

UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

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

EARELIA, BRAIIN & MARTELL LP

235 Montgomery Street San Francisco, California 94104

Tel: (415) 954-4400 Fax: (415) 954-4480

> Petition of The Ken Roberts Company, The United States Chart Company, The Re:

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



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II. ANALYSIS

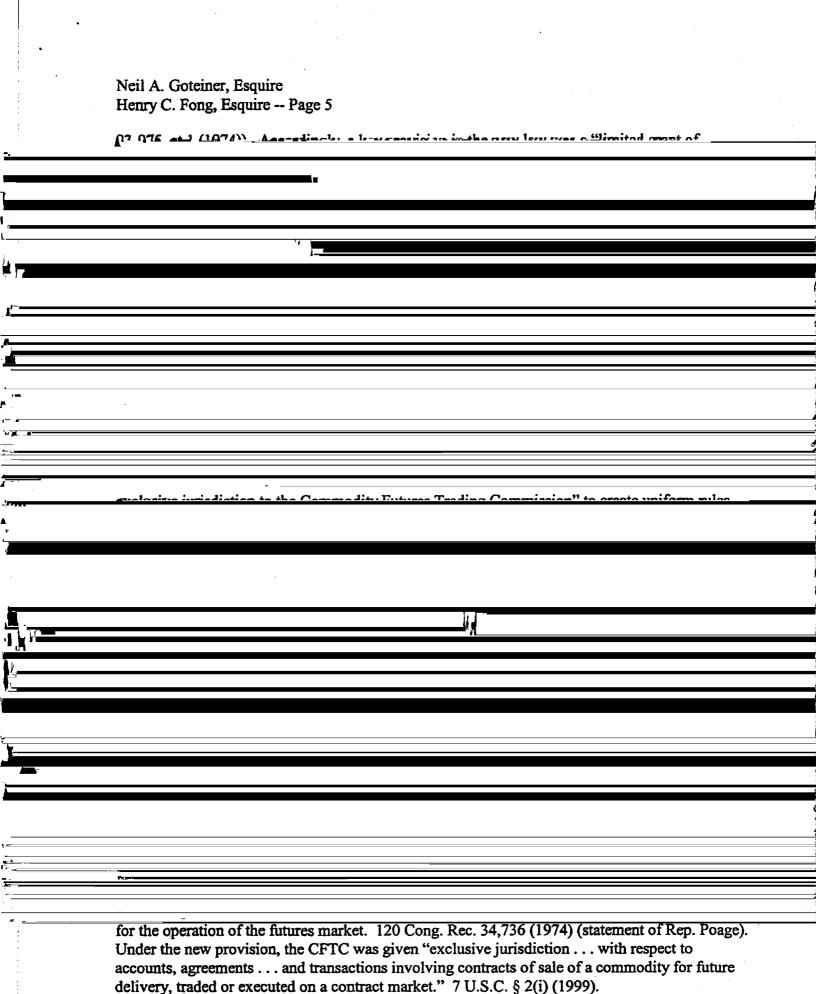
Section 5 of the Federal Trade Commission Act ("FTC Act") gives the Commission broad authority to "prevent persons, partnerships, or corporations" from "using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(2) (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

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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

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	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.9 Accordingly, petitioners have failed to show	
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	that the CEA expressly repealed Sections 5 and 6 of the FTC Act.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,	
4.4.	493 F. Sinn. 296, 300 (S.D.N.V. 1980). The Sunreme Court has thus developed and lower.	
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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 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]

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advertising practices. 13

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