



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

February 25, 2000

**VIA FACSIMILE AND EXPRESS MAIL**

The Ken Roberts Company, The United States Chart  
Company, The Ken Roberts Institute, Inc.,  
and The Ted Warren Corporation

**BARRETT A. BRAIN & MARTINI LLP**

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Re: Petition of The Ken Roberts Company, The United States Chart Company, The  
Ken Roberts Institute, Inc. and The Ted Warren Corporation To Quash Civil  
Investigative Demands -- File No. 9923259

Dear Messrs. Goteiner and Fong:

This letter advises you of the Federal Trade Commission's ruling on the petition of The  
Ken Roberts Company, The United States Chart Company, The Ken Roberts Institute, Inc. and  
The Ted Warren Corporation (collectively "petitioners") to quash civil investigative demands

Neil A. Goteiner, Esquire

## II. ANALYSIS

Section 5 of the Federal Trade Commission Act ("FTC Act") gives the Commission broad authority to "prevent persons, partnerships, or corporations" from "using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(2) (1999). Section 5 also sets forth a few limited exceptions to this grant of authority: the Commission is not empowered to prevent deceptive or unfair practices by banks, savings and loan institutions, federal credit unions, common carriers and air carriers ~~insofar as those entities are subject to specified regulations, or by anyone subject to the~~

~~Dickson and Stearns Act. Id.~~

The Commission's investigative authority is even broader. Section 6 of the FTC Act, 15 U.S.C. § 46 (1999), gives the Commission the power to

gather and compile information concerning, and to investigate from time to time

Neil A. Goteiner, Esquire  
Henry C. Fong, Esquire -- Page 4

Neil A. Goteiner, Esquire  
Henry C. Fong, Esquire -- Page 5

§ 2076 et seq. (1974)). Accordingly, a provision in the new law was a "limited grant of

exclusive jurisdiction to the Commodity Futures Trading Commission" to create uniform rules

for the operation of the futures market. 120 Cong. Rec. 34,736 (1974) (statement of Rep. Poage). Under the new provision, the CFTC was given "exclusive jurisdiction . . . with respect to accounts, agreements . . . and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market." 7 U.S.C. § 2(i) (1999).

In, and on, the ground that the limited exclusive jurisdiction provision in the CEA was not

Neil A. Goteiner Esquire

In sum, preserving the ability of other agencies such as the FTC to enforce general laws is consistent with the letter and the spirit of the CEA.<sup>9</sup> Accordingly, petitioners have failed to show

that the CEA expressly repealed Sections 5 and 6 of the FTC Act.

**B. Implied Repeal**

Petitioners have also failed to show that the FTC's authority was impliedly repealed. "The law is well settled . . . that repeal by implication is not favored and that it follows only where the later act is clearly intended to be in substitution for the earlier act." *U.S. v. Abrahams*, 493 F. Supp. 296, 300 (S.D.N.Y. 1980). The Supreme Court has thus developed -- and lower

Neil A. Goteiner, Esquire  
Henry C. Fong, Esquire -- Page 7

the Senate Committee on Agriculture and Forestry emphasized that "It is not the intent of the

Neil A. Goteiner, Esquire  
Henry C. Fong, Esquire -- Page 8

held that Congress did not intend to limit the application of the antitrust laws simply by establishing an overlapping regulatory scheme. *See Strobl*, 768 F.2d at 27. Rather, the correct test was whether the two statutes were in conflict, and the court held they were not. *Id.* The

court's conclusion regarding price manipulation holds true for the advertising fraud at issue here as well.

As price manipulation also violates antitrust laws, none of [the anti-manipulation] provisions [in the CPA] conflict with the purposes and standards of the antitrust



Neil A. Goteiner, Esquire  
Henry C. Fong, Esquire -- Page 9

~~Cerification, which is the relationship between federal and state law and not the relationship~~

Neil A. Goteiner, Esquire  
Henry C. Fong, Esquire -- Page 10

advertising practices.<sup>13</sup>

The one case petitioners rely upon in arguing for exclusive SEC jurisdiction, *Spinner Corp. v. Princeville Dev. Corp.*, 849 F.2d 388 (9th Cir. 1988), is not controlling. *Spinner* involved whether the Hawaii "baby FTC Act" applied to a private cause of action against an investment adviser -- and did not in any way rule on the jurisdiction of the Commission itself. *Id.* at 393. Rather, the court only considered this Commission's practices in light of a state