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deceptive as well as unfair under Section 5 of the FTC Act.

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**FEDERAL TRADE COMMISSION**

[File No. 971-0065]

**Fair Allocation System, Inc.; Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 13, 1998.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER**

**Benjamin I. Berman,**  
*Acting Secretary.*

**Statement of Commissioner Mozelle W. Thompson**

Today, the Commission voted to accept a consent agreement with Beck's North America, Inc. ("Beck's") in File Number 982-3092 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."<sup>1</sup> In my view, the Beck's television advertisements fit this definition.

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.<sup>2</sup> 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

<sup>1</sup> "Free-rider" concerns may arise where two distributors sell the same product, but provide different levels of service in connection with the sale of that product. For example, one distributor may have a full-service showroom and the other may sell out of a warehouse that offers no service. Consumers may visit the showroom, learn all they need to know about the product, and then purchase the produce from a "no-service" discounter. The problem is that over time the full-service distributor may lose its incentive or financial ability to provide the services, to the detriment of both the manufacturer and the consumers who value those services. Free-rider concerns generally do not exist