, as well as the family, by simply treating it with a nutritional supplement and so I determined right then that evening that I was going to test it because quite honestly, I didn't believe it. The route that we took in experimenting with nutritional supplements was to go with colloidal minerals, to go with a good, strong anti-oxidant combined with ginkgo biloba, and to go with a multi-enzyme and the elimination of as much sugar as possible out of these children's diets. Well, the word just kind of spread, word of mouth, and the results have been over a period of 10 or 12 months now, Dr. Wallach, that I receive phone calls every day, letters, people calling me, psychiatrists, medical doctors, neurologists, pediatricians, all wondering what we're doing. I'm not even sure I believe these statistics myself. I feel blessed by them, but I have not had one single case reported to me, not one, that a child has had to go back on Ritalin after going on to these nutritional supplements.

Dr. Wallach: What a blessing that is. You can take comfort in knowing that I had the same results. Never had to have a child go back on Ritalin. The caveat here again, the thing that you have to have everybody agree on that the whole family has to be aware, have to educate the child that there is a connection between sugar and their negative behavior. Kids don't like to be

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different. As you know, kids don't like to be behind in class and kids don't like to be a non-learner and so once they really get down deep inside of them this knowledge that sugar is a very negative thing for them, when you get them at a young age and the whole family does the same thing, it is very, very easy to get them on the right road and stay on the right road. My own son who was, I guess, about six years old when we figured this out for him, we started looking at health food stores and were able to get hot dogs for instance without corn syrup in it and get pure beef, pure chicken, pure turkey, pure lamb hot dogs. When he got to be nine years old, he'd go out with the Cub Scouts and I used to make brownies out of the roasted carob and out of rice flour and so forth and he could take his brownies that had a nice pecan half on the top of each brownie and his hot dogs and go and do his thing with the Cub Scouts and know that he couldn't eat anybody else's hot dogs. He couldn't trade. He couldn't eat their Twinkies, but he could eat their brownies and because they were so special, I had to start making more of these things so that the whole Cub Scout troop wanted them. It was fascinating to see the change in the whole troop.

Max James: We have a problem in the United States with prescribed drugs and children. Right now, it's reported and I can believe it that ADHD is America's number one childhood psychiatric disorder. And in some areas of the country, the percentage of children that are taking Ritalin has reached 7-8%. Over two million children on it. I am absolutely convinced by the hundreds and hundreds of people that I've talked to that it is not necessary.

Dr. Wallach: Oh, absolutely. And of course, the reason, Max, is that per person in America, now this does not exclude children, it doesn't say per adults, it says per person, there's 148 pounds of sugar per year consumed per person. Now there's some poor kid out there eating 300 pounds because I don't eat any.

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Max James: Right.

Dr. Wallach: And my son doesn't eat any. I'm assuming yours doesn't, so there's, you know, there's six people out there who are eating 300 pounds of sugar per person and it's pretty scary and another fact which is even scarier to me -- according to experts, juvenile and childhood experts, one-third of American children are going to be in a juvenile court this year, 1996, because of behavioral problems because of some kind of criminal behavior whether it is burglarizing neighborhood houses or assaults or murder or manslaughter. These kinds of things -- destructive behavior and you can attribute most of this really to this 148 pounds of sugar per kid and the fact that our foods are totally deficient in minerals and that if you don't supplement these kids with lithium, chromium and vanadium, zinc, sulphur, things like copper, magnesium, manganese and so forth, they get all kinds of physical problems, as well as mental ones and I have to ask you, have you had any rebellion from parents who say well, gosh, this is so expensive our insurance will pay for the Ritalin and we have to pay for the vitamins and minerals.

Max James: I really have not. I found that parents really are anti-drug for children. They don't want the kids on drugs and you're exactly right. These children do not want to take Ritalin. In fact I am working with one school nurse whose job it is every day to stand at the head of this queue of children all lined up to take their "Meds" as they're called, and they have to be supervised of course because it's a controlled substance. She says now that she actually has to put her fingers into their mouth to ensure that they are in fact taking Ritalin because they don't want the drug.

Dr. Wallach: You know, I hope she's washing her fingers between each child.

Max James: [inaudible]

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Dr. Wallach: Okay, Max, hang on. This is Dr. Joel Wallach, your host of the Wellness Hour and we're going to be right back after this message.

Voice: Jerry, you're on live with Dr. Joel Wallach and Max James. Your question please, Jerry?

Jerry: I'm a Judo coach and I have several students that are obviously suffering from ADD. What kind of information can you give me on that?

Max James: As you know, Dr. Wallach, an awful lot of these children that are ADHD become great athletes because of the frustration and the energy that builds up inside them, the anger of having to deal with their problem on a daily basis. This certainly was the case with my son and so we find a lot of ADHD children in Judo classes and they also become great entertainers, again, because of this energy, but one out of every three is going to drop out of school, and if they carry this into adulthood, the national statistics are that one out of every 10 will attempt suicide, so my recommendation is a couple of ounces of colloidal minerals each day for these children. We believe that the anti-oxidant is very important to help clean up the free radical damage that is going on inside their little brains and we combine that with ginkgo biloba and then we think that the multi-enzymes to help them metabolize that sugar that they're going to get -- we just can't seem to eliminate enough of it -- is very important.

Jerry: Okay.

Dr. Wallach: Okay. Thank you. Does that help you out, Jerry?

Jerry: Yeah, that helps me quite a bit and I'm going to try it out with a couple of the students that I have in mind and I will definitely let you know how it went.

Dr. Wallach: Yeah, great, and of course you want to have the parents go through those boxes of all the items that have sugar in it or give them ten cents for every different can, box,

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bottle, or bag that has sugar in it, you know, something, some incentive and you'll be amazed, it'll be a lot of fun.

Jerry: Great. Great. I appreciate it.

Dr. Wallach: Okay, Jerry.

Jerry: Thanks.

Dr. Wallach: Okay, thank you. Yeah, Max, if you had to have one recommendation for parents when they discover -- usually parents discover on their own that there's a problem or a teacher tells them. Personally, I like to keep them away from counselors and shrinks because they invariably direct them and convince the parent it's the right thing to do to get them on Ritalin and I feel if the parents are really interested in the child, I give them the advice without suggesting that they go to a counselor or a shrink. How about yourself?

Max James: A major concern here over this child self-esteem and it's a problem that can be dealt with and it's going to require a great deal of patience and a tremendous amount of love for that child, but that I believe that the problem can be overcome without drugs and that the problem can be overcome with nutrition and number one, you must reduce the amount of sugar. Number two, because you cannot reduce all the sugar, you've got to do something about the negative impact of the sugar and so we start just with that recommendation. Diet, diet, diet.

Dr. Wallach: And as you point out, it's a life-long process and some get it and some don't. It's really a sad thing. And again, I attribute the kids who don't get it is because the family is not willing to give up sugar in their own lives and give the support that's totally necessary for the kid and do the education that's necessary to have the child make the association between sugar and the negative behavior.

Max James: We've also had great experience, by the way, in going to the doctors. Not

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being a medical practitioner myself, I'm very careful of course when children are on prescribed drugs and I suggest to the parents that they go to their doctor and tell the doctor what they want to do. Tell the doctor that they want to try an alternative and Dr. Wallach, I simply have to say this that there have been no long-term studies on the negative effects of Ritalin or Zylar or some of the others that are used and it seems to me that there is something wrong with the picture that says we put adults in jail for possessing this drug and yet we're forcing our children to take it on a daily basis. You know, there weren't any pharmacies in the Garden of Eden and I've just got to believe that this can be handled using natural supplementation.

Dr. Wallach: You're absolutely right and it's a matter of giving up that sugar, 148 pounds of sugar per kid per year and supplementing them properly and the best way to get their minerals is in the colloidal form, of course, 98% available to them. And I've just seen such wonderful results with pills. It used to take me, oh, somewhere around, oh anywhere from four to six weeks to see some real progress because you can't absorb the elemental forms of minerals very well. Even children only would get 8-12%, but with the colloidal minerals, I've had so many parents come back to me and say, hey, in 72 hours this kid is just a different child. The teacher asked if this was the good twin.

Max James: Right.

Dr. Wallach: And I'm sure you've seen the same thing.

Max James: I have indeed. My brother is a doctor back in Memphis, Tennessee, and his children suffer from this malady and they have seen results overnight. Often I hear by the next morning a perceptible change in behavior. It's truly a blessing, Dr. Wallach.

Dr. Wallach: So people have everything to gain and nothing to lose by doing this.

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Max James: Amen.

Dr. Wallach: Absolutely. And we just want to thank you a lot, Max.

Max James: Well, thank you for sharing this time with me.

Dr. Wallach: Yes, and I appreciate all your experience and hope that this works and --

[music]

Voice: Max James has taken this mission upon himself to educate as many parents as he can. Please turn to Side 2 to hear more about God's Recipe.

[END OF TAPE SIDE A. START OF TAPE SIDE B.]

[music]

Voice: During a recent phone session, parents of ADD children met with Dr. Kris Van Oeveren and Max James.

Max James: Bobbie, would you mind leading us off?

Bobbie: Oh, not a bit.

Max James: Oh, fantastic.

Bobbie: I am so excited to be able to share the wonderful things that have happened to my daughter. She started showing signs of ADD when she was in first grade and in second grade she started out above level in reading and ended up with below level at the end of the year. There were a couple of other children in her classroom that also had the same problem as Katie and between all of them mixed together, it was a pretty hectic classroom for the poor teacher and by the end of the year she was doing cartwheels in the back room and the whole nine yards and not really learning anything and she was also having social problems. She was having these fits of rage. She couldn't hold friends because of the rage that she was showing and the rage was

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coming out at the family and on her sister and she was just, poor thing was in trouble all of the time. You'd ask her to do a specific task and go and check on her in about 10 or 15 minutes and the poor little thing was in a trance, I mean, it was like she was staring off into space and it's like, honey, why haven't you done what we asked you to do, you know, you've been here for 15 minutes. No, Mom, I just walked in the room. And she was very honest. You know, you can tell when kids are fibbing and she was very, very honest with the fact that she felt that she had just walked into the room. So, this was long before I found these wonderful products -- the multi-enzymes and such. We started working with a naturopath and she did help us. She said that, you know, a lot of times with food allergies that these things occur and so we did change her diet and so on and so forth, but when we started on the colloidal minerals and the enzymes and the Proanthocyanidin product that has the ginkgo biloba for the brain, etc., my daughter just came up 100% better than just with changing her diet and in two weeks her teacher called me at home during the day. It scared me because I thought something had happened and she said, Mrs. McKuen, I would like to know what it is that you're doing different with Katie and I said, well, in what regard, you know, after having so many bad phone calls, you know, with a child with ADD, you kind of don't want to volunteer too much. Oh, gee, what have we done now. She was wonderful. She says, I don't know what you're doing with her and for her but whatever it is, please don't stop. She says please do more. She said Katie is focusing in the classroom and she is; her attitude towards the other children is changing and she's calming down and she's actually grasping onto concepts now. And I said, well, gosh, it's only been a couple of weeks since we started her on these new products, these natural health care products and she said, wow, I don't care what it is that you've done. I am just so excited. She said, I'm really beginning to see what a wonderful child Katie is and you told me that at the beginning of the year that she was really a

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wonderful child, but because of the these problems and stuff with her ADD, it's hard to get to know the real Katie like you have the chance to at home and she says, I'm just so excited that I've had the chance to get to know the real Katie underneath the problem. She said this is just wonderful and the year has continued to progress and she is just doing absolutely wonderful. She has several friends now. She's become quite popular in school and she's doing much better on her homework and we're still working with some of the backlashes of the ADD, but Katie is definitely a success story and we just started her on these products and so we haven't had her on them for an extreme amount of time before, you know, we're very pleased thinking that she's just about cured from the ADD symptoms.

Dr. Van Oeveren: Oh, that's a fantastic story. Fantastic.

Max James: Jackie, why don't you do the same. Just tell us what's happened in your special family with ADHD and nutritional supplements.

Jackie: Okay. I have a son who is 14 right now and he has had ADD since he was teenie. He was one of those kids that was hyperactive and couldn't sit still and loved to experiment and was always breaking everything in the house. We had trouble with the frustration mainly. Everything he tried to do was so hard for him and he would get terribly frustrated. When he was learning to read, he would read a word fine one day and then he wouldn't remember it the next. He couldn't remember the multiplication tables. When he was spelling, he'd drill and drill and drill and then he wouldn't remember it the next day and it made him so frustrated, and so, usually with his schooling, he would do 10 or 15 minutes and get so frustrated he would go out and jump on the trampoline. He's very good at that. Also, another thing he used to do is when he got really frustrated, he'd kind of almost roll up in a ball and say I'm so dumb, I'm so dumb, I can't, I can't. How come I'm not like anybody else? And it was

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driving me crazy and I felt like I needed to put him on some kind of drugs just because his life seemed so miserable. And we really didn't want to go to Ritalin and so we kind of worked with him and worked with him until we found these products and it was amazing. We gave him the first dose at night and the next morning when we sat down to do, we do scripture reading first and when we sat down to do our scripture reading, he took his turn and he read fluently. Not one word at a time, not sort of sounding them out and looking at them as if he'd never seen them before. He read fluently, just as fluently as could be. And we were just shocked because this is -- he'd only had two doses, you know, night and morning. And then he sat down at the computer and typed a story. And the story ended up being -- he typed that day for like six or seven hours with a little while off for lunch. Straight through. When he came across a word he couldn't spell, he'd always just fly into a rage. This time if he came across a word he didn't know, he'd either spell it the best he could and then use the spell checker or he'd ask somebody and go right on. No rage, no frustration. And his story is absolutely amazing. He sent it in to the contest right now. He won first place in the local contest and it's in the state-wide contest right now. It's an amazing story. He did a fantastic job. And I can always tell if he has remembered to take it or not because if he hasn't taken it, then little things bother him, like he can't find his shoes and he'll, he just gets so frustrated and so angry and all you need to say is hey, did you take your stuff? Did you take your pills? Nope. It's just really easy to tell. It's made a huge difference in his life.

Max James: Oh, what a fantastic story.

Dr. Van Oeveren: That's great.

Max James: Great, great story. Thanks, Jackie, I really appreciate you sharing that with us.

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Dr. Van Oeveren: That's great.

Max James: Dr. Kris.

Dr. Van Oeveren: Yeah.

Max James: Any particular thing you'd want to add into that? That's classic or that you've observed?

Dr. Van Oeveren: Well, I'm not exactly sure why sugar is the main problem. There are a few concepts that we're fairly sure of and that is that refined sugar is the main culprit because it gets metabolized in the digestive system much quicker, basically raises havoc with the rest of the metabolism of the sugar. And it causes a very high influx of insulin to regulate this immense absorption rate of the refined sugars. That's basically the mechanism involved there is that we're just in -- primarily, we're just taking in the incorrect form of sugar which we were never intended to receive that way. We were intended to receive sugar in a natural form like from fruit or vegetables and so now what's happened is through that violation, the digestive system is imbalanced, you might say. Its ability to tolerate these sugars has decreased and then of course that leads in to dysfunction. Where the enzymes come in is twofold. One is to try to help the body recover from this dysfunction by providing enzymatic action with the sugar that is inevitably going to be a part of our diet and thus helping to regulate the metabolism better. That's the primary function of how that does that. The second deal is, what it also does is it sort of gives the body an opportunity then to heal up certain aspects of the digestibility of these sugars by providing its own enzymes. When you have a dysfunctional system, it takes time for the body to heal and in getting this extra help from the enzymes is, it gives you this extra time and ability for the body to heal it up. So, it's a twofold situation and it's in conjunction with a person having to reduce the amount of these refined sugars in their diet and then supplementing

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in the enzymes to help the body recover and bring it back into balance and also help regulate normal metabolic process of the sugar.

Max James: Fantastic, Kris. Thanks. You related that to the co-factors.

Dr. Van Oeveren: Because it is required to be metabolized so much it depletes the body of the co-factors and co-enzymes or co-enzymes are vitamins and co-factors are minerals. So that's why the minerals fit into this program is that you end up depleting or utilizing the minerals available in the body just to try to maintain as long as it can while the person is taking in these processed sugars or violating natural digestive processes, so if you're depleting your vitamins and your minerals and your enzymes, it's somewhere along the line, it's just going to raise havoc and something's going to give. And in this case it's ADD. So the remedy nutritionally would be to supplement back in the vitamins and the minerals or the enzyme co-factors and co-enzymes, along with the food enzymes to bring the body back into balance.

Max James: Dr. Kris, what about the anti-oxidants and what benefit we may be receiving by the people that are ADD?

Dr. Van Oeveren: Well, the anti-oxidants -- of course, anytime that you're going to have tissue dysfunction, you're going to have inflammatory processes going on more than likely and, of course, the anti-oxidants do have an effect on inflammation in attempting to reduce it, thereby also trying to bring back into balance normal function. Things like ginkgo have elements of them that get into the brain to help in the tissue in that particular organ. So there's a relationship there, I think, between utilizing antioxidants and also getting into specific regions of the body or specific organs, for example, the brain with ginkgo and this helps then to bring back into balance the normal function of specific tissues or organs.

Max James: Okay. Super. I've got one last one for you, Kris. Children are getting the

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attention here for ADHD. What about taking this malady into adulthood? What's the story there? Is it curable? Do we just learn to deal with it? What's the situation?

Dr. Van Oeveren: The basic premise is the body's a self-healing organism and in order for it to continue to maintain its natural processes of self-healing, it needs to be fed. And if we continue to feed it appropriately, it has its best opportunity then to maintain proper health. That transcends all age. It doesn't matter how old you are. I think that the answer is basically the same thing.

Max James: Right. Fantastic, Kris. Thanks very much. Sure appreciate your time.

Dr. Van Oeveren: Okay. Thank you very much.

Dr. Van Oeveren: Okay. Bye-bye.

Max James: Well, let's see. Mike Hart.

Mike: Hi, Max.

Max James: How about telling us what's going on in your family?

Mike: Travis is a five-year old young man. Great personality. We have managed to keep him away from the thought of having to take Ritalin by natural means. First, we took sugar out of his life. At about three years old, Travis had some challenges and when ever he had sugar, he became a totally different person. Everybody out there listening, if you're listening to this because you have a challenge, you already know all the stories. You know what happens. You know what happens in school. You know what happens at home. You know what happens to the character of the persons we're talking about. It's not just Travis. This is happening to children all over America. With sugar, we control their lot. We changed his life a lot. Only half as much as his life changed when we were able to give him minerals, enzymes and OPC'S. The group together really made some major changes. And I want to say when we first started giving

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him the products, we halfheartedly gave him the products and we've seen minimal change. It wasn't until we got really regimented about giving him these products all day, every day and what I mean by that is by giving Travis these products three times a day, or if it took four times a day, you could tell when there's a mood swing and there's a change has started to come on. We made sure that he had an enzyme whenever he ate anything. If it was a piece of toast, he had an enzyme. He had minerals at least twice a day and OPC's at least twice a day. What a difference. He's a little gentleman. All of the things that we were experiencing that could have led us to other means of, you know, what a lot of other kids have to take. I know some other programs that are trying to get all kinds of other types of programs going, but we combated it naturally, not even knowing that we had the major problem. So, we're like so many others out there. We think that our child is just maybe a little more excited, a little more ornery than others and that's normal. We think it's normal because there's so many other children out there that we can compare him to. So we think that's normal and what we have to learn is it's not normal, it's common. There's a lot of other people out there, a lot of other children or even adults that we can compare it to that makes it common, but not normal, so if you keep that in mind, there is a problem that needs to be addressed and there are ways to address it naturally. It's really wonderful.

Max James: Oh, that's a fantastic story. Zoanne?

Zoanne: Yes.

Max James: We understand that you've got a wonderful story to share with us about nutrition in your family and ADHD.

Zoanne: We started about four and a half months ago and this has been the greatest four and a half months we've ever had, ever. My son is six and a half years old. In fact I had talked

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to Jackie Ruland about natural things to help for the ADD and this is what she told me about. And at that point, my son, he's in first grade, the principal was bringing him to my work to get him out of the school. He was running away from school. He was talking back to the teachers. He was a severe discipline problem almost to the point of being kicked out of school in first grade. That was the main thing. We had just taken the written test through the school for ADD. The teacher made it out that he was an extreme discipline problem and that he must, we had this meeting. They said I must not discipline him enough. I must not be structured enough with him. All these things that were my fault that were his fault. And right after that meeting was when I started the pills. And I started with one a day. And I didn't see much difference for about a week and so Jackie told me to try two. And so I tried two pills a day over the weekend and then that Monday, from that time period on, we have had perfect behavior all the way through. He won a little pin from the principal for his outstanding work. He got a trip to Sam's Town all paid for by the principal because he has done so fantastically. They're on a green card, yellow card, red card system, green card being the best. He used to be getting he was getting two to three red cards and a yellow card every week which was bad, bad. And he's gotten one red card in four and a half months. His teacher says that she wishes that she could get the stuff for every kid in her class. Just everybody comes into my work. Every day. I hear it. I hear feedback of how great he's doing. What is he doing, what are we doing. It's fantastic.

Max James: Oh, that's a fantastic story. . . . a fantastic story. Let's just take a moment here and let me see if I can't get John to join us. John!

John: Hello!

Max James: Hello, John!

John: How are you?

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Max James: Good, thank you for taking time to join us. Really do appreciate it.

John: Oh, you're welcome. I'd always suffered from -- which I didn't know what it was; I found out later it was ADD. I suffered from a real attention problem, and I'd get focused on certain things that were very confusing to me and it caused me a lot of problems. It caused me all kinds of problems in school. I remember the first time in second grade they were trying to figure out whether or not to let me go into third grade. And I was very distracted. Reading was a real challenge for me. Concentrating on the teacher, or even anyone in just a single conversation was a real challenge. And it turned out that obviously it was not personality. I thought it was just my personality, and I used to get into all kinds of predicaments because of it. Create a lot of tension with my family and with learning in general. And to make a long story short, when I originally started supplementary minerals, with the colloidal minerals, I started regaining control. Control that I had never really had before. And looking back, having dropped out of high school in the 10th grade, looking back at all this, just all the unnecessary trauma due to something that was preventable, it is just neat -- it's neat to see that all these kids that I'd been around, and all these people I'd seen had similar disorders, that they could have avoided it, and avoided the grief due to it, just from supplementing minerals. And I hear you guys have some other remedies for the disorder, and that's really exciting to me. I found that I really do -- I really do love enzymes, and I recently heard that the enzymes are helping the ADD cases, and I think that's pretty exciting too. I notice that when I get on any kind of sugars, or I eat things that are not really good for me, I turn into a completely different person. And all of a sudden some of the prior problems and disorders and different symptoms set in pretty heavy. And it does take quite a bit of minerals, and enzymes really do help too, in breaking down the sugars for me. That's my little story. I tell you, when I got on minerals, the control that I had back when my life

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was very exciting. I started reading, and I'd get up and I just wanted to read. And just started feeding myself. Feeding myself all kinds of things that I didn't get before. Started having relationships that I hadn't had before with my mom and with my brother. With some friends that I used to -- just not get along with real well. I think it was really due to deficiencies and the disorder. It really was challenging for me to keep a relationship of any kind. And it's just really been a blessing to me.

Max James: John, would you say that it's had a significant effect on your business career?

John: Oh, there's no question. You cannot be in business for any length of time successfully with the type of symptoms that ADD causes. I was always in business; I never did have a job. I've never had a job in my life, with the exception of a paper route. And I've always, I've always had some kind of business of some kind, and the reason I never had a job is because I could never keep any kind of job, or take any kind of orders, or concentrate on any one task for any length of time. So I had to choose employment that was -- oh that would work around my crazy schedule and habits and things. And so I had all kinds of different businesses, like I'd mow lawns, and I used to paint fences. And I got into automotive and painting things; things that were craft oriented. And that was about all I could do. It definitely enabled me to do things that involved a lot of multi-tasking and concentrating on many different things versus just one single-minded thing. I was always good at what I did before, but I was just good at one single minded task at a time. And now I'm finding I'm able to do many things at once. And it definitely has impacted my business. No question about it.

Max James: John, thank you very, very much.

John: You're very welcome!

Complaint

127 F.T.C.

EXHIBIT A

Max James: For taking the time out, and joining us.

John: Bye-bye.

Max James: Uh-huh. Now I've learned a lot tonight. And I very much appreciate your being willing to share all of this. I think one of the things that I'd like to end with here is Zoanne said, "Thank God." And it seems to me that we have properly titled what we're doing and the success of this formulation, this combination of natural nutritional supplements with eight, ten, fifteen calls I get a day and the hundreds and hundreds of parents and children now that are benefitting from this, we really can, I think, in good consciousness call it God's Recipe. And what most of us are doing is two ounces of these colloidal minerals spread during the day, maybe first thing in the morning and then sometime mid to late afternoon, 40 milligrams of this Proanthocyanidin, preferably one that comes from grape seed extract in combination with Ginkgo Biloba and we think that you should take those roughly at the same time that you take the mineral supplementation and then lastly, because there is no question that sugar is a major culprit in ADHD and ADD, we need to eliminate sugar as much as possible from all of our diets, but particularly from the diets of those that are very sensitive and impacted negatively by sugar and in order to help ease the problem of the sugar that we are unable to eliminate, these multi-enzyme capsules are phenomenal because as Dr. Kris has told us tonight, they assist mightily in metabolizing the sugar and getting that whole digestive process and the reaction of digesting sugar under control so that we don't get the mood swings and the metabolic swings. So we call that God's Recipe. Hopefully, with the information that you have been kind enough to share with us tonight, the recipe will spread and the resultant blessing will occur to as many people as possible. So, I would just say, again, thank you.

[music]

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Complaint

EXHIBIT A

Voice: To show you how you can start your children on God's Recipe, contact the person who thought enough to give you this tape. All proceeds from this tape are donated to ADD research.

[END OF TAPE SIDE B.]

WELL BEING JOURNAL

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Attention Deficit Disorder Reversed - By Max James

Former Executive VP with Days Inn of America wants to rid the world of Ritalin, substitute good nutrition and dietary supplements in its place....

I attended a lecture by Dr. Kris Van Oeveren last year, at which time he stated that in his practice, he often dealt with children who were ADHD. In many cases (but not all), it was his opinion that these children were unable to adequately process sugar or glucose, and if you added a good multi-enzyme supplement (one containing sufficient gluco-amylase) to their diets, that the problems would disappear, or as a minimum, be greatly reduced.

Having watched my son suffer through the anguish and destruction of being on Ritalin for six years of his life, I was absolutely dumbstruck! I thought, "Are you trying to tell me that I could have avoided putting my son (and my family) through that nightmare from hell by simply giving him a 100% natural supplement? I don't believe it!" But the guilt and sadness of those memories with my son and the family during his formative years of ages six through twelve would not let this stunning disclosure subside from my consciousness. I decided to test this idea with friends from Memphis, who had a son, on Ritalin, and not doing well at all. In fact, he was the same age as my son when our drug odyssey began. It was, simply put, a good-news/bad-news journey.

The discovery of the problem and the diagnosis at Stanford University seemed to be bad news/good news. "He has a "learning disability" and he is "hyperkinetic" (now called ADHD), however, he is extremely bright and can be treated so that he will be able to adequately function in a normal social environment and obtain an appropriate education."

The solution was one of three choices: We could institutionalize him in a medical facility that had children who were suffering with mental disabilities up to the medical level of "moron"; Or we could attempt a nutritional diet that restricted most foods that were being served to him not only at home, but at school and all other places where he was fed, including recreational and entertainment events. Or we could put him on the "drug of choice", Ritalin.

For six years, this drug, which is more popularly called "SPEED", dehydrated my son's body to such an extent that he constantly licked his dry lips causing constant chapping and bleeding. He had huge blue circles under his eyes from the drug abuse. He had no appetite, became malnourished and at the age of 12, weighed only 50 pounds. Every weekend and on holidays, he

suffered through the emotional and physical pains of withdrawal. At school, he was teased and taunted because he had to go to the school office so that he could "get his 'Med's'". He was allowed to take exams in a separate room and often use an open book, and his classmates accused him of cheating. His dysfunctionality led to his not being able to recall those things most children easily commit to rote memory such as the ABC's, multiplication tables, spelling words, capitals of the states, etc., all of this leading to a total loss of self esteem, and this loss leading to anger, frustration, social misbehavior, and at times violence.

Upon graduation from the 6th grade, he was sent to Tennessee to visit his grandparents for a long stay on the farm, a place of great freedom and good nutrition. In 30 days, he experienced a 60% weight gain, from 50 to 80 pounds, AND HE NEVER WENT BACK ON RITALIN. Thanks to hard work on his part, some wonderful, patient, and understanding educators, he successfully earned a high school and a college education. He was afforded the opportunity as a senior in high school to attend a special school, sponsored by the University of the Pacific, in which the principal objective was to reestablish the students' self esteem. One can only continue to wonder what permanent damage has been wrought upon his body and spirit, by a drug that we put adults in jail for possessing, and yet, we force our children to take on a daily basis. Something is terribly wrong with this picture.

Back to my friends in Tennessee. They agreed to have their son's pediatrician monitor the reduction of Ritalin over a 30 day period, combined with the addition of certain natural nutritional supplements. At the end of this test period, they reported that the Ritalin was no longer being taken and that there had been no negative changes in behavior.

Now, hundreds and perhaps many thousands of cases later, parents are hearing glowing reports of their children's outstanding performances in the academic environment as well as the social environments in which they are asked to participate. In fact, while I have no certified statistical evidence to support this conclusion other than anecdotal, I have not had a single report back to me that even one single child has had to return to Ritalin after trying a combination of three natural nutritional supplements which I call "God's Recipe".

God's Recipe

- 1.) 2 ounces of Colloidal Minerals.
- 2.) 40 milligrams of highly effective antioxidant - OPC capsule combined with Ginkgo Biloba.
- 3.) Multi-enzyme capsule with every meal and with every significant snack, as well as the elimination of as much sugar as possible from the diet.

*** See back page for more information**

EXHIBIT C

Information on our "God's Recipe" Products**1.) Colloidal Minerals**

These are minerals in a delicious liquid form that children of all ages really enjoy. The minerals are extremely easy for the body to absorb as they are extracted from plant source deposits of vegetation origin. In fact, the absorption rate in the body of these minerals is much greater than elemental minerals taken in tablet form. There are over 60 minerals in every 32 ounce bottle.

2.) Antioxidant with Ginkgo Biloba:

This antioxidant is OPC and is derived from the original patented grape seed extract. It has 50 times more antioxidant potency than vitamin E, and 20 times more than vitamin C. In combination with Ginkgo Biloba and other herbs, it can have a very positive impact on one's health.

3.) Multi-Enzymes

As the basis of all metabolic activity, enzymes are the driving force of our body's more than 150,000 biochemical reactions. Enzymes are very important for effectively metabolizing sugars, an activity of critical importance to ADHD control. A balanced blend of enzymes and minerals maximizes the assimilation of nutrients.

WHEN TO TAKE GOD'S RECIPE

Take one ounce of Colloidal Minerals and 1 capsule (20 milligrams) of the Antioxidant with Ginkgo Biloba first thing in the morning, and both again mid-to-late afternoon. Take 1 capsule of Multi-Enzymes with each meal and with each significant snack. Eliminate sugar throughout the day and evening.

We wish you and your family the best. If you have any questions, or would like to place an order, please call us at:

EXHIBIT D

GOD'S RECIPE TESTIMONIALS

"Good evening Mr. James: This is Shondra W. I had talked to you about a month ago to get information from you about how I could get my son off of Ritalin. And I just wanted you to know that I have had him completely off Ritalin for the past five days and I couldn't be more pleased with the way he is doing, he is doing so well. He is such a pleasure to be with now. And he is feeling better himself, he doesn't even want foods with sugar. And I just wanted to tell you 'Thank You and I really appreciate all of your help.'" (Shondra W., Texas)

"Dear Max: Your letter regarding your personal experience with ADHD was absolutely fabulous! It moved me to tears, because I could really relate to it with the problems I have been having with my own son with ADHD. He is now 16 years old, has been on Dexedrine for 2 years, and has lost 30 pounds! He is developing a tolerance to the drug and his doctor has had to keep increasing his dosage from 5 mg to the current 20 mg. He is still losing weight and I am very concerned. He has just recently begun using your 'God's Recipe' with (the doctor's) blessing. I have permission from my son's pediatric neurologist to distribute ('God's Recipe') product literature and tapes to other parents of children with ADD/ADHD." (Cheryl G., Michigan)

"Dear Max: I am looking forward to hearing your presentation at the conference. I will be sending my first mailing to over 200 teachers and to approximately 150 homeschooling families, many of whom were motivated to homeschool because of learning difficulties which include ADD or ADHD. I know many families who have members who are also struggling with the symptoms shared by those diagnosed with Attention Deficit Disorder, as well as the devastating side effects they experience as a result of Ritalin. This article (My Experience...") had such an impact on me that I want to tell everyone about the news and encourage them to tell others -- they deserve to be aware that other choices are available!" (Tina M., Washington)

"Dear Max: We started about four and a half months ago and this has been the greatest four and a half months my son and I have ever had, ever. My son is 6 1/2 years old. He was being brought to my work by the school principle because he was such a severe discipline problem that he was under consideration to be "kicked out" of first grade. I was accused by the school of not being strict enough with my son, not disciplining him enough. It was right after that meeting with the school teachers and counselors that I started him on the program (God's Recipe) and we have had perfect behavior since then. He won an award pin for his perfect behavior and he won an all expense paid vacation from the principle for perfect behavior for four straight months. His teacher says that she wishes that she could get this (God's Recipe) for every kid in class. This is the best thing that has ever happened to us. I thank God that we have this. I really, really do! (Zoanne, California)

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, 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.a. Respondent New Vision International, Inc. ("New Vision") is an Arizona corporation with its principal office or place of business at 7762 East Gray Road, Suite 500, Scottsdale, AZ.

1.b. Respondent NVI Promotions, L.L.C., is an Arizona corporation with its principal office or place of business at 7762 East Gray Road, Suite 500, Scottsdale, AZ.

1.c. Respondent Jason P. Boreyko 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. His principal office or place of business is the same as that of the corporations.

1.d. Respondent Benson K. Boreyko 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. His principal office or place of business is the same as that of the corporations.

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

ORDER

DEFINITIONS

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

1. "*God's Recipe*" shall mean the following New Vision products, as sold or advertised in combination: "OPC Grape Seed Extract with an Herbal Blend," "Essential Minerals," and "Multi-Enzymes with Alfalfa/Barley Sprouts."

2. "*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.

3. Unless otherwise specified, "*respondents*" shall mean New Vision International, Inc., and NVI Promotions, L.L.C., corporations, their successors and assigns and their officers; Jason P. Boreyko and Benson K. Boreyko, individually and as officers of the corporations; and each of the above's agents, representatives and employees.

4. "*Drug*" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55.

5. "*Food*" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55.

6. "*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, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of "God's Recipe," or any food,

drug or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

A. Such products can cure, prevent, treat or mitigate Attention Deficit Disorder or its symptoms;

B. Such products can cure, prevent, treat or mitigate Attention Deficit Hyperactivity Disorder or its symptoms; or

C. Such products are an effective alternative treatment to the prescription drug Ritalin for Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder;

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

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 in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. 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; 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 the 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 Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

III.

It is further ordered, That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, regarding:

A. The safety of such product; or

B. The ability of such product to treat, cure, alleviate the symptoms of, prevent, or reduce the risk of developing any disease or disorder;

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

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

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VI.

It is further ordered, That respondents, and their 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 came into their possession from a distributor or any other source 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.

VII.

It is further ordered, That respondents New Vision International, Inc., and NVI Promotions, L.L.C., and their successors and assigns, shall, for a period of five (5) years from the date of service of this order, 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.

VIII.

It is further ordered, That respondents New Vision International, Inc., and NVI Promotions, L.L.C., and their successors and assigns, shall:

A. Deliver a dated and signed notification letter in the form set forth in Appendix A to this order to each independent distributor who receives compensation from New Vision International, Inc., any time during the three (3) months immediately following the date of service of this order. Such notification shall be inserted into the envelope containing the compensation check to be mailed to the independent distributors; and

B. For a period of five (5) years from the date of service of this order, deliver a dated and signed notification letter in the form set forth in Appendix B to this order to each future independent distributor within thirty (30) days after the person assumes such a position. Respondent New Vision shall be in compliance with this

subparagraph with respect to notifying future independent distributors if such notification letter is included in each starter kit provided to each future distributor.

IX.

It is further ordered, That respondents New Vision International, Inc., and NVI Promotions, L.L.C., and their successors and assigns, shall:

A. Institute a reasonable program of continuing surveillance adequate to reveal whether the representations of each of respondents' independent distributors conform to the requirements of this order. Such program must include, at a minimum, the following:

1. A requirement that all independent distributors submit advertising to respondents for pre-approval;
2. A mechanism for suspending or terminating business dealings with any independent distributor who fails to submit advertising for pre-approval;
3. A reminder once every six months of the requirement that all advertising must be submitted for pre-approval. Such reminder shall be delivered to each independent distributor who will receive compensation from respondents any time during the month immediately following the date of service of this order, and once during each sixth month thereafter. Such reminder may be inserted into envelopes containing compensation checks, product shipments or company mailings ; and
4. A monthly search of the World Wide Web for independent distributor advertising. Such a search shall use a commercial search engine, and include the search terms "New Vision" and the brand names of each of respondents' products.

B. Promptly investigate any complaint about any independent distributor and maintain records of any such complaint, investigation and disposition of the complaint for five (5) years from the date of the complaint, such records to be furnished to the Commission upon request.

C. Discontinue dealing with any independent distributor once respondents have actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such distributor is making

a representation prohibited by any part of this order, unless, upon notification by respondents, such distributor immediately ceases making any such representation. If respondents obtain actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such distributor has not permanently ceased making any representation prohibited by any part of this order, respondents must immediately discontinue dealing with such distributor.

X.

It is further ordered, That respondents Jason P. Boreyko and Benson K. Boreyko, for a period of five (5) years after the date of issuance of this order, shall each notify the Commission of the discontinuance of his current business or employment, or of his 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.

XI.

It is further ordered, That respondents New Vision International, Inc., and NVI Promotions, L.L.C., 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.

XII.

It is further ordered, That respondents, and their 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.

XIII.

This order will terminate on March 3, 2019, 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.

APPENDIX A

[date]

Dear Team Member:

New Vision believes that the best way to promote its products is in strict accordance with federal and state laws. To maintain the integrity of the New Vision program and to ensure compliance with the law, including the Federal Trade Commission Act and the Food, Drug and Cosmetic Act, New Vision has adopted policies and procedures that it will strictly enforce. New Vision would like to remind you of a few of the policies and procedures set forth in the "Team Member Policies and Procedures" section of your Life Planner.

1. No Team Member may make any claim regarding the therapeutic or curative properties of New Vision products, except those officially approved by New Vision. Therefore, unless officially approved in writing by New Vision, no Team Member may make any claims, in advertising, promotional materials, labeling, or presentations to prospective members, that New Vision products are useful in the prevention, diagnosis or cure of any disease or disorder.
2. All advertising for New Vision products must be pre-approved by New Vision. Therefore, no Team Member may promote New Vision Products via the use, production, or sale of any sales aid, tapes, third-party literature, or any other materials unless those items have been either provided by New Vision or approved, in writing, by New Vision.

New Vision has implemented company policies, rules, regulations and compensation plan requirements (as found in the Team Member Kit) to prevent improper, abusive or illegal acts. Any violation of the Company's policies and procedures, especially those related to advertising and promoting the product or the compensation plan, will be grounds for an immediate suspension or termination of the Team Member's relationship with New Vision.

[signature]

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Decision and Order

APPENDIX B

[date]

Dear New Team Member:

New Vision believes that the best way to promote its products is in strict accordance with federal and state laws. To maintain the integrity of the New Vision program and to ensure compliance with the law, including the Federal Trade Commission Act and the Food, Drug and Cosmetic Act, New Vision has adopted policies and procedures that it will strictly enforce. New Vision would like to underscore for you a few of the policies and procedures set forth in the "Team Member Policies and Procedures" section of your Life Planner.

1. No Team Member may make any claim regarding the therapeutic or curative properties of New Vision products, except those officially approved by New Vision. Therefore, unless officially approved in writing by New Vision, no Team Member may make any claims, in advertising, promotional materials, labeling, or presentations to prospective members, that New Vision products are useful in the prevention, diagnosis or cure of any disease or disorder.
2. All advertising for New Vision products must be pre-approved by New Vision. Therefore, no Team Member may promote New Vision Products via the use, production, or sale of any sales aid, tapes, third-party literature, or any other materials unless those items have been either provided by New Vision or approved, in writing, by New Vision.

New Vision has implemented company policies, rules, regulations and compensation plan requirements (as found in the Team Member Kit) to prevent improper, abusive or illegal acts. Any violation of the Company's policies and procedures, especially those related to advertising and promoting the product or the compensation plan, will be grounds for an immediate suspension or termination of the Team Member's relationship with New Vision.

[signature]

Complaint

127 F.T.C.

IN THE MATTER OF

MAX F. JAMES

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

Docket C-3857. Complaint, March 3, 1999--Decision, March 3, 1999

This consent order, among other things, prohibits Max F. James, a distributor for New Vision International, Inc., (a multi-level marketing company that advertises and sells a combination of supplements called "God's Recipe") from making unsubstantiated advertising claims that the supplements can prevent, treat, cure or mitigate Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder or their symptoms. Also, the consent order prohibits the misrepresentation of testimonials or endorsements for the product.

Participants

For the Commission: *Matthew Gold, Sylvia Kundig, and Jeffrey Klurfeld.*

For the respondent: *Claude Wild, III and James Prochnow, Patton Boggs, Denver, CO.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Max F. James ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

1. Max F. James resides at 1857 Ridgeview Drive, Roseville, CA.
2. Respondent is an "Executive Diamond Team Leader" distributor for New Vision International, Inc. ("New Vision"). Respondent has advertised, labeled, offered for sale, sold, and distributed nutritional supplement products, and audiotapes and other promotional materials for these products, and has engaged in the recruitment of distributors for the products. The respondent has furnished the means, instrumentalities, services and facilities for and/or condoned or approved the acts and practices referred to below.
3. Respondent has been a distributor in a multilevel marketing plan to sell New Vision products to consumers. The marketing plan allows distributors to earn money by selling the products at a suggested mark-up to consumers. Respondent has also recruited and

trained other individuals to be distributors in the multilevel marketing plan. Respondent earned additional money based on purchases from New Vision made by these recruits and others who they, in turn, recruit to be distributors.

4. Respondent has advertised, promoted, offered for sale, sold, and distributed various nutritional supplements, including: (a) "PC Grape Seed Extract with an Herbal Blend;" (b) "Essential Minerals;" and (c) "Multi-Enzymes with Alfalfa/Barley Sprouts." In some of his promotional materials, respondent collectively referred to these products as "God's Recipe," and touted them as a natural alternative to the prescription drug Ritalin for children suffering from Attention Deficit Disorder or Attention Deficit/Hyperactivity Disorder ("ADD/ADHD"). These products are "'foods' and/or 'drugs'," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

5. 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.

6. Respondent has disseminated or has caused to be disseminated advertisements for God's Recipe, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements:

A. "The problem: Johnny isn't staying up with the rest of the children, he's getting into fights at recess and he's just not listening. The teacher has seen it hundreds of times: ADD (Attention Deficit Disorder) - the most common form of treatment: Ritalin. Parents trusting the advice of well-meaning professionals are unknowingly starting their children on a cycle of chemical dependency. Is there an alternative? The good news is yes, and this tape will outline what has become known as 'God's recipe' as well as letting you hear from some doctors on this very subject. God's recipe is made up of three very exciting, natural health products. The three products you'll hear about on this tape are colloidal minerals, OPC grape seed extract containing ginkgo biloba, and a multi-enzyme product. This combination is making a huge difference in the lives of thousands of children and is a natural approach that works....

One out of every three is going to drop out of school and if they carry this into adulthood, the national statistics are that one out of every ten will attempt suicide, so my recommendation is a couple of ounces of colloidal minerals each day for these children. We believe that the anti-oxidant is very important to help clean up the free radical damage that is going on inside their little brains and we combine that with ginkgo biloba and then we think that the multi-enzymes to help them metabolize that sugar that they're going to get -- we just can't seem to eliminate enough of it -- is very important....

I've learned a lot tonight and I very much appreciate your being willing to share all of this. I think one of the things that I'd like to kind of end with here is as Zoanne said, "Thank God." And it seems to me that we have properly titled what we're doing and the success of this formulation, this combination of natural nutritional supplements with eight, 10, 15 calls I get a day and the hundreds and hundreds of parents and children now that are benefitting from this, we really can, I think, in good consciousness call it God's recipe. And what most of us are doing is two ounces of these colloidal minerals spread during the day, maybe first thing in the morning and then sometime mid to late afternoon, 40 milligrams of this Proanthocyanidin, preferably one that comes from grape seed extract in combination with Ginkgo Biloba and we think that you should take those roughly at the same time that you take the mineral supplementation and then lastly, because there is no question that sugar is a major culprit in ADHD and ADD, we need to eliminate sugar as much as possible from all of our diets, but particularly from the diets of those that are very sensitive and impacted negatively by sugar and in order to help ease the problem of the sugar that we are unable to eliminate, these multi-enzyme capsules are phenomenal because as Dr. Chris has told us tonight, they assist mightily in metabolizing the sugar and getting that whole digestive process and the reaction of digesting sugar under control so that we don't get the mood swings and the metabolic swings. So we call that God's recipe. Hopefully, with the information that you have been kind enough to share with us tonight, the recipe will spread and the resultant blessing will occur to as many people as possible. So, I would just say, again, thank you."

(Exhibit A, Transcript of tape entitled "God's Recipe - The Natural Alternative to Ritalin.")

B. "[Max F. James] Former Executive VP with Days Inn of America wants to rid the world of Ritalin, substitute good nutrition and dietary supplements in its place...

I attended a lecture by Dr. Kris Van Oeveren last year, at which time he stated that in his practice, he often dealt with children who were ADHD. In many cases (but not all), it was his opinion that these children were unable to adequately process sugar or glucose, and if you added a good multi-enzyme supplement (one containing sufficient gluco-amylase) to their diets, that the problems would disappear, or as a minimum, be greatly reduced....

Having watched my son suffer through the anguish and destruction of being on Ritalin for six years of his life, I was absolutely dumbstruck! I thought, "Are you trying to tell me that I could have avoided putting my son (and my family) through that nightmare from hell by simply giving him a 100% natural supplement? I don't believe it!" But the guilt and sadness of those memories with my son and the family during his formative years of ages six through twelve would not let this stunning disclosure subside from my consciousness. I decided to test this idea with friends from Memphis, who had a son, on Ritalin, and not doing well at all. In fact, he was the same age as my son when our drug odyssey began....

Back to my friends in Tennessee. They agreed to have their son's pediatrician monitor the reduction of Ritalin over a 30 day period, combined with the addition of certain natural nutritional supplements. At the end of this test period, they

reported that the Ritalin was no longer being taken and that there had been no negative changes in behavior...

Now, hundreds and perhaps many thousands of cases later, parents are hearing glowing reports of their children' outstanding performances in the academic environment as well as the social environments in which they are asked to participate. In fact, while I have no certified statistical evidence to support this conclusion other than anecdotal, I have not had a single report back to me that even one single child has had to return to Ritalin after trying a combination of three natural nutritional supplements which I call 'God's Recipe.'

(Exhibit B, "Well Being Journal," Vol V, No. 4, July/August 1996 (Included in "Attention Deficit Hyperactivity Disorder" pamphlet.))

C. "God's Recipe

- 1.) 2 ounces of Colloidal Minerals.
- 2.) 40 milligrams of highly effective antioxidant - OPC capsule combined with Ginkgo Biloba.
- 3.) Multi-enzyme capsule with every meal and with every significant snack, as well as the elimination of as much sugar as possible from the diet.

* See back page for more information
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Information on our "God's Recipe" Products

1-) Colloidal Minerals

These are minerals in a delicious liquid form that children of all ages really enjoy. The minerals are extremely easy for the body to absorb as they are extracted from plant source deposits of vegetation origin. In fact, the absorption rate in the body of these minerals is much greater than elemental minerals taken in tablet form. There are over 60 minerals in every 32 ounce bottle.

2.) Antioxidant with Ginkgo Biloba:

This antioxidant is OPC and is derived from the original patented grape seed extract. It has 50 times more antioxidant potency than vitamin E, and 20 times more than vitamin C. In combination with Ginkgo Biloba and other herbs, it can have a very positive impact on one's health.

3.) Multi-Enzymes

As the basis of all metabolic activity, enzymes are the driving force of our body's more than **150,000** biochemical reactions. Enzymes are very important for effectively metabolizing sugars, an activity of critical importance to ADHD control. A balanced blend of enzymes and minerals maximizes the assimilation of nutrients.

WHEN TO TAKE GOD'S RECIPE

Take one ounce of Colloidal Minerals and 1 capsule (20 milligrams) of the Antioxidant with Ginkgo Biloba first thing in the morning, and both again mid-to-late afternoon. Take 1 capsule of Multi-Enzymes with each meal and with each significant snack. Eliminate sugar throughout the day and evening.

We wish you and your family the best. If you have any questions, or would like to place an order, please call us at:..."

(Exhibit C, Excerpted from "Attention Deficit Hyperactivity Disorder" pamphlet.)

D. "GOD'S RECIPE TESTIMONIALS

'Good evening Mr. James: This is Shondra W. I had talked to you about a month ago to get information from you about how I could get my son off of Ritalin. And I just wanted you to know that I have had him completely off Ritalin for the past five days and I couldn't be more pleased with the way he is doing, he is doing so well. He is such a pleasure to be with now. And he is feeling better himself, he doesn't even want foods with sugar. And I just wanted to tell you 'Thank You and I really appreciate all of your help.' (Shondra W, Texas)

'Dear Max: We started about four and a half months ago and this has been the greatest four and a half months my son and I have ever had, ever. My son is 6 ½ years old. He was being brought to my work by the school principle because he was such a severe discipline problem that he was under consideration to be 'kicked out' of first grade. I was accused by the school of not being strict enough with my son, not disciplining him enough. It was right after that meeting with the school teachers and counselors that I started him on the program (God's Recipe) and we have had perfect behavior since then. He won an award pin for his perfect behavior and he won an all expense paid vacation from the principle for perfect behavior for four straight months. His teacher says that she wishes that she could get this (God's Recipe) for every kid in class. This is the best thing that has ever happened to us. I thank God that we have this. I really, really do!' (Zoanne, California)"

(Exhibit D, Excerpted from "Attention Deficit Hyperactivity Disorder" pamphlet.)

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

A. God's Recipe can cure, prevent, treat or mitigate Attention Deficit Disorder or its symptoms.

B. God's Recipe can cure, prevent, treat or mitigate Attention Deficit Hyperactivity Disorder or its symptoms.

C. God's Recipe is an effective alternative treatment to the prescription drug Ritalin for Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder.

D. Testimonials from consumers appearing in the advertisements for God's Recipe reflect the typical or ordinary experience of members of the public whose children have used the product.

8. Through the means described in paragraph six, respondent has represented, expressly or by implication, that he possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph seven, at the time the representations were made.

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

10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Section 5(a) and 12 of the Federal Trade Commission Act.

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TAPE: 'GOD'S RECIPE - THE NATURAL ALTERNATIVE TO RITALIN-

[music]

Parents across America are receiving phone calls from their children's teachers not to praise their progress in class, but to inform them there is a problem with Johnny. The problem? Johnny isn't staying up with the rest of the children, he's getting into fights at recess and he's just not listening. The teacher has seen it hundreds of times: ADD (Attention Deficit Disorder) - the most common form of treatment: Ritalin. Parents trusting the advice of well-meaning professionals are unknowingly starting their children on a cycle of chemical dependency. Is there an alternative? The good news is yes, and this tape will outline what has become known as God's Recipe, as well as letting you hear from some doctors on this very subject. God's Recipe is made up of three very exciting, natural health products. The three products you'll hear about on this tape are colloidal minerals, OPC grape seed extract containing ginkgo biloba, and a multi-enzyme product. This combination is making a huge difference in the lives of thousands of children and is a natural approach that works. Let us start this learning adventure with a well-known radio show broadcasted weekly, hosted by Dr. Joel Wallach.

[music]

Thank you and welcome to the Wellness Hour. This is Dr. Joel Wallach, your host, a physician and a veterinarian. I can tell you a lot of my patients say I treat them like dogs, but they seem to get better. We're going to talk about ADD/ADHD, hyperactivity, learning disabilities and all kinds of related disorders. I would be famous for this up in Portland, Oregon where I practiced for 12 years. I used to see literally hundreds and hundreds; maybe as many as thousands of parents who'd bring their children to me who had these problems and, of course, this was in the '70's and early '80's. People were just learning about Ritalin and all the teachers

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would like to put the students on Ritalin -- we're talking about 6, 7, 8, 9 and 10-year olds -- they would want to put them on Ritalin. I think a psychiatrist gave lectures to the teachers so they were very aware of Ritalin and, when a child was disruptive in the class, the first thing they would do is say to the parent, "Put the kid on Ritalin." And if the parent refused, the teachers would turn the parents over to the social services in Oregon, which were really hot to do something and they would then take on the parents and they'd say look, if you don't turn the kid over to be put on Ritalin, the first thing that's going to happen is we're going to make the child a ward of the state and the state will make sure that the kid gets Ritalin because it is good for the kid. And this is all based on the teachers' assessment of what was going on in the classroom.

Well, what I got famous for was taking these kids and having them draw their favorite animal or plane or flower or house or whatever it might be prior to having breakfast in the morning. Then having whatever usual breakfast they would have; it could be sugar frosted flakes, something like Pop Tarts, syrup on their Eggos, apple juice, grape juice, Sunny Delight, these kinds of things. Then go to school and about an hour and a half later do their same drawing again and then compare the two. And what we found out was that a six-year-old who could draw a giraffe that looked obviously like a giraffe after an hour and half following a high-sugar breakfast would draw a giraffe that would look much like a schmoo. For those of you who are old enough to remember what a schmoo looked like, it was a pillowcase with eyes on it. So, we would recognize that this kid was sensitive to sugar and, of course, we have talked about this many times on this show, there are people who are sensitive to sugar in all forms, whether it is natural, processed, corn syrup, honey, molasses, and people are sensitive to sugar--just like they are to alcohol. There are good alcoholics--people who, for instance, if they have a drink, they might go to sleep. This is at one extreme end, they go to sleep, there's people in the middle, who drink

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alcohol and just kinda get giddy and loud and boisterous and, at the other end of the scale, they become violent. The same thing is true with sugar. Some people when they take in sugar get sleepy and drowsy. Some people when they take in sugar get agitated and boisterous and then some people when they take in sugar get violent. And ADD/ADHD is somewhere in between those two extremes because these kids or adults even get disruptive, irritable and they can be involved in domestic violence; certainly, they are not going to learn how to read, write and do math, they are going to experiment with cigarettes, alcohol and drugs as they get older trying to find something to satisfy their cravings to be successful at, because when you have ADD/ADHD it's very difficult to be a positive performer. And so what we did was take these kids and young adults totally off of all sugar, natural and processed, supplement them with three trace minerals preferably in the colloidal form. This was lithium, chromium and vanadium and low and behold, usually within 24 to 72 hours, there was a significant benefit. The parents and teachers immediately recognized this and then, within weeks, the kid would go from the bottom of the class to the top of the class. It has nothing to do with intelligence and we actually saved thousands of kids from being put on Ritalin and today's -- welcome, Max James!

Max James: Thank you, sir, good morning.

Dr. Wallach: Good morning. And obviously, you've had a lot of personal experience. I was reading your materials. Why don't you share with our listeners how you got involved, a real estate agent basically and somebody with a military background. How did you get involved with ADD?

Max James: Yes, I have a wonderful son and when he reached the age of six years and headed off to the first grade after about two weeks in school, we got what turned out to be a perennial call from the school teacher saying we have a major problem with your son disrupting

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the class. He's two weeks behind academically, got quite a problem. He's the playground bully and you need to come talk with him. We were absolutely stunned. Our son had no behavioral problems at home, was the nicest little guy you ever want to meet in your life so we thought perhaps there was an error, that maybe it was the wrong child. In any event, fortunately we had a very bright and progressive first grade teacher who suggested that if that were the case, what she'd like to do is have the school psychologist test him and they did so and a couple of weeks later called us and said they believed that he had a learning disability at that time. This was in the late sixties. They called it hyperkinesis or hyperkinetic behavior and suggested that we go to Stanford University and have further psychological tests done. We did so and they determined that indeed he was ADHD and was going to be incapable of getting a normal education if we didn't do something to render him some assistance. The intelligence exams that they gave him indicated that he had an extremely high IQ but simply was not able to utilize it and produce the results. So we were given three choices, Dr. Wallach. They said number one, you can institutionalize him and --

Dr. Wallach: This is a six-year old?

Max James: This is a six-year old. I said, well, that's interesting. I mean, what kind of institution you're talking about and having seen the Jack Nichols movie "One Flew Over The Cuckoos Nest" --

Dr. Wallach: Exactly.

Max James: I had visions of horror and they said, well, he'll be in with quite a variety of children with learning disabilities up to the medical level of moron and that just didn't seem appropriate for my son, given that we had no problems with his social behavior in the home setting, in the family setting. I said, what's my next choice? And they said, well, you could try

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nutrition and I said great, fantastic. What do we do? And their response was you've got to remove all sugar. You've got to remove red food dye. No more peanuts. No more this, no more that, no more - -

Dr. Wallach: Wait a minute. You said this is in the 1960's?

Max James: Yes, late sixties. Probably '68, '69.

Dr. Wallach: Okay.

Max James: I said, well, you know, I -- I think that we might be able to do that at home. It sounds like quite a challenge, but what do I do about his meals at school and what do I do about vacation and camp and visits and friend's home and birthday parties. What's the third choice? Anyway, they said, well we highly recommend the third choice. It's the drug of choice. It's Ritalin and Ritalin is safe, it's a mild drug and they explained it and so that was the recommendation and that's what we did. The results were immediate and wonderful. Suddenly the handwriting which had been virtually illegible became not only legible but quite artistic, and I had thought that the handwriting problem was probably genetic. I couldn't write. My handwriting was terrible.

Dr. Wallach: Uh-huh.

Max James: So in any event, he suddenly started using three syllable words which his older sister had difficulty at that point understanding and then the body made the adjustment and a lot of that went away and constant battles with the appropriate dosage finally settled in and we proceeded on a six-year odyssey of my son on the drug that is more popularly called speed. The problem in my mind with Ritalin is that it works. He certainly was able to get an education, but the problem with Ritalin also is the side effects and in this case were, in my mind, devastating.

Dr. Wallach: Parents who are just exhausted with a hyperkinetic child or one with ADD

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or ADHD, they get this relief from this drug Ritalin. Suddenly, they can all go to sleep and suddenly they can go on with their lives because the kid's under control and things seem to be going well and the education's going good. And they think they've solved the problem. This is why the medical profession and teachers can get parents kind of coerced into this because suddenly the major portions of the problems go away and they can say, phew, finally, we get some relief here and we can go on with everybody's lives. Let me ask you something. Did they tell you to still with the child on Ritalin to take him off of sugar and supplement him with some trace minerals?

Max James: There's certainly no suggestion of trace-minerals, no.

Dr. Wallach: But they did say it would help to get him off of sugar?

Max James: Yes, they did. Yes, they did. The benefits of the Ritalin of course were that he became perfectly adjusted in the classroom, but the side effects, Dr. Wallach, are what have created my passion to see if I can find a better alternative.

Dr. Wallach: Sure. Well, what were the side effects that you saw in your son?

Max James: For six years my son was on Ritalin and they required a drug holiday which is we took him off on the weekends and obviously during holidays and the summers. And when he came off the drug there were withdrawals. The symptoms of drug withdrawal, as well as what's now popularly called "Ritalin rebound," so that about late Sunday afternoon behavioral problems really were abundant. Huge blue circles under the eyes from the abuse of this drug. Lips that were constantly chapped and bleeding because he was so dehydrated from this drug that he was constantly licking the lips and that created problems.

Dr. Wallach: Uh-huh.

Max James: Depression, moodiness and withdrawal --

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Dr. Wallach: Well, these blue circles under the eyes. We call them allergic shiners.

Max James: Okay.

Dr. Wallach: You know, allergic shiners, and invariably there's something that they're eating either sugar in one form or another or maybe even dairy can cause that on occasion and it's one of the signals that the child's in trouble when you see these blue, purple marks under the eyes that we call allergic shiners.

Max James: Well, it was clear to us that he was in trouble from a growth potential physically at the age of 12, he weighed 50 pounds.

Dr. Wallach: My goodness.

Max James: And when he finished the sixth grade at 50 pounds, we sent him back to the farm in Tennessee back to my parents. And, of course, went off the Ritalin and he got on those good natural foods back there at my dad's farm and garden, and then an environment that was free without the pressures of the school room and the classroom, and Dr. Wallach, he had a sixty percent weight gain in 30 days. Went from 50 pounds to 80 pounds and never went back on Ritalin.

Dr. Wallach: Isn't that amazing?

Max James: Absolutely amazing. He was able to go through the rest of his secondary education and in fact had an opportunity to redevelop and rebuild his self-esteem with a special program that at one time was provided by the University of the Pacific here to help children with these problems and he went on and got a college education and is a well-adjusted young adult today. But never back on Ritalin. I would hope that no one would ever have to go through that with their son.

Dr. Wallach: Okay. So what have you been doing all these years since your son has

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gotten off of Ritalin? It says here that you're a tireless worker in helping people and going into the media and making sure that people know about this problem. Tell us some of your experiences.

Max James: Well, a little over a year ago, I was sitting in a lecture on nutrition and a Dr. Kris Van Oeveren indicated that in his practice he dealt with a lot of children that were diagnosed as ADHD. And his experience was that many of them, not all, were unable to process or metabolize sugar and that if you gave them a good multi-enzyme the problem would often disappear. Well, I sat in this audience in total shock. I mean, I was stunned that I could have perhaps avoided putting my son through all of that pain and agony, as well as the family, by simply treating it with a nutritional supplement and so I determined right then that evening that I was going to test it because quite honestly, I didn't believe it. The route that we took in experimenting with nutritional supplements was to go with colloidal minerals, to go with a good, strong anti-oxidant combined with ginkgo biloba, and to go with a multi-enzyme and the elimination of as much sugar as possible out of these children's diets. Well, the word just kind of spread, word of mouth, and the results have been over a period of 10 or 12 months now, Dr. Wallach, that I receive phone calls every day, letters, people calling me, psychiatrists, medical doctors, neurologists, pediatricians, all wondering what we're doing. I'm not even sure I believe these statistics myself. I feel blessed by them, but I have not had one single case reported to me, not one, that a child has had to go back on Ritalin after going on to these nutritional supplements.

Dr. Wallach: What a blessing that is. You can take comfort in knowing that I had the same results. Never had to have a child go back on Ritalin. The caveat here again, the thing that you have to have everybody agree on that the whole family has to be aware, have to educate the child that there is a connection between sugar and their negative behavior. Kids don't like to be

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different. As you know, kids don't like to be behind in class and kids don't like to be a non-learner and so once they really get down deep inside of them this knowledge that sugar is a very negative thing for them, when you get them at a young age and the whole family does the same thing, it is very, very easy to get them on the right road and stay on the right road. My own son who was, I guess, about six years old when we figured this out for him, we started looking at health food stores and were able to get hot dogs for instance without corn syrup in it and get pure beef, pure chicken, pure turkey, pure lamb hot dogs. When he got to be nine years old, he'd go out with the Cub Scouts and I used to make brownies out of the roasted carob and out of rice flour and so forth and he could take his brownies that had a nice pecan half on the top of each brownie and his hot dogs and go and do his thing with the Cub Scouts and know that he couldn't eat anybody else's hot dogs. He couldn't trade. He couldn't eat their Twinkies, but he could eat their brownies and because they were so special, I had to start making more of these things so that the whole Cub Scout troop wanted them. It was fascinating to see the change in the whole troop.

Max James: We have a problem in the United States with prescribed drugs and children. Right now, it's reported and I can believe it that ADHD is America's number one childhood psychiatric disorder. And in some areas of the country, the percentage of children that are taking Ritalin has reached 7-8%. Over two million children on it. I am absolutely convinced by the hundreds and hundreds of people that I've talked to that it is not necessary.

Dr. Wallach: Oh, absolutely. And of course, the reason, Max, is that per person in America, now this does not exclude children, it doesn't say per adults, it says per person, there's 148 pounds of sugar per year consumed per person. Now there's some poor kid out there eating 300 pounds because I don't eat any.

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Max James: Right.

Dr. Wallach: And my son doesn't eat any. I'm assuming yours doesn't, so there's, you know, there's six people out there who are eating 300 pounds of sugar per person and it's pretty scary and another fact which is even scarier to me -- according to experts, juvenile and childhood experts, one-third of American children are going to be in a juvenile court this year, 1996, because of behavioral problems because of some kind of criminal behavior whether it is burglarizing neighborhood houses or assaults or murder or manslaughter. These kinds of things -- destructive behavior and you can attribute most of this really to this 148 pounds of sugar per kid and the fact that our foods are totally deficient in minerals and that if you don't supplement these kids with lithium, chromium and vanadium, zinc, sulphur, things like copper, magnesium, manganese and so forth, they get all kinds of physical problems, as well as mental ones and I have to ask you, have you had any rebellion from parents who say well, gosh, this is so expensive our insurance will pay for the Ritalin and we have to pay for the vitamins and minerals.

Max James: I really have not. I found that parents really are anti-drug for children. They don't want the kids on drugs and you're exactly right. These children do not want to take Ritalin. In fact I am working with one school nurse whose job it is every day to stand at the head of this queue of children all lined up to take their "Meds" as they're called, and they have to be supervised of course because it's a controlled substance. She says now that she actually has to put her fingers into their mouth to ensure that they are in fact taking Ritalin because they don't want the drug.

Dr. Wallach: You know, I hope she's washing her fingers between each child.

Max James: [inaudible]

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Dr. Wallach: Okay, Max, hang on. This is Dr. Joel Wallach, your host of the Wellness Hour and we're going to be right back after this message.

Voice: Jerry, you're on live with Dr. Joel Wallach and Max James. Your question please, Jerry?

Jerry: I'm a Judo coach and I have several students that are obviously suffering from ADD. What kind of information can you give me on that?

Max James: As you know, Dr. Wallach, an awful lot of these children that are ADHD become great athletes because of the frustration and the energy that builds up inside them, the anger of having to deal with their problem on a daily basis. This certainly was the case with my son and so we find a lot of ADHD children in Judo classes and they also become great entertainers, again, because of this energy, but one out of every three is going to drop out of school, and if they carry this into adulthood, the national statistics are that one out of every 10 will attempt suicide, so my recommendation is a couple of ounces of colloidal minerals each day for these children. We believe that the anti-oxidant is very important to help clean up the free radical damage that is going on inside their little brains and we combine that with ginkgo biloba and then we think that the multi-enzymes to help them metabolize that sugar that they're going to get -- we just can't seem to eliminate enough of it -- is very important.

Jerry: Okay.

Dr. Wallach: Okay. Thank you. Does that help you out, Jerry?

Jerry: Yeah, that helps me quite a bit and I'm going to try it out with a couple of the students that I have in mind and I will definitely let you know how it went.

Dr. Wallach: Yeah, great, and of course you want to have the parents go through those boxes of all the items that have sugar in it or give them ten cents for every different can, box,

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bottle, or bag that has sugar in it, you know, something, some incentive and you'll be amazed, it'll be a lot of fun.

Jerry: Great. Great. I appreciate it.

Dr. Wallach: Okay, Jerry.

Jerry: Thanks.

Dr. Wallach: Okay, thank you. Yeah, Max, if you had to have one recommendation for parents when they discover – usually parents discover on their own that there's a problem or a teacher tells them. Personally, I like to keep them away from counselors and shrinks because they invariably direct them and convince the parent it's the right thing to do to get them on Ritalin and I feel if the parents are really interested in the child, I give them the advice without suggesting that they go to a counselor or a shrink. How about yourself?

Max James: A major concern here over this child self-esteem and it's a problem that can be dealt with and it's going to require a great deal of patience and a tremendous amount of love for that child, but that I believe that the problem can be overcome without drugs and that the problem can be overcome with nutrition and number one, you must reduce the amount of sugar. Number two, because you cannot reduce all the sugar, you've got to do something about the negative impact of the sugar and so we start just with that recommendation. Diet, diet, diet.

Dr. Wallach: And as you point out, it's a life-long process and some get it and some don't. It's really a sad thing. And again, I attribute the kids who don't get it is because the family is not willing to give up sugar in their own lives and give the support that's totally necessary for the kid and do the education that's necessary to have the child make the association between sugar and the negative behavior.

Max James: We've also had great experience, by the way, in going to the doctors. Not

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being a medical practitioner myself, I'm very careful of course when children are on prescribed drugs and I suggest to the parents that they go to their doctor and tell the doctor what they want to do. Tell the doctor that they want to try an alternative and Dr. Wallach, I simply have to say this that there have been no long-term studies on the negative effects of Ritalin or Zylar or some of the others that are used and it seems to me that there is something wrong with the picture that says we put adults in jail for possessing this drug and yet we're forcing our children to take it on a daily basis. You know, there weren't any pharmacies in the Garden of Eden and I've just got to believe that this can be handled using natural supplementation.

Dr. Wallach: You're absolutely right and it's a matter of giving up that sugar, 148 pounds of sugar per kid per year and supplementing them properly and the best way to get their minerals is in the colloidal form, of course, 98% available to them. And I've just seen such wonderful results with pills. It used to take me, oh, somewhere around, oh anywhere from four to six weeks to see some real progress because you can't absorb the elemental forms of minerals very well. Even children only would get 8-12%, but with the colloidal minerals, I've had so many parents come back to me and say, hey, in 72 hours this kid is just a different child. The teacher asked if this was the good twin.

Max James: Right.

Dr. Wallach: And I'm sure you've seen the same thing.

Max James: I have indeed. My brother is a doctor back in Memphis, Tennessee, and his children suffer from this malady and they have seen results overnight. Often I hear by the next morning a perceptible change in behavior. It's truly a blessing, Dr. Wallach.

Dr. Wallach: So people have everything to gain and nothing to lose by doing this.

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Max James: Amen.

Dr. Wallach: Absolutely. And we just want to thank you a lot, Max.

Max James: Well, thank you for sharing this time with me.

Dr. Wallach: Yes, and I appreciate all your experience and hope that this works and --

[music]

Voice: Max James has taken this mission upon himself to educate as many parents as he can. Please turn to Side 2 to hear more about God's Recipe.

[END OF TAPE SIDE A. START OF TAPE SIDE B.]

[music]

Voice: During a recent phone session, parents of ADD children met with Dr. Kris Van Oeveren and Max James.

Max James: Bobbie, would you mind leading us off?

Bobbie: Oh, not a bit.

Max James: Oh, fantastic.

Bobbie: I am so excited to be able to share the wonderful things that have happened to my daughter. She started showing signs of ADD when she was in first grade and in second grade she started out above level in reading and ended up with below level at the end of the year. There were a couple of other children in her classroom that also had the same problem as Katie and between all of them mixed together, it was a pretty hectic classroom for the poor teacher and by the end of the year she was doing cartwheels in the back room and the whole nine yards and not really learning anything and she was also having social problems. She was having these fits of rage. She couldn't hold friends because of the rage that she was showing and the rage was

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coming out at the family and on her sister and she was just, poor thing was in trouble all of the time. You'd ask her to do a specific task and go and check on her in about 10 or 15 minutes and the poor little thing was in a trance, I mean, it was like she was staring off into space and it's like, honey, why haven't you done what we asked you to do, you know, you've been here for 15 minutes. No, Mom, I just walked in the room. And she was very honest. You know, you can tell when kids are fibbing and she was very, very honest with the fact that she felt that she had just walked into the room. So, this was long before I found these wonderful products -- the multi-enzymes and such. We started working with a naturopath and she did help us. She said that, you know, a lot of times with food allergies that these things occur and so we did change her diet and so on and so forth, but when we started on the colloidal minerals and the enzymes and the Proanthocyanidin product that has the ginkgo biloba for the brain, etc., my daughter just came up 100% better than just with changing her diet and in two weeks her teacher called me at home during the day. It scared me because I thought something had happened and she said, Mrs. McKuen, I would like to know what it is that you're doing different with Katie and I said, well, in what regard, you know, after having so many bad phone calls, you know, with a child with ADD, you kind of don't want to volunteer too much. Oh, gee, what have we done now. She was wonderful. She says, I don't know what you're doing with her and for her but whatever it is, please don't stop. She says please do more. She said Katie is focusing in the classroom and she is; her attitude towards the other children is changing and she's calming down and she's actually grasping onto concepts now. And I said, well, gosh, it's only been a couple of weeks since we started her on these new products, these natural health care products and she said, wow, I don't care what it is that you've done. I am just so excited. She said, I'm really beginning to see what a wonderful child Katie is and you told me that at the beginning of the year that she was really a

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wonderful child, but because of these problems and stuff with her ADD, it's hard to get to know the real Katie like you have the chance to at home and she says, I'm just so excited that I've had the chance to get to know the real Katie underneath the problem. She said this is just wonderful and the year has continued to progress and she is just doing absolutely wonderful. She has several friends now. She's become quite popular in school and she's doing much better on her homework and we're still working with some of the backlashes of the ADD, but Katie is definitely a success story and we just started her on these products and so we haven't had her on them for an extreme amount of time before, you know, we're very pleased thinking that she's just about cured from the ADD symptoms.

Dr. Van Oeveren: Oh, that's a fantastic story. Fantastic.

Max James: Jackie, why don't you do the same. Just tell us what's happened in your special family with ADHD and nutritional supplements.

Jackie: Okay. I have a son who is 14 right now and he has had ADD since he was teenie. He was one of those kids that was hyperactive and couldn't sit still and loved to experiment and was always breaking everything in the house. We had trouble with the frustration mainly. Everything he tried to do was so hard for him and he would get terribly frustrated. When he was learning to read, he would read a word fine one day and then he wouldn't remember it the next. He couldn't remember the multiplication tables. When he was spelling, he'd drill and drill and drill and then he wouldn't remember it the next day and it made him so frustrated, and so, usually with his schooling, he would do 10 or 15 minutes and get so frustrated he would go out and jump on the trampoline. He's very good at that. Also, another thing he used to do is when he got really frustrated, he'd kind of almost roll up in a ball and say I'm so dumb, I'm so dumb, I can't, I can't. How come I'm not like anybody else? And it was

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driving me crazy and I felt like I needed to put him on some kind of drugs just because his life seemed so miserable. And we really didn't want to go to Ritalin and so we kind of worked with him and worked with him until we found these products and it was amazing. We gave him the first dose at night and the next morning when we sat down to do, we do scripture reading first and when we sat down to do our scripture reading, he took his turn and he read fluently. Not one word at a time, not sort of sounding them out and looking at them as if he'd never seen them before. He read fluently, just as fluently as could be. And we were just shocked because this is -- he'd only had two doses, you know, night and morning. And then he sat down at the computer and typed a story. And the story ended up being -- he typed that day for like six or seven hours with a little while off for lunch. Straight through. When he came across a word he couldn't spell, he'd always just fly into a rage. This time if he came across a word he didn't know, he'd either spell it the best he could and then use the spell checker or he'd ask somebody and go right on. No rage, no frustration. And his story is absolutely amazing. He sent it in to the contest right now. He won first place in the local contest and it's in the state-wide contest right now. It's an amazing story. He did a fantastic job. And I can always tell if he has remembered to take it or not because if he hasn't taken it, then little things bother him, like he can't find his shoes and he'll, he just gets so frustrated and so angry and all you need to say is hey, did you take your stuff? Did you take your pills? Nope. It's just really easy to tell. It's made a huge difference in his life.

Max James: Oh, what a fantastic story.

Dr. Van Oeveren: That's great.

Max James: Great, great story. Thanks, Jackie, I really appreciate you sharing that with us.

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Dr. Van Oeveren: That's great.

Max James: Dr. Kris.

Dr. Van Oeveren: Yeah.

Max James: Any particular thing you'd want to add into that? That's classic or that you've observed?

Dr. Van Oeveren: Well, I'm not exactly sure why sugar is the main problem. There are a few concepts that we're fairly sure of and that is that refined sugar is the main culprit because it gets metabolized in the digestive system much quicker, basically raises havoc with the rest of the metabolism of the sugar. And it causes a very high influx of insulin to regulate this immense absorption rate of the refined sugars. That's basically the mechanism involved there is that we're just in -- primarily, we're just taking in the incorrect form of sugar which we were never intended to receive that way. We were intended to receive sugar in a natural form like from fruit or vegetables and so now what's happened is through that violation, the digestive system is imbalanced, you might say. Its ability to tolerate these sugars has decreased and then of course that leads in to dysfunction. Where the enzymes come in is twofold. One is to try to help the body recover from this dysfunction by providing enzymatic action with the sugar that is inevitably going to be a part of our diet and thus helping to regulate the metabolism better. That's the primary function of how that does that. The second deal is, what it also does is it sort of gives the body an opportunity then to heal up certain aspects of the digestibility of these sugars by providing its own enzymes. When you have a dysfunctional system, it takes time for the body to heal and in getting this extra help from the enzymes is, it gives you this extra time and ability for the body to heal it up. So, it's a twofold situation and it's in conjunction with a person having to reduce the amount of these refined sugars in their diet and then supplementing

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in the enzymes to help the body recover and bring it back into balance and also help regulate normal metabolic process of the sugar.

Max James: Fantastic, Kris. Thanks. You related that to the co-factors.

Dr. Van Oeveren: Because it is required to be metabolized so much it depletes the body of the co-factors and co-enzymes or co-enzymes are vitamins and co-factors are minerals. So that's why the minerals fit into this program is that you end up depleting or utilizing the minerals available in the body just to try to maintain as long as it can while the person is taking in these processed sugars or violating natural digestive processes, so if you're depleting your vitamins and your minerals and your enzymes, it's somewhere along the line, it's just going to raise havoc and something's going to give. And in this case it's ADD. So the remedy nutritionally would be to supplement back in the vitamins and the minerals or the enzyme co-factors and co-enzymes, along with the food enzymes to bring the body back into balance.

Max James: Dr. Kris, what about the anti-oxidants and what benefit we may be receiving by the people that are ADD?

Dr. Van Oeveren: Well, the anti-oxidants -- of course, anytime that you're going to have tissue dysfunction, you're going to have inflammatory processes going on more than likely and, of course, the anti-oxidants do have an effect on inflammation in attempting to reduce it, thereby also trying to bring back into balance normal function. Things like ginkgo have elements of them that get into the brain to help in the tissue in that particular organ. So there's a relationship there, I think, between utilizing antioxidants and also getting into specific regions of the body or specific organs, for example, the brain with ginkgo and this helps then to bring back into balance the normal function of specific tissues or organs.

Max James: Okay. Super. I've got one last one for you, Kris. Children are getting the

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attention here for ADHD. What about taking this malady into adulthood? What's the story there? Is it curable? Do we just learn to deal with it? What's the situation?

Dr. Van Oeveren: The basic premise is the body's a self-healing organism and in order for it to continue to maintain its natural processes of self-healing, it needs to be fed. And if we continue to feed it appropriately, it has its best opportunity then to maintain proper health. That transcends all age. It doesn't matter how old you are. I think that the answer is basically the same thing.

Max James: Right. Fantastic, Kris. Thanks very much. Sure appreciate your time.

Dr. Van Oeveren: Okay. Thank you very much.

Dr. Van Oeveren: Okay. Bye-bye.

Max James: Well, let's see. Mike Hart.

Mike: Hi, Max.

Max James: How about telling us what's going on in your family?

Mike: Travis is a five-year old young man. Great personality. We have managed to keep him away from the thought of having to take Ritalin by natural means. First, we took sugar out of his life. At about three years old, Travis had some challenges and when ever he had sugar, he became a totally different person. Everybody out there listening, if you're listening to this because you have a challenge, you already know all the stories. You know what happens. You know what happens in school. You know what happens at home. You know what happens to the character of the persons we're talking about. It's not just Travis. This is happening to children all over America. With sugar, we control their lot. We changed his life a lot. Only half as much as his life changed when we were able to give him minerals, enzymes and OPC'S. The group together really made some major changes. And I want to say when we first started giving

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him the products, we halfheartedly gave him the products and we've seen minimal change. It wasn't until we got really regiment about giving him these products all day, every day and what I mean by that is by giving Travis these products three times a day, or if it took four times a day, you could tell when there's a mood swing and there's a change has started to come on. We made sure that he had an enzyme whenever he ate anything. If it was a piece of toast, he had an enzyme. He had minerals at least twice a day and OPC's at least twice a day. What a difference. He's a little gentleman. All of the things that we were experiencing that could have led us to other means of, you know, what a lot of other kids have to take. I know some other programs that are trying to get all kinds of other types of programs going, but we combated it naturally, not even knowing that we had the major problem. So, we're like so many others out there. We think that our child is just maybe a little more excited, a little more ornery than others and that's normal. We think it's normal because there's so many other children out there that we can compare him to. So we think that's normal and what we have to learn is it's not normal, it's common. There's a lot of other people out there, a lot of other children or even adults that we can compare it to that makes it common, but not normal, so if you keep that in mind, there is a problem that needs to be addressed and there are ways to address it naturally. It's really wonderful.

Max James: Oh, that's a fantastic story. Zoanne?

Zoanne: Yes.

Max James: We understand that you've got a wonderful story to share with us about nutrition in your family and ADHD.

Zoanne: We started about four and a half months ago and this has been the greatest four and a half months we've ever had, ever. My son is six and a half years old. In fact I had talked

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to Jackie Ruland about natural things to help for the ADD and this is what she told me about. And at that point, my son, he's in first grade, the principal was bringing him to my work to get him out of the school. He was running away from school. He was talking back to the teachers. He was a severe discipline problem almost to the point of being kicked out of school in first grade. That was the main thing. We had just taken the written test through the school for ADD. The teacher made it out that he was an extreme discipline problem and that he must, we had this meeting. They said I must not discipline him enough. I must not be structured enough with him. All these things that were my fault that were his fault. And right after that meeting was when I started the pills. And I started with one a day. And I didn't see much difference for about a week and so Jackie told me to try two. And so I tried two pills a day over the weekend and then that Monday, from that time period on, we have had perfect behavior all the way through. He won a little pin from the principal for his outstanding work. He got a trip to Sam's Town all paid for by the principal because he has done so fantastically. They're on a green card, yellow card, red card system, green card being the best. He used to be getting he was getting two to three red cards and a yellow card every week which was bad, bad. And he's gotten one red card in four and a half months. His teacher says that she wishes that she could get the stuff for every kid in her class. Just everybody comes into my work. Every day. I hear it. I hear feedback of how great he's doing. What is he doing, what are we doing. It's fantastic.

Max James: Oh, that's a fantastic story. . . . a fantastic story. Let's just take a moment here and let me see if I can't get John to join us. John!

John: Hello!

Max James: Hello, John!

John: How are you?

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Max James: Good, thank you for taking time to join us. Really do appreciate it.

John: Oh, you're welcome. I'd always suffered from -- which I didn't know what it was; I found out later it was ADD. I suffered from a real attention problem, and I'd get focused on certain things that were very confusing to me and it caused me a lot of problems. It caused me all kinds of problems in school. I remember the first time in second grade they were trying to figure out whether or not to let me go into third grade. And I was very distracted. Reading was a real challenge for me. Concentrating on the teacher, or even anyone in just a single conversation was a real challenge. And it turned out that obviously it was not personality. I thought it was just my personality, and I used to get into all kinds of predicaments because of it. Create a lot of tension with my family and with learning in general. And to make a long story short, when I originally started supplementary minerals, with the colloidal minerals, I started regaining control. Control that I had never really had before. And looking back, having dropped out of high school in the 10th grade, looking back at all this, just all the unnecessary trauma due to something that was preventable, it is just neat -- it's neat to see that all these kids that I'd been around, and all these people I'd seen had similar disorders, that they could have avoided it, and avoided the grief due to it, just from supplementing minerals. And I hear you guys have some other remedies for the disorder, and that's really exciting to me. I found that I really do -- I really do love enzymes, and I recently heard that the enzymes are helping the ADD cases, and I think that's pretty exciting too. I notice that when I get on any kind of sugars, or I eat things that are not really good for me, I turn into a completely different person. And all of a sudden some of the prior problems and disorders and different symptoms set in pretty heavy. And it does take quite a bit of minerals, and enzymes really do help too, in breaking down the sugars for me.

That's my little story. I tell you, when I got on minerals, the control that I had back when my life

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was very exciting. I started reading, and I'd get up and I just wanted to read. And just started feeding myself. Feeding myself all kinds of things that I didn't get before. Started having relationships that I hadn't had before with my mom and with my brother. With some friends that I used to -- just not get along with real well. I think it was really due to deficiencies and the disorder. It really was challenging for me to keep a relationship of any kind. And it's just really been a blessing to me.

Max James: John, would you say that it's had a significant effect on your business career?

John: Oh, there's no question. You cannot be in business for any length of time successfully with the type of symptoms that ADD causes. I was always in business; I never did have a job. I've never had a job in my life, with the exception of a paper route. And I've always, I've always had some kind of business of some kind, and the reason I never had a job is because I could never keep any kind of job, or take any kind of orders, or concentrate on any one task for any length of time. So I had to choose employment that was -- oh that would work around my crazy schedule and habits and things. And so I had all kinds of different businesses, like I'd mow lawns, and I used to paint fences. And I got into automotive and painting things; things that were craft oriented. And that was about all I could do. It definitely enabled me to do things that involved a lot of multi-tasking and concentrating on many different things versus just one single-minded thing. I was always good at what I did before, but I was just good at one single minded task at a time. And now I'm finding I'm able to do many things at once. And it definitely has impacted my business. No question about it.

Max James: John, thank you very, very much.

John: You're very welcome!

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Max James: For taking the time out, and joining us.

John: Bye-bye.

Max James: Uh-huh. Now I've learned a lot tonight. And I very much appreciate your being willing to share all of this. I think one of the things that I'd like to end with here is Zoanne said, "Thank God." And it seems to me that we have properly titled what we're doing and the success of this formulation, this combination of natural nutritional supplements with eight, ten, fifteen calls I get a day and the hundreds and hundreds of parents and children now that are benefitting from this, we really can, I think, in good consciousness call it God's Recipe. And what most of us are doing is two ounces of these colloidal minerals spread during the day, maybe first thing in the morning and then sometime mid to late afternoon, 40 milligrams of this Proanthocyanidin, preferably one that comes from grape seed extract in combination with Ginkgo Biloba and we think that you should take those roughly at the same time that you take the mineral supplementation and then lastly, because there is no question that sugar is a major culprit in ADHD and ADD, we need to eliminate sugar as much as possible from all of our diets, but particularly from the diets of those that are very sensitive and impacted negatively by sugar and in order to help ease the problem of the sugar that we are unable to eliminate, these multi-enzyme capsules are phenomenal because as Dr. Kris has told us tonight, they assist mightily in metabolizing the sugar and getting that whole digestive process and the reaction of digesting sugar under control so that we don't get the mood swings and the metabolic swings. So we call that God's Recipe. Hopefully, with the information that you have been kind enough to share with us tonight, the recipe will spread and the resultant blessing will occur to as many people as possible. So, I would just say, again, thank you.

[music]

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Voice: To discover how you can start your children on God's Recipe, contact the person who thought enough to give you this tape. All proceeds from this tape are donated to ADD research.

[END OF TAPE SIDE B.]

WELL BEING JOURNAL

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Attention Deficit Disorder Reversed - By Max James

Former Executive VP with Days Inn of America wants to rid the world of Ritalin, substitute good nutrition and dietary supplements in its place....

I attended a lecture by Dr. Kris Van Oeveren last year, at which time he stated that in his practice, he often dealt with children who were ADHD. In many cases (but not all), it was his opinion that these children were unable to adequately process sugar or glucose, and if you added a good multi-enzyme supplement (one containing sufficient gluco-amylase) to their diets, that the problems would disappear, or as a minimum, be greatly reduced.

Having watched my son suffer through the anguish and destruction of being on Ritalin for six years of his life, I was absolutely dumbstruck! I thought, "Are you trying to tell me that I could have avoided putting my son (and my family) through that nightmare from hell by simply giving him a 100% natural supplement? I don't believe it!" But the guilt and sadness of those memories with my son and the family during his formative years of ages six through twelve would not let this stunning disclosure subside from my consciousness. I decided to test this idea with friends from Memphis, who had a son, on Ritalin, and not doing well at all. In fact, he was the same age as my son when our drug odyssey began. It was, simply put, a good-news/bad-news journey.

The discovery of the problem and the diagnosis at Stanford University seemed to be bad news/good news. "He has a "learning disability" and he is "hyperkinetic" (now called ADHD), however, he is extremely bright and can be treated so that he will be able to adequately function in a normal social environment and obtain an appropriate education."

The solution was one of three choices: We could institutionalize him in a medical facility that had children who were suffering with mental disabilities up to the medical level of "moron"; Or we could attempt a nutritional diet that restricted most foods that were being served to him not only at home, but at school and all other places where he was fed, including recreational and entertainment events. Or we could put him on the "drug of choice", Ritalin.

For six years, this drug, which is more popularly called "SPEED", dehydrated my son's body to such an extent that he constantly licked his dry lips causing constant chapping and bleeding. He had huge blue circles under his eyes from the drug abuse. He had no appetite, became malnourished and at the age of 12, weighed only 50 pounds. Every weekend and on holidays, he

suffered through the emotional and physical pains of withdrawal. At school, he was teased and taunted because he had to go to the school office so that he could "get his 'Med's'". He was allowed to take exams in a separate room and often use an open book, and his classmates accused him of cheating. His dysfunctionality led to his not being able to recall those things most children easily commit to rote memory such as the ABC's, multiplication tables, spelling words, capitals of the states, etc., all of this leading to a total loss of self esteem, and this loss leading to anger, frustration, social misbehavior, and at times violence.

Upon graduation from the 6th grade, he was sent to Tennessee to visit his grandparents for a long stay on the farm, a place of great freedom and good nutrition. In 30 days, he experienced a 60% weight gain, from 50 to 80 pounds, AND HE NEVER WENT BACK ON RITALIN. Thanks to hard work on his part, some wonderful, patient, and understanding educators, he successfully earned a high school and a college education. He was afforded the opportunity as a senior in high school to attend a special school, sponsored by the University of the Pacific, in which the principal objective was to reestablish the students' self esteem. One can only continue to wonder what permanent damage has been wrought upon his body and spirit, by a drug that we put adults in jail for possessing, and yet we force our children to take on a daily basis. Something is terribly wrong with this picture.

Back to my friends in Tennessee. They agreed to have their son's pediatrician monitor the reduction of Ritalin over a 30 day period, combined with the addition of certain natural nutritional supplements. At the end of this test period, they reported that the Ritalin was no longer being taken and that there had been no negative changes in behavior.

Now, hundreds and perhaps many thousands of cases later, parents are bearing glowing reports of their children's outstanding performances in the academic environment as well as the social environments in which they are asked to participate. In fact, while I have no certified statistical evidence to support this conclusion other than anecdotal, I have not had a single report back to me that even one single child has had to return to Ritalin after trying a combination of three natural nutritional supplements which I call "God's Recipe".

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God's Recipe

- 1.) 2 ounces of Colloidal Minerals.
- 2.) 40 milligrams of highly effective antioxidant - OPC capsule combined with Ginkgo Biloba.
- 3.) Multi-enzyme capsule with every meal and with every significant snack, as well as the elimination of as much sugar as possible from the diet.

*** See back page for more information**

EXHIBIT C

Information on our "God's Recipe" Products**1.) Colloidal Minerals**

These are minerals in a delicious liquid form that children of all ages really enjoy. The minerals are extremely easy for the body to absorb as they are extracted from plant source deposits of vegetation origin. In fact, the absorption rate in the body of these minerals is much greater than elemental minerals taken in tablet form. There are over 60 minerals in every 32 ounce bottle.

2.) Antioxidant with Ginkgo Biloba:

This antioxidant is OPC and is derived from the original patented grape seed extract. It has 50 times more antioxidant potency than vitamin E, and 20 times more than vitamin C. In combination with Ginkgo Biloba and other herbs, it can have a very positive impact on one's health.

3.) Multi-Enzymes

As the basis of all metabolic activity, enzymes are the driving force of our body's more than 150,000 biochemical reactions. Enzymes are very important for effectively metabolizing sugars, an activity of critical importance to ADHD control. A balanced blend of enzymes and minerals maximizes the assimilation of nutrients.

WHEN TO TAKE GOD'S RECIPE

Take one ounce of Colloidal Minerals and 1 capsule (20 milligrams) of the Antioxidant with Ginkgo Biloba first thing in the morning, and both again mid-to-late afternoon. Take 1 capsule of Multi-Enzymes with each meal and with each significant snack. Eliminate sugar throughout the day and evening.

We wish you and your family the best. If you have any questions, or would like to place an order, please call us at:

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GOD'S RECIPE TESTIMONIALS

"Good evening Mr. James: This is Shondra W. I had talked to you about a month ago to get information from you about how I could get my son off of Ritalin. And I just wanted you to know that I have had him completely off Ritalin for the past five days and I couldn't be more pleased with the way he is doing, he is doing so well. He is such a pleasure to be with now. And he is feeling better himself, he doesn't even want foods with sugar. And I just wanted to tell you 'Thank You and I really appreciate all of your help.'" (Shondra W., Texas)

"Dear Max: Your letter regarding your personal experience with ADHD was absolutely fabulous! It moved me to tears, because I could really relate to it with the problems I have been having with my own son with ADHD. He is now 16 years old, has been on Dexedrine for 2 years, and has lost 30 pounds! He is developing a tolerance to the drug and his doctor has had to keep increasing his dosage from 5 mg to the current 20 mg. He is still losing weight and I am very concerned. He has just recently begun using your 'God's Recipe' with (the doctor's) blessing. I have permission from my son's pediatric neurologist to distribute (God's Recipe) product literature and tapes to other parents of children with ADD/ADHD." (Cheryl G., Michigan)

"Dear Max: I am looking forward to hearing your presentation at the conference. I will be sending my first mailing to over 200 teachers and to approximately 150 homeschooling families, many of whom were motivated to homeschool because of learning difficulties which include ADD or ADHD. I know many families who have members who are also struggling with the symptoms shared by those diagnosed with Attention Deficit Disorder, as well as the devastating side effects they experience as a result of Ritalin. This article (My Experience...") had such an impact on me that I want to tell everyone about the news and encourage them to tell others - they deserve to be aware that other choices are available!" (Tina M., Washington)

"Dear Max: We started about four and a half months ago and this has been the greatest four and a half months my son and I have ever had, ever. My son is 6 1/2 years old. He was being brought to my work by the school principle because he was such a severe discipline problem that he was under consideration to be "kicked out" of first grade. I was accused by the school of not being strict enough with my son, not disciplining him enough. It was right after that meeting with the school teachers and counselors that I started him on the program (God's Recipe) and we have had perfect behavior since then. He won an award pin for his perfect behavior and he won an all expense paid vacation from the principle for perfect behavior for four straight months. His teacher says that she wishes that she could get this (God's Recipe) for every kid in class. This is the best thing that has ever happened to us. I thank God that we have this. I really, really do! (Zoanne, California)

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 Bureau of Consumer Protection 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 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 Max F. James resides at 1857 Ridgeview Drive, Roseville, CA.

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

1. "*God's Recipe*" shall mean the following New Vision products, either collectively or individually: "OPC Grape Seed Extract with an Herbal Blend," "Essential Minerals," and "Multi-Enzymes with Alfalfa/Barley Sprouts."

2. "*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.

3. "*Clearly and prominently*" shall mean as follows:

A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. 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. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend 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.

C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

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

4. Unless otherwise specified, "*respondent*" shall mean Max F. James, and his agents, representatives and employees.

5. "*Drug*" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55.

6. "*Food*" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55.

7. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of "God's Recipe," or any food, drug or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

A. Such products can cure, prevent, treat or mitigate Attention Deficit Disorder or its symptoms;

B. Such products can cure, prevent, treat or mitigate Attention Deficit Hyperactivity Disorder or its symptoms; or

C. Such products are an effective alternative treatment to the prescription drug Ritalin for Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder;

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

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 in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. 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; or

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

1. What the generally expected results would be for users of the 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 Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

III.

It is further ordered, That respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, regarding:

A. The safety of such product; or

B. The ability of such product to treat, cure, alleviate the symptoms of, prevent, or reduce the risk of developing any disease or disorder;

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

IV.

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

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and

Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VI.

It is further ordered, That respondent, and his 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 came into his possession from a distributor or any other source that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in his 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.

VII.

It is further ordered, That respondent shall deliver a copy of this order, or a summary in the form set forth as Appendix A to this order, 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, or a summary in the form set forth as Appendix A to 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.

VIII.

It is further ordered, That respondent, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his 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 respondent, and his 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 he has complied with this order.

X.

This order will terminate on March 3, 2019, 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.

APPENDIX A

Dear Agent, Representative, or Employee:

The Federal Trade Commission ("FTC") has conducted an investigation to determine whether Max James may have engaged in acts or practices which violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, including, but not limited to, false and unsubstantiated product claims for New Vision products. As a result of its investigation, the FTC has alleged that Mr. James (herein referred to as "respondent"), has made false and unsubstantiated representations in connection with the advertising, promotion, offering for sale, sale and distribution of a combination of three New Vision products known as "God's Recipe."

As a result of recent negotiations with the FTC, the respondent has agreed to a consent order ("order") with the FTC. The order is for settlement purposes only and does not constitute an admission of violations of law by Mr. James. Pursuant to the order, the respondent has agreed not to make certain claims for God's Recipe, or any other food, drug or dietary supplement, unless he can substantiate those claims.

Specifically, the order prohibits respondent from representing that God's Recipe, or any other food, drug or dietary supplement:

1. Can cure, prevent, treat or mitigate Attention Deficit Disorder or its symptoms;
2. Can cure, prevent, treat or mitigate Attention Deficit Hyperactivity Disorder or its symptoms; or
3. Is an effective alternative treatment to the prescription drug Ritalin for Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder;

unless respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

The order also prohibits respondent, when advertising any food, drug or dietary supplement, from making any representation regarding the safety of such a product, or the ability of such product to treat, cure, alleviate the symptoms of, prevent, or reduce the risk of developing any disease or disorder, unless respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

The order also prohibits respondent from claiming that user testimonials or endorsements represent the typical or ordinary experience of members of the public who use the product, unless respondent possesses and relies upon competent and reliable evidence that substantiates the representation, or respondent discloses either (1) what the generally expected results would be for users of the 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.

The order specifies that respondent may make any representation for any drug that is permitted in labeling for 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. The order further specifies that respondent may make any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

In addition to the above provisions, the order requires that respondent provide a copy of this notice to each of his current and future agents, representatives and employees who have responsibilities with regard to the order's requirements.

If you have any questions or would like a copy of the order, you can contact me at [].

Very truly yours,

[respondent's name]

IN THE MATTER OF

ALLIED DOMEQC SPIRITS & WINE AMERICAS, INC., ET AL.

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

Docket C-3858. Complaint, March 5, 1999--Decision, March 5, 1999

This consent order, among other things, prohibits two Michigan-based corporations, that advertise and distribute alcohol beverages, from misrepresenting the alcohol content, through numerical or descriptive terms, of any alcohol product.

Participants

For the Commission: *Richard Kelly, Janet Evans, C. Lee Peeler and Janis Pappalardo.*

For the respondents: *Theodore Voorhees, Covington & Burling, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker, 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 Allied Domecq Spirits & Wine Americas, Inc. is a Delaware corporation with its principal office or place of business at 3000 Town Center, Southfield, MI.

2. Respondent Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker is a Michigan corporation with its principal office or place of business at 3000 Town Center, Southfield, MI. Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker is a wholly-owned subsidiary of Allied Domecq Spirits & Wine Americas, Inc.

3. Respondents have advertised, offered for sale, sold, and distributed beverage alcohol products to the public, including Kahlua White Russian, a pre-mixed cocktail. Kahlua White Russian is a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

4. 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.

5. Respondents disseminated or caused to be disseminated advertisements for Kahlua White Russian, including but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statement: "LOW ALCOHOL BEVERAGE."

6. Through the means described in paragraph five, respondents represented, expressly or by implication, that the Kahlua White Russian is a low alcohol beverage.

7. In truth and in fact, the Kahlua White Russian is not a low alcohol beverage. It has a significant alcohol content, 11.8 proof (5.9% alcohol by volume), equal to or greater than numerous other alcohol beverages. For example, a Kahlua White Russian has substantially more alcohol ounce for ounce than many beers, malt liquors and wine coolers. For some people, drinking as few as two or three Kahlua White Russians will begin to impair normal functions, such as driving.

Therefore, the representation set forth in paragraph six was false or misleading.

8. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

Exhibit A - 1

Kahlua "Jumpin' Joint" /

Depictions	Verbal
• Doorway with neon sign reading "Club Kahlua White Russian"	(street sounds such as a honk)
• Close up on doorway as door starts to open	(music starts: Big Band/Swing style-Brown Sugar)
• Viewer sees a man leaving the club and walks behind a couple entering	(music continues)
• Viewer walks up to maitre'd who greets viewer	(music continues)
• Viewer begins to walk through club observing atmosphere, an attractive girl smiles at viewer	(music continues/band member says "Hit It")
• Waitress walks by with a tray of Kahlua White Russians SUPER: LOW ALCOHOL BEVERAGE	(music continues)
• Viewer walks by a couple drinking Kahlua White Russians who make eye contact and smile at viewer	(music continues)
• A couple gets up from a table and starts dancing	(music continues)
• Close up of band in full swing	(music continues/lyrics begin: "Yeah,")
• Pan of dance floor while viewer walks through dancers toward a table of friends	(music with lyrics: "Yeah")
• Waitress walks by with a tray of Kahlua White Russians	(music with lyrics: "Yeah, Brown Sugar")
• Viewer walks off to table of friends who smile and invite viewer to join	(music)

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Complaint

EXHIBIT A

- Close up of Kahlua White Russian (music with lyrics: "How Come you Taste So Good?")
- Viewer picks up glass revealing napkin with writing "Kahlua White Russian How come you taste So GOOD?" Voice: "Kahlua White Russian: How Come you Taste So Good?"
- SUPER:
©1997 Kahlua' Pre-Mixed Cocktails.
5.9% alc./vol., Hiram Walker.
Southfield, MI.

Exhibit A - 2

**Kahlua "Jumpin' Joint" Ad
(VIDEOCASSETTE)**

EXHIBIT B

Exhibit B - 1

Kahlua "Jumpin' Joint/Alt."

Depictions	Verbal
• Doorway with neon sign reading "Club Kahlua White Russian"	(street sounds such as a honk)
• Close up on doorway as door starts to open	(music starts: Big Band/Swing style-Brown Sugar)
• Viewer sees a man leaving the club and walks behind a couple entering	(music continues)
• Viewer walks up to maitre'd who greets viewer	(music continues)
• Viewer begins to walk through club observing atmosphere, an attractive girl smiles at viewer	(music continues/band member says "Hit It")
• Waitress walks by with a tray of Kahlua White Russians SUPER: LOW ALCOHOL BEVERAGE	(music continues)
• Viewer walks by a couple drinking Kahlua White Russians who make eye contact and smile at viewer	(music continues)
• A couple gets up from a table and starts dancing	(music continues)
• Close up of band in full swing	(music continues/lyrics begin: "Yeah,")
• Pan of dance floor while viewer walks through dancers toward a table of friends	(music with lyrics: "Yeah")
• Waitress walks by with a tray of Kahlua White Russians	(music with lyrics: "Yeah, Brown Sugar")
• Viewer walks off to table of friends who smile and invite viewer to join	(music)

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Complaint

EXHIBIT B

- Close up of Kahlua White Russian (music with lyrics: "How Come you Taste So Good?")
- Viewer picks up glass revealing napkin with writing "Kahlua White Russian How come you taste So GOOD?" Voice: "Kahlua White Russian: How Come you Taste So Good?"
- SUPER:
LOW ALCOHOL BEVERAGE
©1997 Kahlua® Pre-Mixed Cocktails,
5.9% alc./vol., Hiram Walker,
Southfield, MI. Voice: "Low alcohol beverage"

Exhibit B - 2

Kahlua "Jumpin' Joint/Alt." Ad
(VIDEOCASSETTE)

DECISION AND ORDER

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

The respondents, 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 complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Allied Domecq Spirits & Wine Americas, Inc. is a Delaware corporation with its principal office or place of business at 3000 Town Center, Southfield, MI.

2. Respondent Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker is a Michigan corporation with its principal office or place of business at 3000 Town Center, Southfield, MI. Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker is a wholly-owned subsidiary of Allied Domecq Spirits & Wine Americas, Inc.

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

DEFINITIONS

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

1. Unless otherwise specified, "*respondents*" shall mean Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker, corporations, their successors and assigns, and their officers, agents, representatives, and employees.

2. "*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 advertising, promotion, offering for sale, sale, or distribution of beverage alcohol products in or affecting commerce shall not, in any manner, expressly or by implication:

A. Represent that any beverage alcohol product containing 5.9% alcohol by volume is a low alcohol beverage; or

B. Misrepresent, through numerical or descriptive terms, or any other means, the amount of alcohol contained in any beverage alcohol product.

Provided, however, that a statement of alcohol percent by volume shall not violate this order if it is within the tolerances identified for such beverage in 27 CFR 4.36(b)(1) and (2) (wines containing 7 percent or more alcohol); 27 CFR 5.37(b) (distilled spirits); 27 CFR 7.71(c)(1) and (2) (malt beverages); and 27 CFR 24.257(a)(4) (wine beverages containing less than 7 percent alcohol); and provided, further, that nothing in this order shall prohibit respondents from making any representation about the amount of alcohol contained in any beverage alcohol product that is specifically required in advertising for such product by regulation or order promulgated by the Bureau of Alcohol Tobacco and Firearms pursuant to the Federal Alcohol Administration Act.

II.

It is further ordered, That respondents Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker and their successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by Part I of 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.

Provided, however, that Subparts A & B of this Part shall not apply to representations of alcohol percent by volume content or proof required or permitted in advertising by the Bureau of Alcohol, Tobacco and Firearms.

III.

It is further ordered, That respondents Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker and their 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 direct or supervisory responsibilities with respect to the creation or approval of advertising that is 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.

IV.

It is further ordered, That respondents Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker 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.

V.

It is further ordered, That respondents Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker and their 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.

VI.

This order will terminate on March 5, 2019, 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(s) 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.

IN THE MATTER OF
BECK'S NORTH AMERICA, INC.

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

Docket C-3859. Complaint, March 5, 1999--Decision, March 5, 1999

This consent order, among other things, prohibits a Connecticut-based corporation, that advertises and distributes Beck's Beer, from disseminating advertisements that depicts a person consuming alcohol beverages on a boat while engaging in activities that pose a substantial risk of serious injury from falling overboard.

Participants

For the Commission: *Janet Evans, Richard Kelly, C. Lee Peeler,*
and *Dennis Murphy.*

For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Beck's North America, 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 Beck's North America, Inc. is a Delaware corporation with its principal office or place of business at 57 Old Post Road No. 2, Greenwich, Connecticut.
2. Respondent has advertised, labeled, offered for sale, sold and distributed products to the public, including Beck's Beer. Beck's Beer is a liquid beverage consisting of 5% alcohol by volume (10 proof).
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 caused to be disseminated advertisements for Beck's Beer, including but not necessarily limited to the attached television advertisements, Exhibits A and B. Exhibits A and B depict a number of passengers in various places on a sailing boat at sea. On the deck of the boat is a large bucket of ice, filled with bottles of Beck's Beer. Almost all of the passengers are holding bottles of beer, with one passenger standing precariously on the

bowsprit (a spar extending almost horizontally off the bow of the boat), and others sitting on the edge of the bow; no one is wearing a life jacket.

5. Through the visual depictions described in paragraph four, respondent has depicted boating passengers as drinking Beck's beer while engaged in activities that require a high degree of alertness and coordination to avoid falling overboard. This conduct is inconsistent with the Beer Institute's own Advertising and Marketing Code and may also violate federal and state boating safety laws. The risks associated with such activities while boating are greatly increased by the consumption of alcohol. In the boating environment, even low and moderate blood alcohol levels sufficiently affect coordination and balance to place boat passengers at increased risk of falling overboard and thus drowning, and many persons are unaware of this increased risk. As many as one-half of all boating fatalities are alcohol-related, including an average of 60 recreational boat fatalities annually from falling overboard while drinking. Respondent's depiction of this activity in its advertisements is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. Respondent's practice was an unfair act or practice.

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

Commissioner Swindle dissenting.

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Complaint

EXHIBIT A-1

Beck's TV Spot #1

Depictions	Verbal
• Ocean with green-sailed schooner in view.	Music starts.
• Close up on schooner.	Music continues throughout commercial.
• Close up: unseen people toast with two bottles of Beck's.	Man's voice: "Here's to adventure."
• Female passenger talking to viewer. Switch to another female passenger, holding a Beck's, riding piggy-back on standing male passenger. She touches the tip of her beer to the beer of another passenger.	Female voice: "Three weeks in the sun . . ." Music continues.
• Four passengers sitting/leaning on the edge of the bow, most holding beers and a fifth balancing on the bowsprit, waving a beer.	Female voice continues: "on a big German ship."
• Close up: two Beck's beers being removed from a cooler full of ice on deck.	Male voice: "Sponsored by . . ."
• Close up: a bottle of Beck's being opened with a bottle opener.	Male voice continues: "Beck's beer."
• Close up: a male passenger talking to the viewer.	Male voice: "I'm in!"
• Switch to two passengers sitting near rail, then to three others near the rail, most holding Beck's.	Male voice: "It's totally different!"
• Close up: male passenger talking.	Male voice: "Like the beer."
• Close up: hand slamming Beck's bottle on wet surface.	Male narrator's voice: "Beck's . . ."

Complaint

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- Close up: glass with Beck's logo filled with foaming beer. Voice continues: "truly distinctive."
- A couple sitting/reclining in boat, lifting Beck's to the viewer. Voice continues: "Totally refreshing."
- Four passengers sitting/reclining in stern, water behind them, holding Beck's, while fifth passenger takes their photo. Female voice: "I wanted a great experience . . ."
- Close up on a female passenger talking to viewer. Voice continues: "I got it!"
- Waves coming up on ship. SUPER: Narrator's voice: "Beck's, America's Favorite German Beer"

BECK'S
America's Favorite German Beer
Imported by DriBeck Importers,
Greenwich, Connecticut

EXHIBIT A-2

Beck's TV Spot #1
(VIDEOTAPE AD)

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Complaint

EXHIBIT B-1

Beck's TV Spot #2

Descriptions	Verbal
• Ocean with green-sailed schooner in view.	Music starts.
• Close ups of schooner, sails.	Music continues throughout rest of commercial.
• Close up of female passenger talking to viewer.	Female voice: "Wanna Have some Fun?"
• Couple playing; switch to three passengers dancing/playing while their photo is taken on upper deck, framed against sky; passengers holding beers in background.	Female voice: "Mix hot music . . ."
• Close up: male passenger talking.	Male voice: "cool people . . ."
• Four passengers sitting/leaning on the edge of the bow, most holding beers, and a fifth balancing on the bowsprit, waving a beer.	Male voice: "a big boat . . ."
• Couple sitting with backs to rail, toasting Beck's.	Male voice: "and a . . ."
• Two Beck's are removed from a cooler filled with ice and beers.	Male voice: "great . . ."
• Bottle of Beck's being opened with a bottle opener.	Male voice: "German Beer."
• Close up: female passenger talking to viewer.	Female voice: "With the right ingredients . . ."
• Scene of couple, blue sky in background, she waves beer; switch to four passengers sitting/reclining in stern, most holding beers.	Voice continues: "nothing's better!"

Complaint

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- Hand slams bottle of Beck's down on wet surface. Male narrator voice: "Beck's . . ."
- Close up: glass with Beck's logo filled with foaming beer. Voice continues: "truly distinctive . . ."
- A couple sitting/reclining in boat, lifting Beck's to the viewer. Voice continues: "totally refreshing . . ."
- Close up: male passenger talking to viewer. Male voice: "this is just the best!"
- Close up: waves coming up on ship. Narrator: "Beck's, America's Favorite German Beer"
SUPER:

BECK'S
America's Favorite German Beer
DriBeck Importers, Greenwich,
Connecticut

EXHIBIT B-2

Beck's TV Spot #2
(VIDEOTAPE AD)

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

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

1. Respondent Beck's North America, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at 57 Old Post Road No. 2, Greenwich, Connecticut.
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. Unless otherwise specified, "*respondent*" shall mean Beck's North America, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.

2. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, shall not broadcast or otherwise disseminate, or assist others to broadcast or otherwise disseminate, the television advertisements attached to the complaint as Exhibits A and B or any other advertisement that depicts a person having consumed or consuming alcohol on a boat while engaging in activities that pose a substantial risk of serious injury from falling overboard or that depicts activities that would violate 46 U.S.C. 2302(c).

II.

It is further ordered, That respondent 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 depicting the use or presence of alcoholic beverages on any boat;

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 on for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

It is further ordered, That respondent 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.

IV.

It is further ordered, That respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation 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.

V.

It is further ordered, That respondent, 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 it has complied with this order.

VI.

This order will terminate on March 5, 2019, 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.

Commissioner Swindle dissenting.

STATEMENT OF COMMISSIONER MOZELLE W. THOMPSON

The Commission has now voted to accord final approval to the consent agreement with Beck's North America, Inc. ("Beck's") in Docket Number C-3859 on grounds that Beck's disseminated or caused to be disseminated unfair television advertisements. I joined in that vote. I also believe, however, that the advertisements at issue were deceptive. The Commission has defined deceptive advertising as "that which contains a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."¹ In my view, the Beck's television advertisements fit this definition.

¹ See *Cliffdale Associates, Inc.*, 103 FTC 110, 176 (1984) Appeal dismissed sub nom., Kovan v. FTC, No. 84-5337 (11th Cir. Oct. 10, 1984) (Deception Statement).

First, I believe the advertisements imply to reasonable targeted consumers that consuming alcohol while boating is appropriate and/or safe. In fact, the actors begin one advertisement by stating "Wanna have some fun? Mix hot music, cool people, [a] big boat and a great German beer." Unfortunately, the advertisement does not disclose that consuming alcohol while boating poses a heightened danger not only to the boat operator, but also to passengers. It also fails to disclose that such behavior may violate applicable Federal boating laws.² Second, as evidenced by the actors and the language portrayed in the advertisement, I believe that the message is targeted at a youthful audience. Accordingly, it can be justifiably inferred that a reasonable youthful consumer could easily be deceived by not appreciating the danger of imitating the behavior featured in the television advertisements.

For these reasons, I would find that the Beck's advertisements were deceptive as well as unfair under Section 5 of the FTC Act.

STATEMENT OF COMMISSIONER ORSON SWINDLE

In August 1998, the Commission released a proposed complaint against Beck's North America, Inc. in connection with its dissemination of advertisements showing young adults drinking beer on a boat and engaging in dangerous activities, such as standing on the bowsprit. The proposed complaint challenged the ads as unfair acts or practices in or affecting commerce in violation of Section 5 of the FTC Act. At the same time, the Commission also accepted for public comment a consent agreement that would prohibit Beck's from disseminating these specific ads or any others depicting a person consuming alcohol on a boat while engaged in activities that increase the risk of falling overboard or violate federal boating safety laws. Although I voted to accept the consent agreement for comment, I now dissent from the issuance of the complaint and final consent order because, upon further reflection, I conclude that the requirements for unfairness are not met.

I continue to believe that the ads, which are inconsistent with the Beer Institute's Advertising and Marketing Code and may violate

² This problem has become so serious that the U. S. Coast Guard has recently launched a new campaign to better inform the public of the dangers of mixing boating and alcohol.

federal and state boating safety laws, are ill-conceived and unwise. They are, however, directed at young adults who by any reasonable standard should have the ability to exercise their own judgment when undertaking clearly risky activities. In a January 15, 1999, decision, the U.S. Court of Appeals for the D.C. Circuit rejected the view that certain types of advertising claims "have such an awesome impact on consumers as to make it virtually impossible for them to exercise any judgment" *Pearson v. Shalala*, 164 F.3d 650 (D.C. Cir. 1999), 1999 U.S. App. LEXIS 464, at * 16. The court further characterized *Peel v. Attorney Registration and Disciplinary Comm'n of Illinois*, 496 U.S. 91, 105 (1990), as rejecting the "paternalistic" assumption that an adult viewing a claim is "no more discriminating than the audience for children's television." 1999 U.S. App. LEXIS 464, at * 16.

An unfair act or practice is one that is likely to cause substantial injury to consumers that is *not reasonably avoidable* by consumers themselves and is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. 45(n). In order for the Beck's advertisements to be unfair, they must be likely to cause consumers substantial injury, such as increasing the likelihood they will fall off a boat and drown, and this injury must be one that consumers cannot reasonably avoid by themselves. Unlike in other unfairness cases, where ads influenced children to engage in unsafe activities, in this case the consumers of Beck's products -- through the exercise of their own adult judgment -- surely can reasonably avoid any injury that they might suffer from the advertisements' depiction of dangerous activity. In other words, a reasonable adult could easily see that the conduct depicted in the ads is rather stupid and dangerous and would conclude that it would be unwise to engage in it.

This case calls attention to the ongoing debate over how far the government should go in trying to protect people from themselves. The Commission is seeking to protect people who may decide to act unreasonably by choosing to put themselves at risk of injury. Government cannot and should not shield people who knowingly choose to expose themselves to such risks.

I dissent.

IN THE MATTER OF
GENERAL SIGNAL POWER SYSTEMS, INC.

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

Docket C-3860. Complaint, March 11, 1999--Decision, March 11, 1999

This consent order, among other things, prohibits the Wisconsin-based company that manufactures, advertises and sells Uninterruptible Power Supplies ("UPS"), devices that protect computers or other appliances from damage resulting from power outages, from making any representations regarding the ability of its UPS, or similar products, to reduce computer or network downtime, or regarding the extent to which any such product reduces the number of calls for service, unless the company possesses and relies upon competent and reliable evidence to substantiate the claims.

Participants

For the Commission: *Matthew Gold, Linda Badger, and Jeffrey Klurfeld.*

For the respondent: *Donald Mulvihill, Cahill, Gordon & Reindel, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that General Signal Power Systems, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

1. Respondent General Signal Power Systems, Inc., is a Wisconsin corporation with its principal office or place of business at N. 9246 Highway 80, Necedah, Wisconsin.

2. Respondent, through its division, Best Power, has manufactured, advertised, labeled, offered for sale, sold, and distributed computer products to the public, including the "Patriot" and "Fortress" uninterruptible power systems. Uninterruptible power systems are devices that protect consumer appliances, such as personal computers, from damage resulting from power disturbances or power failures.

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 for Patriot uninterruptible power systems and Fortress uninterruptible power systems, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A. "This isn't a mod+em problem. This is a power problem.

.....
The results are crashed networks and hard drives, faulty data transmissions, read/write errors, premature failure of components, system lockups, corrupted or lost data and more.

Best Power products are the answer. They *clean up dirty power* before it reaches your equipment. This can reduce your computer problems up to 80%.*

*A five-year power quality study conducted by Best Power's National Power Laboratory showed that the number of calls for computer service dropped 82% after installation of a UPS.

.....
Don't tolerate power problems. Call Best Power for your power protection answers."

(Exhibit A, print advertisement)

B. "80% of your downtime isn't hardware or software related. It just *looks* that way. It's actually power problems masquerading as hardware or software problems.

.....
Best Power products are your answer. If you have a blackout, they give you enough power to shutdown everything correctly. They also *clean up dirty power* before it reaches your equipment, which can reduce your computer problems by up to 80%.*

*A five-year power quality study conducted by Best Power's National Power Laboratory showed that the number of calls for computer service dropped 82% after installation of a UPS.

.....
Don't let power-related downtime affect your bottom line. Call Best Power for your power protection answers."

(Exhibit B, print advertisement)

C. "Today, millions of people will experience their worst nightmare. They will lose presentations and reports to a computer crash.

They will blame their software or hardware when a power problem is really responsible.

Power problems can also cause network and hard drive crashes, read/write errors, corruption or loss of data, faulty data transmissions, system lockups, premature failure of components and much more.

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Complaint

Best Power products are your answer. They *clean up dirty power*, which can reduce your computer problems up to 80%.*

*A five-year power quality study conducted by Best Power's National Power Laboratory showed that the number of calls for computer service dropped 82% after installation of a UPS.

.....
Don't take unnecessary risks. Call Best Power for your power protection answers."
(Exhibit C, print advertisement)

D. "6 days ago you had important data. 3 days ago you had a power spike. Now you have a problem.

Bad power can corrupt *all* the files on a UNIX system. And that's not all. Power problems can also cause network and hard drive crashes, read/write errors, corruption or loss of data, faulty data transmissions, system lockups, premature failure of components and much more.

Best Power products are your answer. They *clean up dirty power* before it reaches your equipment, which can reduce your computer and network downtime up to 80%.*

*A five-year power quality study conducted by Best Power's National Power Laboratory showed that the number of calls for computer service dropped 82% after installation of a UPS."

(Exhibit D, print advertisement)

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

A. Best Power products can reduce computer problems, such as crashed networks, crashed hard drives, faulty data transmissions, read/write errors, premature failure of components, system lockups, corrupted or lost data, by up to 80%.

B. Best Power products can reduce computer and network downtime up to 80%.

C. 80% of a typical computer's downtime is due to power problems, rather than to hardware or software problems.

D. A Patriot or Fortress UPS can reduce the number of calls for computer service by 82%.

6. 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.

7. 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 six was, and is, false or misleading.

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that a five-year power quality study conducted by Best Power's National Power Laboratory showed that the number of calls for computer service dropped 82% after installation of a UPS.

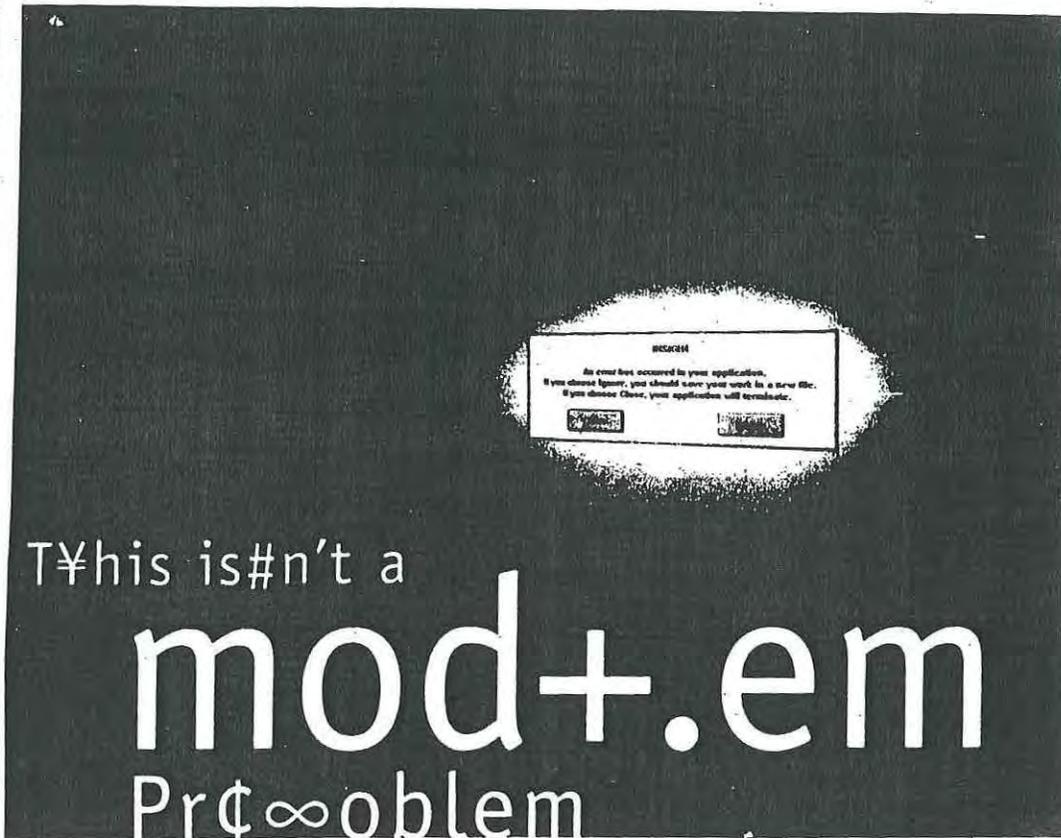
9. In truth and in fact, a five-year power quality study conducted by Best Power's National Power Laboratory did not show that the number of calls for computer service dropped 82% after installation of a UPS. Rather, the 82% figure cited in the advertisements was taken from a one-time customer survey. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. Through the means described in paragraph four, respondent has represented, expressly or by implication, that competent and reliable studies or surveys show that the number of calls for computer service dropped 82% after installation of an uninterruptible power source.

11. In truth and in fact, competent and reliable studies or surveys do not show that the number of calls for computer service dropped 82% after installation of an uninterruptible power source. For example, the consumer survey from which the 82% figure was taken only considered purchasers of UPSs that feature a ferroresonant transformer, which provides a much higher degree of protection from power disturbances than do the Patriot or Fortress model featured in the advertisements. Therefore, the representation set forth in paragraph ten was, and is, false or misleading.

12. 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



This isn't a
mod+.em
 Problem

This is a power problem.

It's easy to solve a problem once you know what the problem is.

The average computer site suffers 289 disruptive or destructive power disturbances a year. The results are crashed networks and hard drives, faulty data transmissions, read/write errors, premature failure of components, system lockups, corrupted or lost data and more.

Best Power products are the answer. They *clean up dirty power* before it reaches your equipment. This can reduce your computer problems up to 80%. * They also provide backup power during outages, allowing you to shut down properly.

And now, all Best Power Single-Phase UPSs come with free software, providing power monitoring and automatic unattended shutdown for your system.

Don't tolerate power problems. Call Best Power for your power protection answers.

1-800-469-4842
 Ask for operator 365

e-mail: info@BestPower.com
 Internet: <http://www.BestPower.com>
 24-hour FAX information line at 1-800-487-6813.

*A five-year power quality study conducted by Best Power's National Power Laboratory showed that the number of calls for computer service dropped 81% after installation of a UPS.



Patent® Uninterruptible Power Systems (Includes Free Software)



The Answer in Power Protection

EXHIBIT A

CONFIDENTIAL
 BEST POWER
 001 R4

©1994 Best Power, a unit of General Signal

Complaint

127 F.T.C.

EXHIBIT B

Best answers

80%

of your downtime isn't
hardware or software related.
It just *looks* that way.

It's actually power problems masquerading as hardware or software problems.

Sure, you can blame your program or equipment when your computer locks up. But it's probably bad power. And most power problems are undetectable, even though the average computer site is hit by 289 a year. They can cause crashes, corrupt or lost data, faulty data transmissions and lots more.

Best Power products are your answer. If you have a blackout, they give you enough power to shutdown everything correctly. They also *clean up dirty power* before it reaches your equipment, which can reduce your computer problems by up to 80%.*

And now, all Best Power Single-Phase UPSs come bundled with free software on CD-ROM to program automatic shutdown in the event of a power failure.

Don't let power-related downtime affect your bottom line. Call Best Power for your power protection answers.

1-800-469-4842

Ask for operator 381

E-mail: info@bestpower.com
Internet: <http://www.bestpower.com>
24-hour FAX information line at 1-800-487-6813.

*A five-year power quality study conducted by Best Power's National Power Laboratory showed that the number of calls for computer service dropped 82% after installation of a UPS.



Fortress® Uninterruptible Power Systems
(Includes Free Software)

Visit us at COMDEX/Fall, Booth #S3570
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The Answer in Power Protection

WINDOW'S SOURCES • WWW.WSOURCES.COM / DECEMBER 1996 **211**

CIRCLE 118 ON READER SERVICE CARD

EXHIBIT B

391

Complaint

EXHIBIT C

Best answers

Today,
millions
 of people will experience
 their worst nightmare.

They will lose presentations and
 reports to a computer crash!

They will blame their software or hardware when a power problem is really responsible.

Power problems can also cause network and hard drive crashes, read/write errors, corruption or loss of data, faulty data transmissions, system lockups, premature failure of components and much more.

Best Power products are your answer. They *clean up dirty power*, which can reduce your computer problems by up to *80%*.* They also provide backup power to shutdown gracefully in a blackout.

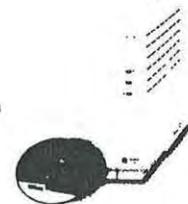
And now, all Best Power Single-Phase UPSs come bundled with free software, providing power monitoring and automatic unattended shutdown for your system.

Don't take unnecessary risks. Call Best Power for your power protection answers.

1-800-469-4842
 Ask for operator 380

E-mail: info@bestpower.com
 Internet: <http://www.bestpower.com>
 24-hour FAX information line at 1-800-487-6813.

* A five-year power quality study conducted by Best Power's National Power Laboratory showed that the number of calls for computer service dropped 81% after installation of a UPS.



Patriot® Plus Uninterruptible Power Systems
 (Includes Free Software)

Visit us at COMDEX/Fall, Booth #S3570
©1996 Best Power. All Rights Reserved.

Best Power

The Answer in Power Protection

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CIRCLE 117 ON READER SERVICE CARD

EXHIBIT C

Complaint

127 F.T.C.

EXHIBIT D

Best answers

6 days ago you had
important data.
3 days ago you
had a power spike.

Now you have a problem.

Bad power can corrupt *all* the files on a UNIX system.

And that's not all. Power problems can also cause network and hard drive crashes, read/write errors, corruption or loss of data, faulty data transmissions, system lock-ups, premature failure of components and much more.

Best Power products are your answer. They *clean up dirty power* before it reaches your

equipment, which can reduce your computer and network downtime up to 80%.* And if you have a blackout, they provide backup power to shut down your system correctly.

And now, every Best Power Single-Phase UPS comes with free software, providing power monitoring and unattended shutdown for your entire computing environment.

So call Best Power for your power protection answers.

1-800-469-4842

Ask for operator 298

E-mail: info@bestpower.com
Internet: <http://www.bestpower.com>
24-hour FAX information line at 1-800-487-6813.

*A five-year power quality study conducted by Best Power's National Power Laboratory showed that the number of calls for computer service dropped 82% after installation of a UPS.



Fortress® Uninterruptible Power Systems
(Includes Free Software)

Visit us at COMDEX/Fall, Booth #S3570

©1996 Best Power. All Rights Reserved.

Best Power

The Answer in Power Protection

Circle 132 on Inquiry Card (RESELLERS: 133).

EXHIBIT D

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 San Francisco 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 General Signal Power Systems, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at N. 9246 Highway 80, Necedah, Wisconsin.

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 the 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 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.

2. Unless otherwise specified, "*respondent*" shall mean General Signal Power Systems, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees.

3. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

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 the Patriot or Fortress uninterruptible power systems, or any substantially similar product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

A. The ability of any such product to reduce computer and network downtime; or

B. The extent to which any such product reduces the number of calls for computer service,

unless, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

For purposes of this Part, "substantially similar product" shall mean any uninterruptible power supply.

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 in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

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 any computer-related product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy 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.

IV.

It is further ordered, That respondent, 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 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 respondent, 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.

VI.

It is further ordered, That respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation 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.

VII.

It is further ordered, That respondent, 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 it has complied with this order.

VIII.

This order will terminate on March 11, 2019, 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.

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Decision and Order

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

127 F.T.C.

IN THE MATTER OF

KONINKLIJKE AHOLD NV, 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-3861. Complaint, April 5, 1999--Decision, April 5, 1999

This consent order, among other things, permits Koninklijke Ahold nv ("Ahold"), a Dutch firm, to acquire Giant Food Inc. ("Giant"), a Maryland-based supermarket chain, and requires Ahold to divest ten supermarkets in eight geographic markets within 20 days after Ahold acquires Giant or four months after the date on which the companies sign the agreement containing consent order, whichever is earlier.

Participants

For the Commission: *James Fishkin, Richard Liebeskind, Phillip Broyles, Kenneth Libby, Daniel Ducore, William Baer, Daniel O'Brien, Malcolm Coate and Daniel Hosken.*

For the respondents: *Mark Gidley, White & Case, and Glenn Mitchell, Stein, Mitchell & Mezines, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Koninklijke Ahold nv ("Ahold") has entered into an agreement to acquire all of the Class AC voting securities of respondent Giant Food Inc. ("Giant") held by respondent The 1224 Corporation ("1224"), all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

DEFINITION

1. For the purposes of this complaint:

"Supermarket" means a full-line retail grocery store with annual sales of at least \$2 million that carries a wide variety of food and

grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

KONINKLIJKE AHOLD NV

2. Respondent Ahold is a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands.

3. Respondent Ahold, through Ahold USA, Inc., BI-LO, Inc., Giant Food Stores, Inc., The Stop & Shop Companies, Inc., and Top's Market, Inc., its wholly-owned domestic subsidiaries, is, and at all times relevant herein has been, engaged in the operation of supermarkets in Connecticut, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia. Ahold and its wholly-owned domestic subsidiaries operate approximately 880 supermarkets in these states under the BI-LO, Edwards, Finast, Giant, Martin's, Stop & Shop, and Top's trade names. Ahold had \$14.29 billion in total United States sales for the fiscal year that ended on December 28, 1997.

4. Respondent Ahold 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 Federal Trade Commission Act, as amended, 15 U.S.C. 44.

GIANT FOOD INC.

5. Respondent Giant 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 6300 Sheriff Road, Landover, Maryland.

6. Respondent Giant is, and at all times relevant herein has been, engaged in the operation of supermarkets in Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and the District of Columbia. Giant operates approximately 179 supermarkets under the Giant and Super G trade names. Giant had \$4.23 billion in total sales for the fiscal year that ended on February 28, 1998.

7. Respondent Giant 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 Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE 1224 CORPORATION

8. Respondent 1224 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 6300 Sheriff Road, Landover, Maryland.

9. Respondent 1224 owns all of the Class AC voting stock of Giant, which elects five of the nine directors of Giant.

10. Respondent 1224 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 Federal Trade Commission Act, as amended, 15 U.S.C. 44.

ACQUISITION

11. On or about May 19, 1998, Ahold and 1224 entered into a Stock Purchase Agreement pursuant to which Ahold will acquire all of the Class AC voting stock of Giant from 1224 and all of the Class A non-voting common stock of Giant for \$43.50 per share for cash. The Class AC voting stock elects five of the nine directors of Giant. Separately, Ahold is acquiring from J Sainsbury USA Holdings, Inc., a subsidiary of J Sainsbury, plc, a United Kingdom corporation, all of the Class AL voting stock of Giant, which elects four of the nine directors of Giant. The total value of the proposed acquisition of the Class AC and Class AL voting stock is approximately \$105.4 million. The total value of the proposed acquisition of the Class A non-voting common stock is approximately \$2.6 billion.

TRADE AND COMMERCE

12. The relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition described herein is the retail sale of food and grocery products in supermarkets.

13. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")) as well as a deep inventory of those SKUs. In order to accommodate the large number of food and non-food products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

14. Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets primarily base their food and grocery prices on the prices of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

15. Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

16. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition described herein are the areas in and near the following cities and towns:

- | | |
|---------------------------|----------------------------------|
| a. Bel Air, Maryland; | e. Hilltown, Pennsylvania; |
| b. Eldersburg, Maryland; | f. Norristown, Pennsylvania; |
| c. Frederick, Maryland; | g. Warminster, Pennsylvania; and |
| d. Westminster, Maryland; | h. Yardley, Pennsylvania. |

MARKET STRUCTURE

17. The Bel Air, Maryland, Eldersburg, Maryland, Frederick, Maryland, Westminster, Maryland, Norristown, Pennsylvania, Warminster, Pennsylvania, and Yardley, Pennsylvania, relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios. The acquisition would substantially increase concentration in each market. Ahold and Giant would have a combined market share of near or greater than 35% in each geographic market. The post-acquisition HHIs in the geographic markets range from 3,008 to 6,716.

18. The Hilltown, Pennsylvania relevant market is highly concentrated. The market will remain highly concentrated as a result of this acquisition, and will be significantly more concentrated than it would have been but for this acquisition.

ENTRY CONDITIONS

19. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant markets.

ACTUAL COMPETITION

20. Ahold and Giant are actual and direct competitors in and near Bel Air, Maryland, Eldersburg, Maryland, Frederick, Maryland, Westminster, Maryland, Norristown, Pennsylvania, Warminster, Pennsylvania, and Yardley, Pennsylvania.

ACTUAL POTENTIAL COMPETITION

21. Ahold is an actual potential competitor against Giant in and near Hilltown, Pennsylvania. But for the acquisition, Ahold and Giant would have become direct competitors in the Hilltown, Pennsylvania, relevant market. The acquisition will eliminate that competition.

EFFECTS

22. The effect of the acquisition, if consummated, may be substantially to lessen competition in the relevant line of commerce in the relevant sections of the country 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, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct competition between supermarkets owned or controlled by Ahold and supermarkets owned or controlled by Giant;
- b. By eliminating actual potential competition between supermarkets owned or controlled by Ahold and supermarkets owned or controlled by Giant;
- c. By increasing the likelihood that Ahold will unilaterally exercise market power; and
- d. By increasing the likelihood of, or facilitating, collusion or coordinated interaction,

each of which increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country.

VIOLETIONS CHARGED

23. The Stock Purchase Agreement between Ahold and 1224, pursuant to which Ahold will acquire all of the Class AC voting stock of Giant from 1224 and the Class A non-voting common stock of Giant, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the proposed acquisition would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Koninklijke Ahold nv ("Ahold") of all of the voting securities of Giant Food Inc. ("Giant") held by The 1224 Corporation ("1224") (collectively, "respondents"), and respondents having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order,

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments 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 Ahold is a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands.

2. Respondent Giant 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 6300 Sheriff Road, Landover, Maryland.

3. Respondent 1224 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 6300 Sheriff Road, Landover, Maryland.

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

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

- A. "*Ahold*" means Koninklijke Ahold nv, its directors, officers, employees, agents, representatives, predecessors, successors, and

assigns; its subsidiaries, divisions, groups and affiliates controlled by Ahold, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Ahold, after consummation of the Acquisition, includes Giant.

B. "*Giant*" means Giant Food Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Giant, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. The class AC voting stock, which elects five of the nine directors of Giant, is owned by 1224.

C. "*1224*" means The 1224 Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by 1224, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. 1224 owns the class AC voting stock, which elects five of the nine directors of Giant.

D. "*Respondents*" means Ahold, Giant, and 1224 individually and collectively.

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

F. "*Acquisition*" means Ahold's acquisition of the outstanding voting securities of and merger with Giant pursuant to the Stock Purchase Agreement dated May 19, 1998.

G. "*Assets To Be Divested*" means the Supermarkets identified in Schedule A, Schedule B, Schedule C, Schedule D, and Schedule E of this order and all assets, leases, properties, permits (to the extent transferable), customer lists, businesses and goodwill, tangible and intangible, related to or utilized in the Supermarket business operated at those locations, but shall not include those assets consisting of or pertaining to any of the respondents' trade marks, trade dress, service marks, or trade names.

H. "*Supermarket*" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products,

including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

I. "*Fleming*" means Fleming Companies, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal place of business located at 6301 Waterford Boulevard, Oklahoma City, Oklahoma.

J. "*Fleming Agreement*" means the Purchase Agreement between Fleming and Ahold executed on September 12, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Fleming of the Schedule A Assets To Be Divested.

K. "*Frederick County Foods*" means Frederick County Foods LLC, a limited liability corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal place of business located at 835 West Hillcrest Road, Hagerstown, Maryland.

L. "*Frederick County Foods Agreement*" means the Purchase Agreement between Frederick County Foods and Ahold executed on September 11, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Frederick County Foods of the Schedule B Assets To Be Divested.

M. "*Richfood*" means Richfood Holdings, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business located at 4860 Cox Road, Suite 300, Glen Allen, Virginia.

N. "*Food-A-Rama*" means Food-A-Rama, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business located at 5483 Baltimore National Pike, Baltimore, Maryland. Food-A-Rama is a wholly-owned subsidiary of Richfood. Food-A-Rama operates supermarkets under the Metro Food Markets trade name.

O. "*Richfood Agreement*" means the Purchase Agreement between Food-A-Rama and Ahold executed on September 14, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Richfood of the Schedule C Assets To Be Divested.

P. "*Safeway*" means Safeway Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 5918 Stoneridge Mall Road, Pleasanton, California.

Q. "*Safeway Agreement*" means the Purchase Agreement between Safeway and Giant executed on September 12, 1998, and all

subsequent amendments thereto, for the divestiture by respondents to Safeway of the Schedule D Assets To Be Divested.

R. "*Supervalu*" means Supervalu Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 11840 Valley View Road, Eden Prairie, Minnesota; and Supervalu Holdings, Inc. a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 11840 Valley View Road, Eden Prairie, Minnesota. Supervalu Holdings, Inc. is a wholly-owned subsidiary of Supervalu Inc.

S. "*Supervalu Agreement*" means the Purchase Agreement between Supervalu and Giant executed on September 14, 1998, and all subsequent amendments thereto, for the divestiture by respondents to Supervalu of the Schedule E Assets To Be Divested.

T. "*Acquirer(s)*" means Fleming, Frederick County Foods, Richfood, Safeway, Supervalu and/or any other entity or entities approved by the Commission to acquire the Assets To Be Divested pursuant to this order, individually and collectively.

U. "*Third Party Consents*" means all consents from any other person, including all landlords, that are necessary to effect the complete transfer to the Acquirer(s) of the Assets To Be Divested.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, the Schedule A Assets To Be Divested to Fleming, in accordance with the Fleming Agreement dated September 12, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule A Assets to Fleming pursuant to the Fleming Agreement prior to the date the order becomes final, and if, at the time the Commission

determines to make the order final, the Commission notifies respondents that Fleming is not an acceptable acquirer or that the Fleming Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Fleming and shall divest the Schedule A Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule A Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Respondents shall obtain all required Third Party Consents prior to the closing of the Fleming Agreement or any other agreement pursuant to which the Schedule A Assets To Be Divested are divested to an Acquirer.

B. Respondents shall divest, absolutely and in good faith, the Schedule B Assets To Be Divested to Frederick County Foods, in accordance with the Frederick County Foods Agreement dated September 11, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement; provided, however, that pursuant to the Frederick County Foods Agreement, respondents may assign their leasehold interests in the supermarkets to Supervalu, which shall sublease the Supermarkets to Frederick County Foods), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule B Assets to Frederick County Foods pursuant to the Frederick County Foods Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that Frederick County Foods is not an acceptable acquirer or that the Frederick County Foods Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Frederick County Foods and shall divest the Schedule B Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule B Assets only to an acquirer that receives the prior approval of the

Commission and only in a manner that receives the prior approval of the Commission.

Respondents shall obtain all required Third Party Consents prior to the closing of the Frederick County Foods Agreement or any other agreement pursuant to which the Schedule B Assets To Be Divested are divested to an Acquirer.

C. Respondents shall divest, absolutely and in good faith, the Schedule C Assets To Be Divested to Richfood, in accordance with the Richfood Agreement dated September 14, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule C Assets to Richfood pursuant to the Richfood Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that Richfood is not an acceptable acquirer or that the Richfood Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Richfood and shall divest the Schedule C Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule C Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Respondents shall obtain all required Third Party Consents prior to the closing of the Richfood Agreement or any other agreement pursuant to which the Schedule C Assets To Be Divested are divested to an Acquirer.

D. Respondents shall divest, absolutely and in good faith, the Schedule D Assets To Be Divested to Safeway, in accordance with the Safeway Agreement dated September 12, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule D Assets to Safeway pursuant to the Safeway Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that Safeway is not an acceptable acquirer or that the Safeway Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Safeway and shall divest the Schedule D Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule D Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Respondents shall obtain all required Third Party Consents prior to the closing of the Safeway Agreement or any other agreement pursuant to which the Schedule D Assets To Be Divested are divested to an Acquirer.

E. Respondents shall divest, absolutely and in good faith, the Schedule E Assets To Be Divested to Supervalu, in accordance with the Supervalu Agreement dated September 14, 1998 (which agreement shall not be construed to vary or contradict the terms of this order or the Asset Maintenance Agreement), no later than

1. Twenty (20) days after the date on which the Acquisition is consummated, or
2. Four (4) months after the date on which respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if respondents have divested the Schedule E Assets to Supervalu pursuant to the Supervalu Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that Supervalu is not an acceptable acquirer or that the Supervalu Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with Supervalu

and shall divest the Schedule E Assets within three (3) months of the date the order becomes final. Respondents shall divest the Schedule E Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Respondents shall obtain all required Third Party Consents prior to the closing of the Supervalu Agreement or any other agreement pursuant to which the Schedule E Assets To Be Divested are divested to an Acquirer.

F. The purpose of the divestitures is to ensure the continuation of the Assets To Be Divested as ongoing viable enterprises engaged in the Supermarket business and to remedy the lessening of competition resulting from the Acquisition alleged in the Commission's complaint.

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within the time required by paragraph II of this order, the Commission may appoint a trustee to divest the Assets To Be Divested. In the event that the Commission or the Attorney General 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 or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the 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 have the exclusive power and authority to divest the Assets To Be Divested.

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 each divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in paragraph III.B.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be 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 the period for no more than two (2) additional periods.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may 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 divestitures. 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 respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestitures

shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by Ahold 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, 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 divestitures 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 Ahold, 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 Assets To Be Divested.

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, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

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

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

11. The trustee may 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 Assets To Be Divested. In the event that any Acquirer is unable to take or keep possession of any Asset To Be Divested, the trustee may divest all other assets of the respondents in that relevant section of the country, as alleged in paragraph 16 of the complaint, to remedy the anticompetitive effects alleged in the complaint.

12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

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

IV.

It is further ordered, That:

A. Pending divestiture of the Assets To Be Divested pursuant to this order, respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of Assets To Be Divested 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 all Assets To Be Divested have been divested as required by this order.

V.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Ahold shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the Commission:

A. Acquire any ownership or leasehold interest in any facility that has operated as a Supermarket within six (6) months prior to the date of such proposed acquisition in Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania.

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any Supermarket or owned any interest in or operated any Supermarket within six (6) months prior to such proposed acquisition in Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania.

Provided, however, that advance written notification shall not apply to the construction of new facilities by Ahold or the acquisition of or leasing of a facility that has not operated as a Supermarket within six (6) months prior to Ahold's offer to purchase or lease.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Ahold and not of any other party to the transaction. Ahold shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 CFR 803.20), Ahold shall not consummate the transaction until twenty days after substantially complying with such request. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

VI.

It is further ordered, That, for a period of ten (10) years commencing on the date this order becomes final:

A. Ahold shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the

Clayton Act, 15 U.S.C. 12(a)) that acquires any Supermarket, any leasehold interest in any Supermarket, or any interest in any retail location used as a Supermarket on or after January 1, 1998, in Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania, to operate a Supermarket at that site if such Supermarket was formerly owned or operated by Ahold.

B. Ahold shall not remove any fixtures or equipment from a property owned or leased by Ahold in Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania, that is no longer in operation as a Supermarket, except (1) prior to and as part of a sale, sublease, assignment, or change in occupancy of such Supermarket; or (2) to relocate such fixtures or equipment in the ordinary course of business to any other Supermarket owned or operated by Ahold.

VII.

It is further ordered, That:

A. Within thirty (30) days after the date respondents signed the Agreement Containing Consent Order and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraphs II, III, and IV 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, III, and IV of this order. 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, III, and IV of the order, including a description of all substantive contacts or negotiations for divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, Ahold shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

VIII.

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

IX.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request with five (5) days' notice to respondents, respondents 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 respondents relating to any matters contained in this order; and

B. Without restraint or interference from respondents, to interview respondents or officers, directors, or employees of respondents in the presence of counsel.

X.

It is further ordered, That, upon consummation of the Acquisition, the obligations of respondent 1224 under this order shall terminate.

Schedule A
(Supermarket Divested to Fleming)

The following supermarket located in Harford County, Maryland:

1. Ahold store no. 114 operating under the "Martin's Food Market" trade name, which is located at 550 West McPhail Road, Bel Air, Maryland 21014.

Schedule B
(Supermarkets Divested to Frederick County Foods)

The following supermarkets located in Frederick County, Maryland:

1. Ahold store no. 40 operating under the "Martin's Food Market" trade name, which is located at 66 Waverly Drive in the Frederick Towne Mall Shopping Center, Frederick, Maryland 21701; and
2. Ahold store no. 96 operating under the "Martin's Food Market" trade name, which is located at 1305 West 7th Street in the Frederick Shopping Center, Frederick, Maryland 21701.

Schedule C
(Supermarket Divested to Richfood)

The following supermarket located in Carroll County, Maryland:

1. Ahold store no. 36 operating under the "Martin's Food Market" trade name, which is located at 551 Jermor Lane, Westminster, Maryland 21157.

Schedule D
(Supermarket Divested to Safeway)

The following supermarket located in Carroll County, Maryland:

1. Giant store no. 238 operating under the "Giant" trade name, which is located at 1313 Londontowne Boulevard in the Londontowne Square Shopping Center, Eldersburg, Maryland 21784.

Schedule E
(Supermarkets Divested to Supervalu)

The following supermarkets located in Bucks County, Pennsylvania:

1. Giant store no. 242 operating under the "Super G" trade name, which is located at 1601 Big Oak Road in the Oxford Oaks Shopping Center, Lower Makefield Township, Pennsylvania 19067; and
2. Giant store no. 249 operating under the "Super G" trade name, which is located at 942 West Street Road in the Towne Square Shopping Center, Warminster, Pennsylvania 18974.

The following supermarkets located in Montgomery County, Pennsylvania:

1. Giant store no. 237 operating under the "Super G" trade name, which is located at 1591 Bethlehem Pike in the Hilltown Crossings Shopping Center, Hilltown Township, Pennsylvania 19440; and
2. Giant store no. 243 operating under the "Super G" trade name, which is located at 2775 West Main Street in the Park-Ridge Shopping Center, Lower Providence Township, Pennsylvania 19403; and
3. Giant store no. 250 operating under the "Super G" trade name, which is located at 55 Germantown Pike in the Norriton Square Shopping Center, East Norriton Township, Pennsylvania 19401.

APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between Koninklijke Ahold nv ("Ahold"), a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Albert Heijnweg 1, 1507 EH Zaandam, The Netherlands; Giant Food Inc. ("Giant"), 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 6300 Sheriff Road, Landover, Maryland 20785; The 1224 Corporation ("1224"), 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 6300 Sheriff Road, Landover, Maryland 20785 (collectively "Proposed Respondents"); 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, Ahold, pursuant to a Stock Purchase Agreement dated May 19, 1998, agreed to acquire all of the class AC voting securities of Giant held by 1224, which will enable Ahold to elect five of the nine directors of Giant (hereinafter "the proposed Acquisition"); and

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

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("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 either withdraw such acceptance or issue and serve its Complaint and its Decision and final Order in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the Assets To Be Divested as defined in the attached Consent Order (hereinafter referred to as

"Assets" or "Supermarket(s)") during the period prior to their divestiture, any divestiture resulting from the Consent Order or from any other administrative proceeding challenging the legality of the proposed Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending their divestiture pursuant to the terms of the Consent Order, in order to remedy any anticompetitive effects of the proposed Acquisition; and

Whereas, Proposed Respondents' entering into this Agreement shall in no way be construed as an admission by Proposed Respondents that the proposed Acquisition is illegal; and

Whereas, Proposed Respondents 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 period, the Parties agree as follows:

TERMS OF AGREEMENT

1. Proposed Respondents 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. Proposed Respondents agree that from the date Proposed Respondents sign this Agreement until the earlier of the dates listed in subparagraphs 2.a. and 2.b., Proposed Respondents will comply with the provisions of this Agreement:

a. Three (3) 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. With respect to each Supermarket, the date on which the divestiture of such Supermarket, as required by the Consent Order, has been completed.

3. Proposed Respondents shall maintain the viability, marketability, and competitiveness of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall they cause the Assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Assets. Proposed Respondents shall conduct or cause to be conducted the business of the Supermarkets in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with each Supermarket's suppliers, customers, employees and others having business relations with the Supermarkets, in the ordinary course of the Supermarkets' business and in accordance with past practice. Proposed Respondents shall not terminate the operation of any Supermarket. Proposed Respondents shall continue to maintain the inventory of each Supermarket at levels and selections (*e.g.*, stock-keeping units) consistent with those maintained by such Proposed Respondent(s) at such Supermarket in the ordinary course of business consistent with past practice. Proposed Respondents shall use best efforts to keep the organization and properties of each of the Supermarkets intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with each Supermarket. Included in the above obligations, Proposed Respondents shall, without limitation:

- a. Maintain operations and departments and not reduce hours at each Supermarket;
- b. Not transfer inventory from any Supermarket other than in the ordinary course of business consistent with past practice;
- c. Make any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations, in each case in a manner consistent with past practice;
- d. Maintain each Supermarket's books and records;
- e. Not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any Proposed Respondent is moving its operations to another location, or that indicates a Supermarket will close;

f. Not conduct any "going out of business," "close-out," "liquidation" or similar sales or promotions at or relating to any Supermarket; and

g. Not change or modify in any material respect the existing advertising practices, programs and policies for any Supermarket, other than changes in the ordinary course of business consistent with past practice for supermarkets of the Proposed Respondents not being closed or relocated.

4. Should the Commission seek in any proceeding to compel Proposed Respondents to divest themselves of the Assets or to seek any other injunctive or equitable relief, Proposed Respondents 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 proposed Acquisition. Proposed Respondents also waive all rights to contest the validity of this Agreement.

5. 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 Proposed Respondents and to their principal office(s), Proposed Respondents shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Proposed Respondents, 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 Proposed Respondents relating to compliance with this Agreement; and

b. To interview officers or employees of Proposed Respondents, who may have counsel present, regarding any such matters.

6. Upon consummation of the Acquisition, the obligations of Proposed Respondent 1224 under this Agreement shall terminate.

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

IN THE MATTER OF
JOHNSON WORLDWIDE ASSOCIATES, INC.

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

Docket C-3862. Complaint, April 6, 1999--Decision, April 6, 1999

This consent order, among other things, prohibits Johnson Worldwide Associates, Inc., the Wisconsin-based marketer of outdoor recreation products, including fishing line, from misrepresenting the extent to which any fishing product is made in the United States.

Participants

For the Commission: *Kent Howerton, Laura Koss, and Elaine Kolish.*

For the respondent: *Rebecca Fry, Foley & Lardner, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Johnson Worldwide Associates, Inc. ("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 Johnson Worldwide Associates, Inc. is a Wisconsin corporation with its principal office or place of business at 1326 Willow Road, Sturtevant, Wisconsin.

2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to the public, including fishing line.

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 packaging for its Spiderwire Super Mono Super Monofilament ("Super Mono") fishing line, including but not necessarily limited to the attached Exhibit A. The front panel of this packaging contains the following statement:

"MADE IN THE USA of American and Japanese components."

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that its Super Mono fishing

line is made in the United States of American and Japanese components.

6. In truth and in fact, the Super Mono fishing line is totally made in Japan with Japanese labor and components. Only the spool on which the fishing line is wrapped and the package, labeling, and package inserts contain American labor or components. Therefore, the representation set forth in paragraph five was, and is, false or misleading.

7. Respondent has disseminated or has caused to be disseminated advertisements and other promotional materials for its Super Mono fishing line, including but not necessarily limited to the attached Exhibits B through J. These advertisements and other promotional materials contain the following statements and depictions:

A. Poster, Exhibit B:

Picture of the Super Mono fishing line packaging. The statement "MADE IN THE USA" is legible on the package. The statement "of American and Japanese components" is not visible.

B. Newspaper Advertisement, Exhibit C:

Picture of the Super Mono fishing line package. The statement "MADE IN THE USA" is legible on the package. The statement "of American and Japanese components" is not visible.

C. Advertising Pamphlet, Exhibit D:

Picture of the Super Mono fishing line package on the front cover of the pamphlet. The statement "MADE IN THE USA" is legible on the package. The statement "of American and Japanese components" is not visible.

D. Fishing 1998 Catalog, Exhibit E:

Picture of the Super Mono fishing line package on page 5 of the catalog. The statement "MADE IN THE USA" is legible on the package. The statement "of American and Japanese components" is not in a type size sufficiently large for an ordinary consumer to read and comprehend it.

E. Fishing 1999 Catalog, Exhibit F:

Picture of the Super Mono fishing line package on page 4 of the catalog. The statement "MADE IN THE USA" is legible on the package. The statement "of American and Japanese components" is not in a type size sufficiently large for an ordinary consumer to read and comprehend it.

F. Fishing Ad Planner 1998, Exhibit G:

Picture of the Super Mono fishing line package on page 14 of the ad planner. The statement "MADE IN THE USA" is legible on the package. The statement "of American and Japanese components" is not visible.

G. Information Sheet, Exhibit H:

Picture of the Super Mono fishing line package. The statement "MADE IN THE USA" is legible on the package. The statement "of American and Japanese components" is not visible.

H. Product Insert, Exhibit I:

Picture of the Super Mono fishing line package. The statement "MADE IN THE USA" is legible on the package. The statement "of American and Japanese components" is not in a type size sufficiently large for an ordinary consumer to read and comprehend it.

I. Informational Videotape, Exhibit J:

Picture of the Super Mono fishing line package. The statement "MADE IN THE USA" is legible on the package. The statement "of American and Japanese components" is not visible.

8. Through the means described in paragraph seven, respondent has represented, expressly or by implication, that its Super Mono fishing line is made in the United States, *i.e.*, that all, or virtually all, of the component parts of the Super Mono fishing line is made in the United States, and that all, or virtually all, of the labor in manufacturing the Super Mono fishing line is performed in the United States.

9. In truth and in fact, the Super Mono fishing line is totally made in Japan with Japanese labor and components. Only the spool on which the fishing line is wrapped and the package, labeling, and package inserts contain American labor or components. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. 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.

430

Complaint

EXHIBIT A



EXHIBIT B

Exhibit B consists of a poster.
It has been placed on the public record of this proceeding.

EXHIBIT C

Exhibit C consists of a full-page newspaper advertisement.
It has been placed on the public record of this proceeding.

EXHIBIT D

SPIDERWIRE
 THE MAXIMUM FISHING EDGE

Reel In Bigger Fishing Line
Profits
With Spiderwire!

Free Membership Offer, Sweepstakes
 and Roland Martin Display
 Lure More Customers and Land
 Extra Sales.

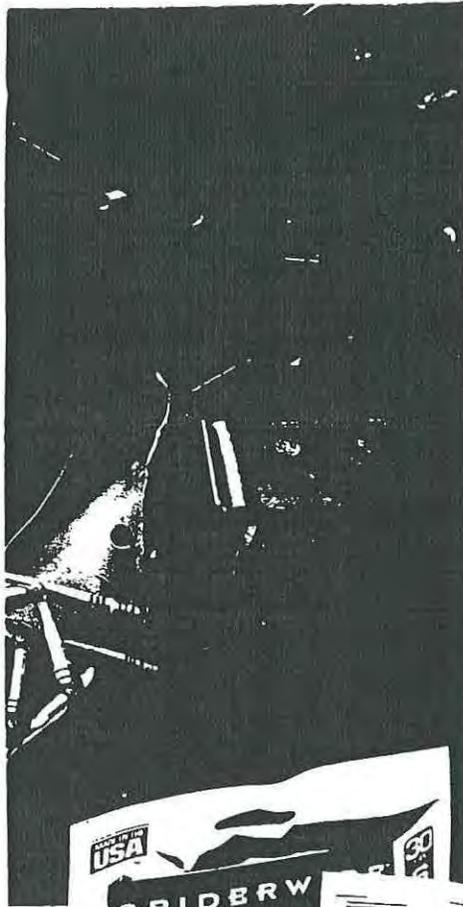


**REEL IN A
 FREE
 MEMBERSHIP**

Enter to Win A
 Trip With
ROLAND MARTIN!

EXHIBIT D

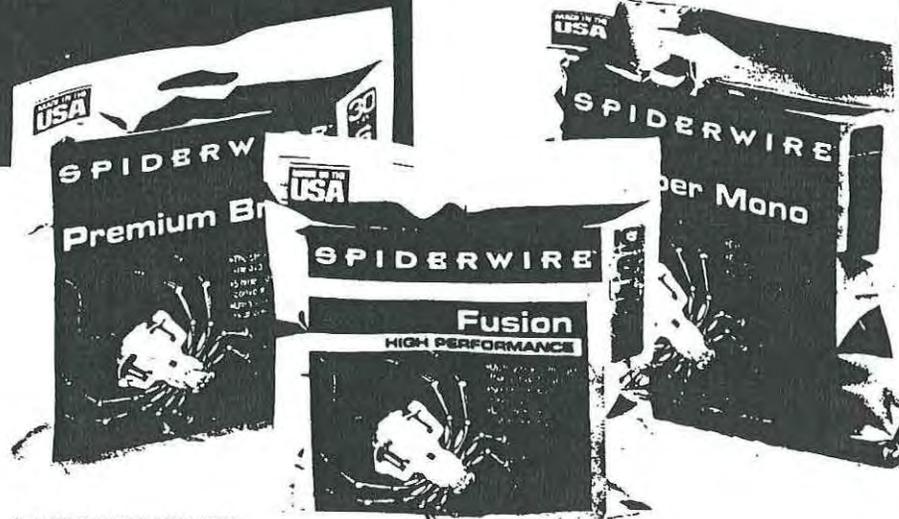
EXHIBIT E



30
LB. STRENGTH
6
LB. DIAMETER
150
YARDS
MOSS
GREEN
FEEL
THE
POWER

SpiderWire's superior strength is key to fishermen.

The SpiderWire label clearly shows the line strength and the line diameter is compared to traditional fishing line. The attached line sample allows you to "Feel the Power."



SpiderWire Packaging stands out from the pack with its clearly differentiated line types, SpiderWire lines and their strength 300, 350, 400.

EXHIBIT E

EXHIBIT F

SPIDERWIRE™**SpiderWire —
award-winning technology
catches more fish**

SpiderWire's award-winning leadership in fishing line technology is well-known within the fishing industry. This year, SpiderWire's new products were recognized as "Best of Show" new fishing lines at the American Sportfishing Association annual trade show.

- SpiderWire Super Mono — Best of Show new monofilament.
- SpiderWire Riptide — Best of Show new superline.

SpiderWire continues to win industry awards because our fishing pros and fishing line experts are dedicated to making SpiderWire the best performing premium fishing line in each line category.

**SpiderWire's
leading fishing lines**

SpiderWire Braid revolutionized fishing and is still recognized as the superline leader! Designed with high-tech Spectra material, SpiderWire Braid's strength and sensitivity is legendary.

In fact, SpiderWire Braid is the strongest, thinnest, most sensitive fishing line in the world. Period.

SpiderWire Riptide Saltwater Braid is designed for optimum saltwater performance. Recognized as "Best of Show", Riptide Saltwater Braid is the world's strongest deepest-fishing line!



EXHIBIT G

SPIDERWIRE
MICROFILAMENT SUPERLINE

Premium Braid
Spiderwire
Microfilament Superline

- Super Strength
- Ultra sensitive to feel more fish
- Ultra-thin diameters
- Round construction
- Near-zero stretch for instant hook sets
- UV resistance
- No reel memory
- Acid and chemical resistance



\$00

SPIDERWIRE
MICROFILAMENT SUPERLINE

Super Mono
Spiderwire
Super Mono Line

Only the world's number one superline producer could produce Super Mono. Extra strong tensile and knot strength, plus unparalleled abrasion resistance.



\$00

SPIDERWIRE
MICROFILAMENT SUPERLINE

Fusion
Spiderwire Fusion
Fused Microfilament
Superline

Bonds together dozens of micro-fine, super-strong Spectra fibers to ensure excellent abrasion resistance and durability, minimal reel memory, plus complete UV and chemical resistance. It blows nylon monofilament lines out of the water.



\$00

SPIDERWIRE
MICROFILAMENT SUPERLINE

SPIDERWIRE
MICROFILAMENT SUPERLINE

SPIDERWIRE
MICROFILAMENT SUPERLINE

SPIDERWIRE
MICROFILAMENT SUPERLINE

SPIDERWIRE

SPIDERWIRE

Fusion

Fusion

Fusion

Fusion

Super Mono

Super Mono

Super Mono

Premium Braid

Premium Braid

Premium Braid

SPIDERWIRE

EXHIBIT H

<p>SPIDERWIRE[®] Premium Braid</p> <p>Strongest, thinnest line available Highest strength-to-diameter ratio in the world</p> <p>5 times stronger than conventional mono Unmatched strength for the most extreme fishing structure</p> <p>Ultra sensitive, near zero stretch Ultra sensitive to feel every fish without blur away stretch for instant hook set</p> 	<p>SPIDERWIRE[®] Fusion</p> <p>HIGH PERFORMANCE</p> <p>Up to 2 times stronger than conventional mono Superior strength for extreme fishing structure</p> <p>Sensitive to feel more fish Instantly feel every fish strike</p> <p>Low stretch to catch more fish Low stretch for instant hook set</p> 	<p>SPIDERWIRE[®] Super Mono</p> <p>Extra strong Special design for advanced tackle and best strength for the toughest fish</p> <p>Easy and long casting Delivers exceptional performance for long, pinpoint casts</p> <p>Unparalleled abrasion resistance Technically advanced abrasion resistance delivers superior performance against rocks, cuts, and abrasion</p> 
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	Spinning	Casting	Jigging
White Bass	6/10-10/14	6/10-10/14	6/10-10/14
Muskie	12/24-17/28	12/24-17/28	12/24-17/28
Northern Pike	12/24-17/28	12/24-17/28	12/24-17/28
Walleye	6/10-10/14	6/10-10/14	6/10-10/14
Panfish	6/10-8/12	6/10-8/12	6/10-8/12
Catfish	6/10-10/14	6/10-10/14	6/10-10/14
Smallmouth Bass	6/10-10/14	6/10-10/14	6/10-10/14
Trout	6/10-8/12	6/10-8/12	6/10-8/12

	Live Bait	Trotting
Largemouth Bass	12/24-17/28	6/12-10/14
Smallmouth Bass	6/10-10/14	8/12-10/14
White Bass	6/10-10/14	8/12-10/14
Muskie	12/24-17/28	12/24-17/28
Northern Pike	12/24-17/28	12/24-17/28
Walleye	6/10-10/14	6/10-10/14
Panfish	6/10-8/12	6/10-8/12
Catfish	12/24-17/28	12/24-17/28
Steelhead	12/24-17/28	8/12-10/14
Salmon	12/24-17/28	12/24-17/28
Trout	6/10-8/12	6/10-8/12

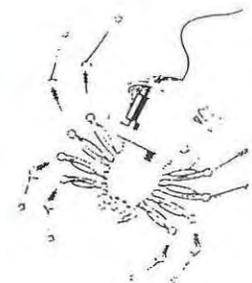


EXHIBIT H

430

Complaint

EXHIBIT I

Exhibit I consists of a product insert.
It has been placed on the public record of this proceeding.

EXHIBIT J

Exhibit J consists of an informational videotape.
It has been placed on the public record of this proceeding.

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 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 respondent with violations 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, and admission by the respondent of all the jurisdictional facts set forth in the draft 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 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 Johnson Worldwide Associates, Inc. is a Wisconsin corporation with its principal office or place of business at 1326 Willow Road, Sturtevant, Wisconsin.

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

ORDER

I.

It is ordered, That respondent, Johnson Worldwide Associates, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation,

subsidiary, division, or other device, in connection with the manufacturing, marking, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any fishing product in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall not misrepresent, in any manner, directly or by implication, the extent to which any such product is made in the United States. For purposes of this order, fishing product means any product that is intended to be used for fishing, including but not limited to fishing rods, fishing reels, fishing line, fishing lures, and fishing spoons.

Provided, however, that a representation that any fishing product is made in the United States will not be in violation of this order so long as all, or virtually all, of the component parts of the product are made in the United States and all, or virtually all, of the labor in manufacturing the product is performed in the United States.

Provided, further, that respondent shall not make a general U.S. origin claim, whether or not accompanied by qualifying information (e.g., "Made in U.S.A. of U.S. and imported parts" or "Manufactured in U.S. with imported materials") unless the fishing product was last substantially transformed in the United States, as the term "substantially transformed" is defined by regulations or administrative rulings issued by the U.S. Customs Service under Section 304 of the Tariff Act of 1930, 19 U.S.C. 1304.

II.

It is further ordered, That respondent Johnson Worldwide Associates, 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 labeling, packaging, 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.

III.

It is further ordered, That respondent Johnson Worldwide Associates, 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.

IV.

It is further ordered, That respondent Johnson Worldwide Associates, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation 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.

V.

It is further ordered, That respondent Johnson Worldwide Associates, Inc., and its successors and assigns, shall, within ninety (90) 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 it has complied with this order.

VI.

This order will terminate on April 6, 2019, 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 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.

IN THE MATTER OF
KUBOTA TRACTOR CORPORATION

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

Docket C-3863. Complaint, April 6, 1999--Decision, April 6, 1999

This consent order, among other things, prohibits a California-based corporation from misrepresenting the extent to which any lawn and garden tractor, or lawn and garden tractor product line, is made in the United States.

Participants

For the Commission: *Kent Howerton, Laura Koss, and Elaine Kolish.*

For the respondent: *Richard Briggs*, in-house counsel, Gardena, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Kubota Tractor 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 Kubota Tractor Corporation is a California corporation with its principal office or place of business at 3401 Del Amo Boulevard, Torrance, California.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including lawn tractors.
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 for its line of T-Series Lawn Tractors, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements:

Exhibit A, 1998 Full Line Brochure

"The Kubota T-Series lawn tractors are manufactured at Kubota Manufacturing of America in Gainesville, Georgia."

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Exhibit B, dealer television commercial

"The Kubota T-Series - 3 models to choose from . . . Made in America, the Kubota T-Series."

Exhibit C, dealer promotion advertisement

"T-Series Lawn Tractors
 •Made by Kubota in the U.S.A."
 Photograph of the T1460 tractor

Exhibit D, dealer promotion advertisement featuring the T1760 tractor

"T-Series Lawn Tractors
 •Made by Kubota in the U.S.A. . . .
 •Easy lift 48" mower deck on T1760"
 Photograph of the T1760 tractor

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that its entire line of T-Series Lawn Tractors is made in the United States, *i.e.*, that all, or virtually all, of the component parts of each of the T-Series Lawn Tractors are made in the United States, and that all, or virtually all, of the labor in manufacturing each of the T-Series Lawn Tractors is performed in the United States.

6. In truth and in fact, model T1760, one of the three lawn tractor models included in the T-Series, contains significant foreign parts and therefore is not all or virtually all made in the United States. Therefore, the representations set forth in paragraph five were, and are, false or misleading.

7. Respondent has disseminated or has caused to be disseminated advertisements and labeling for its model T1760 lawn tractors, including but not necessarily limited to the attached Exhibits D through F. These advertisements and labeling contain the following statements:

Exhibit D, dealer promotion advertisement featuring the T1760 tractor

"T-Series Lawn Tractors
 • Made by Kubota in the USA . . .
 • Easy lift 48" mower deck on T1760"
 Photograph of the T1760 tractor

Exhibit E, dealer ad planner page

"Kubota T1760 17 HP . . .
 •Made by Kubota in the USA"

Exhibit F, serial plate for Model T1760

"Made in U.S.A."

8. Through the means described in paragraph seven, respondent has represented, expressly or by implication, that its model T1760

lawn tractor is made in the United States, *i.e.*, that all, or virtually all, of the component parts of the model T1760 lawn tractor is made in the United States, and that all, or virtually all, of the labor in manufacturing the model T1760 lawn tractor is performed in the United States.

9. In truth and in fact, the model T1760 lawn tractor contains significant foreign parts and therefore is not all or virtually all made in the United States. Therefore, the representations set forth in paragraph eight were, and are, false and misleading.

10. Respondent has disseminated or has caused to be disseminated advertisements for its line of TG-Series Lawn and Garden Tractors, including but not necessarily limited to the attached Exhibit G. This advertisement contains the following statement:

Exhibit G, dealer promotion advertisement featuring the TG1860 tractor

"TG-Series Lawn & Garden Tractors

• Made by Kubota in the U.S.A."

Photograph of the TG1860 tractor

11. Through the means described in paragraph ten, respondent has represented, expressly or by implication, that its entire line of TG-Series Lawn and Garden Tractors is made in the United States, *i.e.*, that all, or virtually all, of the component parts of each of the TG-Series Lawn and Garden Tractors are made in the United States, and that all, or virtually all, of the labor in manufacturing each of the TG-Series Lawn and Garden Tractors is performed in the United States.

12. In truth and in fact, both of the lawn and garden tractor models included in the TG-Series, TG1860 and TG1860G, contain significant foreign parts and therefore are not all or virtually all made in the United States. Therefore, the representations set forth in paragraph eleven were, and are, false and misleading.

13. Respondent has disseminated or has caused to be disseminated advertisements and labeling for its model TG1860 lawn and garden tractors, including but not necessarily limited to the attached Exhibits G and H. These advertisements and labeling contain the following statements:

Exhibit G, dealer promotion advertisement featuring the TG1860 tractor

"TG-Series Lawn & Garden Tractors

• Made by Kubota in the U.S.A."

Photograph of the TG1860 tractor

Exhibit H, serial plate for Model TG1860

"Made in U.S.A."

14. Through the means described in paragraph thirteen, respondent has represented, expressly or by implication, that its model TG1860 lawn and garden tractor is made in the United States, *i.e.*, that all, or virtually all, of the component parts of the model TG1860 lawn and garden tractor is made in the United States, and that all, or virtually all, of the labor in manufacturing the model TG1860 lawn and garden tractor is performed in the United States.

15. In truth and in fact, the model TG1860 lawn and garden tractor contains significant foreign parts and therefore is not all or virtually all made in the United States. Therefore, the representations set forth in paragraph fourteen were, and are, false and misleading.

16. Respondent has disseminated or has caused to be disseminated labeling for its model TG1860G lawn and garden tractor, including but not necessarily limited to the attached Exhibit I. This labeling contains the following statement:

Exhibit I, serial plate for Model TG1860G

"Made in U.S.A."

17. Through the means described in paragraph sixteen, respondent has represented, expressly or by implication, that its model TG1860G lawn and garden tractor is made in the United States, *i.e.*, that all, or virtually all, of the component parts of the model TG1860G lawn and garden tractor is made in the United States, and that all, or virtually all, of the labor in manufacturing the model TG1860G lawn and garden tractor is performed in the United States.

18. In truth and in fact, the model TG1860G lawn and garden tractor contains significant foreign parts and therefore is not all or virtually all made in the United States. Therefore, the representations set forth in paragraph seventeen were, and are, false and misleading.

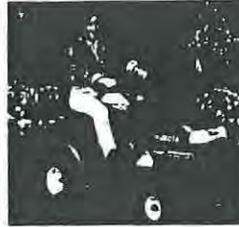
19. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

Lawn Tractors-T1460, T1560, T1760

The Kubota T-Series lawn tractors are manufactured at Kubota Manufacturing of America in Gainesville, Georgia. The body is sleek and streamlined, designed to provide you with a nice, comfortable ride. These lawn tractors, in fact, are built to trim mowing jobs down to size.

- Comfortable and easy-to-operate, the T1460 with 12.5 horsepower, the T1560 with 14 HP and the T1760 with 17 HP tractors feature a hydrostatic transmission and OHV engine. The T-Series models feature a suspended mower deck with a deep contoured deck design and a simple dial-type cutting height adjustment that can be set from the operator's seat. A 40" deck is available for the T1460 and T1560, a 44" deck for the T1560 and a 48" deck for the T1760. The deck is easy to raise and lower due to the lift-assist, gas-charged cylinder. The large fuel tank holds 2.9 gallons to extend your operating time.
- The T1560 model is the first lawn tractor to offer the Auto-Throttle Advance System. It operates the engine speed auto-



matically, both when the PTO lever is engaged and when in motion. Another first on the T1560 and T1760 is the smooth ride provided by the "Cushion Ride" suspension system.

- Ideally suited for a wide range of lawn care applications, the T-Series lawn tractors are compatible with a full line of performance-matched implements. Grass catcher, front blade, thatcher and snowblower attachments make the T-Series lawn tractors well suited for year-round use. All three T-Series lawn tractors can be fitted with an optional mulching kit that converts the tractors' side discharge deck into a mulching deck.
- The T-Series are supported with a two-year warranty, which includes the original mower deck.

	T1460 OHV, air-cooled, gasoline, 1-cylinder	T1560 OHV, air-cooled, gasoline, 1-cylinder	T1760 Liquid-cooled, gasoline 2-cylinder
Displacement (cu in.)	25.8	25.8	26.7
Horsepower	12.5	14.0	17.0
Length (inches)	67.7	67.7	68.0
Width	52"	52"	60.8"
Weight (lbs)	528	528	606
Speeds (forward/reverse)	Infinite	Infinite	Infinite

MODEL	T1460	T1560	T1760
Mower Drive System	Belt drive	Belt drive	Belt drive
Cutting Width (inches)	40"	40", 44"	48"
Cutting Height (inches)	1.0" - 4.0"	1.0" - 4.0"	1.0" - 4.0"

Specifications subject to change without notice.

EXHIBIT B

**Kubota T-Series
(XKTC-T961)**

:30 second spot, available on 1" or 3/4" tape



Looking for a lawn tractor...



The Kubota T-Series -
3 models to choose from...



Easy to operate with
hydrostatic transmission.



You can change the cutting
height with the turn of a dial.



Made in America, the Kubota
T-Series.



Dealer tag.

EXHIBIT C

KUBOTA'S SPRING VALUE DAYS

90 Days Same as Cash!

On Kubota's T, TG, G and GF Series on approved credit
Purchase by August 31, 1998.

No Down • No Interest • No Payment



**90 DAYS
SAME AS
CASH**

T-Series Lawn Tractors

- Made by Kubota in the U.S.A.
- 12.5 to 17 horsepower
- Foot pedal control hydrostatic transmission
- Easy lift mower deck

T1460 - Easy to drive value

Kubota

*No down payment, No monthly payment and No interest accrual for 90 days on approved credit, available through Kubota Credit Corporation on retail sales through August 31, 1998. Ninety days after retail sale, customer may then choose to pay the purchase-invoice price in full or finance the purchase through Kubota Credit Corporation. Credit terms that apply after 90 day period: 7.99% APR for 36 months on approved credit. See dealer for details.

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EXHIBIT D

KUBOTA'S SPRING VALUE DAYS

90 Days Same as Cash!

On Kubota's T, TG, G and GF Series on approved credit
Purchase by August 31, 1998.

No Down • No Interest • No Payment

T-Series Lawn Tractors

- Made by Kubota in the U.S.A.
- 12.5 to 17 horsepower
- Exclusive Cushion Ride and Auto Throttle Advance (T1560 & T1760)
- Foot pedal control hydrostatic transmission
- Easy lift 48" mower deck on T1760



T1760 -
17 HP liquid
cooled
engine.

Kubota.

*No down payment, No monthly payment and No interest accrual for 90 days on approved credit, available through Kubota Credit Corporation on retail sales through August 31, 1998. Ninety days after retail sale, customer may then choose to pay the purchase invoice once in full or finance the purchase through Kubota Credit Corporation. Credit terms that apply after 90 day benefit: 19% A.P.R. for 36 months on approved credit. See dealer for details.

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EXHIBIT E

**KUBOTA
T1760
17 HP**

- OHV gasoline engine
- Foot control hydrostatic transmission
- 48" mower deck
- Simple dial-type cutting height adjustment
- Auto Throttle Advance (ATA) for easy operation
- Operator presence control and safety start switch
- Made by Kubota in the USA

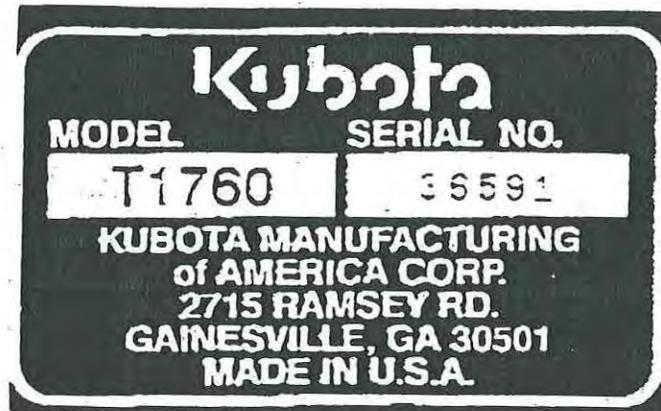
Kubota

E

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Complaint

EXHIBIT F



Complaint

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EXHIBIT G

KUBOTA'S SPRING VALUE DAYS!

90 Days Same as Cash!

On Kubota's T, TG, G and GF Series on approved credit.
Purchase by August 31, 1998.
No Down • No Interest • No Payment

TG-Series Lawn & Garden Tractors

- Made by Kubota in the U.S.A.
- 18 HP liquid-cooled gas or diesel engine
- Foot-controlled hydrostatic transmission
- Easy to lift and lower 48" or 54" mower deck
- Electric PTO clutch

G-Series Diesel Lawn & Garden Tractors

- 16 and 18 HP liquid cooled diesel engines
- Shaft drive mowers standard
- Shaft drive hydrostatic transmission
- Cruise control
- Hydraulic implement lift
- Optional 4-wheel steering

G-SERIES - Precision cutting



TG1860- With Kubota's exclusive electronic rack & pinion power steering



*No down payment. No monthly payment. No interest accrual for 90 days on approved credit, available through Kubota Credit Corporation on retail sales through August 31, 1998. Ninety days after retail sale, customer may then choose to pay the purchase-invoice price in full, or finance the purchase through Kubota Credit Corporation. Credit terms that apply after 90 day period: 7.99% A.P.R. for 36 months (48 months if amount financed is \$5001 or more) on approved credit. See dealer for details.



EXHIBIT G

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EXHIBIT H



H

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EXHIBIT I



I.

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 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 respondent with violations 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, and admission by the respondent of all the jurisdictional facts set forth in the draft 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 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 Kubota Tractor Corporation is a California corporation with its principal office or place of business at 3401 Del Amo Boulevard, P.O. Box 2992, Torrance, California.

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

ORDER

I.

It is ordered, That respondent, Kubota Tractor Corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division,

or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any lawn tractor or lawn and garden tractor in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall not misrepresent, in any manner, directly or by implication, the extent to which any such lawn tractor or lawn and garden tractor, or lawn tractor or lawn and garden tractor product line, is made in the United States.

Provided, however, that a representation that any such lawn tractor or lawn and garden tractor, or lawn tractor or lawn and garden tractor product line, is made in the United States will not be in violation of this order so long as all, or virtually all, of the component parts of such product, or of all products in such product line, are made in the United States and all, or virtually all, of the labor in manufacturing such product, or of all products in such product line, is performed in the United States.

For purposes of this order, the terms "lawn tractor" and "lawn and garden tractor" shall mean products manufactured, labeled, advertised, promoted, offered for sale, sold, or distributed primarily for consumers to mow grass, including but not limited to respondent's T-Series lawn tractors and TG-Series lawn and garden tractors. Such products may be sold with or without attachments such as grass catchers, front blades, or snowblowers.

II.

It is further ordered, That respondent Kubota Tractor Corporation, 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 labeling, packaging, 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.

III.

It is further ordered, That respondent Kubota Tractor Corporation, and its successors and assigns, shall deliver a copy of this order to all current and future officers and directors, 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.

IV.

It is further ordered, That respondent Kubota Tractor Corporation, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation 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.

V.

It is further ordered, That respondent Kubota Tractor Corporation, 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 it has complied with this order.