

Annual
Report
of the

FEDERAL
TRADE
COMMISSION

For the Fiscal Year Ended

June 30, 1973

FEDERAL TRADE COMMISSION

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PAUL RAND DIXON, Commissioner
A. EVERETTE MACINTYRE, Commissioner
MARY GARDINER JONES, Commissioner
DAVID S. DENNISON, JR., Commissioner

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Letter of Transmittal

FEDERAL TRADE COMMISSION
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit the fifty-ninth Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended June 30, 1973. The Commission regrets the delay which has occurred in transmission of this report.

By direction of the Commission.

PAUL RAND DIXON
Acting Chairman.

THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

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THE YEAR IN SUMMARY

During fiscal year 1973, the Federal Trade Commission instituted an examination of all policies and procedures to determine whether the Commission's manpower and budgetary resources were being efficiently allocated.

As a result of this examination, staff energies were directed toward the careful selection of problems and cases where corrective or preventive action would have the greatest impact.

The Commission's ability to act effectively on behalf of the public also was strengthened in other respects during fiscal 1973. The agency's rulemaking authority, under a cloud because of an adverse court decision the previous year, was affirmed by a court of behalffa la 4 \$prob E. 01/10/10

Fiscal 1973 also marked the Commission's first major involvement with problems arising from creditor's remedies. A comprehensive program for attacking retail fraud was developed.

As part of its re-evaluation, the Commission staff prepared an in-depth report on the advertising substantiation program, evaluating its impact on advertisers and recommending changes. The staff also developed guidelines for practical application of the "unfairness" doctrine.

The Commission continued to encourage and cooperate with state and local agencies wishing to adopt "little FTC acts" for consumer protection. With assistance from Commission headquarters and regional offices, 44 states now have passed laws to prevent deceptive and unfair trade practices.

The Commission also continued its efforts to expand and to make more effective the participation of regional offices in Commission law enforcement activities.

The Federal Trade Commission also undertook its first significant attempt to apply cost/benefit analysis to decisionmaking in the antitrust area. Because the task has been hampered by lack of good data, the Commission has begun a major data-gathering program, the most important aspect of which will be the collection of profit information for individual lines of business. Such information will permit, for the first time, profitability comparisons between meaningful economic markets and between firms within those markets.

Through investigations of market concentration, the staff continued efforts to identify for the Commission those industries where the exercise of t h e

CONSUMER PROTECTION

The Commission's consumer-oriented activities are entrusted to its Bureau of Consumer Protection. The Federal Trade Commission Act is the principal source of authority for the Bureau's work. Additional authority is conferred by specialized statutes governing specific areas such as consumer credit and fair packaging and labeling of consumer goods.

Each of the Bureau's divisions specializes in a particular aspect of the total consumer protection effort. Each Division, however, closely coordinates its work with the work of the others.

General Litigation

The General Litigation Division is charged with major responsibility for contesting unfair or deceptive acts or practices in areas other than national advertising.

Deceptive Advertising and promotion of hazardous products were of special concern to the Division during fiscal year 1973. Complaints were issued against three major sellers of pesticides who allegedly used deceptive safety advertising to promote sales.

The practices of retail food stores were investigated and a complaint was issued charging mispricing of advertised food products.

Deceptive advertising for automobiles and automobile tires was also investigated during the year, and the Commission issued an order requiring a major tire manufacturer to substantiate safety and performance claims with scientific tests (Firestone Tire &

Rubber Co. v. FTC, 481 F. 2d 246 (6th Cir. 1973) cert. denied, 414 U.S. 11 12 (1973)). Also, the Commission issued a complaint against a major manufacturer charging that its failure to show reasonable basis for performance and durability claims constituted deception and unfairness. Finally, orders requiring a reasonable basis for economy claims were secured against an importer of automobiles and its advertising agency.

Four consent orders were obtained from firms engaged in utilizing deceptive techniques to sell magazine subscriptions. Other major investigations during fiscal year 1973 resulted in action against private vocational schools and income tax preparation services.

National Advertising

This Division is responsible for the enforcement of the Federal Trade Commission Act in the area of advertising. During fiscal year 1973, the Division addressed misleading and deceptive advertising using such recently adopted tools as requirements for advertising substantiation and corrective advertising.

of

The Commission issued eleven consent cease and desist

programs. These responsibilities have been carried out in the past through the preparation of a series of Analytical Program Guides. The Division has now begun to undertake substantive projects in addition to its planning and evaluation work. The staff also continues its work as the "unfairness task force," exploring the reach of the Sperry & Hutchinson decision (405 U.S. 233 (1972)) which gave the Commission broad power to declare trade practices unfair to consumers.

In light of the Supreme Court's decision in S&H, the Division developed guidelines for practical application of the "unfairness" doctrine. A consent agreement settling the S&H matter was accepted by the Commission.

In 1973, the Evaluation staff developed a program for attacking metropolitan retail fraud. This program concentrated on the problems arising from creditors' remedies and markedD 0 Tc () Tj 2.76 0 TD

During fiscal year 1973, the Commission promulgated two new Trade Regulation Rules: Cooling Off Period for Door-to-Door Sales and Negative Option Plans for Book and Record Clubs.

The Rule relating to a Cooling Off Period for Door-to-Door Sales provides, in connection with contracts signed in the home, that purchasers be afforded a three-day period during which they may cancel the transaction without penalty or obligation.

The Rule relating to Negative Option Plans for Book and Record Clubs addresses the negative option system of marketing by providing consumers with full disclosure of all terms and conditions of participation in these plans, by providing adequate time for club members to consider the products periodically being offered and by requiring that participants be given adequate time in which to advise the club of their wish not to receive a given selection.

In July 1972, the Rule relating to Tw (negative) Tj 40.445u() Tj 1 TD 0.012 Tc (to) Tj 9.36 0odically

Franchising. A proposed Rule requiring disclosures concerning the relationship between franchisors and prospective franchisees, particularly in connection with representations made in soliciting participation in franchise arrangements.

Law Book Publishing Industry: Proposed guides relating to the practices of sellers, publishers and distributors in connection with the advertising and sale of law books. Disclosures are aimed at supplementation, representations such as "new," "current," or "up-to-date," misleading titles, and other matters.

Detergents: A proposed rule relating to labeling and advertising requirements for detergents.

During fiscal 1973, the Division also conducted public hearings in Chicago and Washington in connection with a proposed Rule relating to Buyers' Claims and Defenses in Consumer Installment Sales. The proposal relates to the commercial doctrine of holder-in-due course and to the problem of preserving consumers' rights against sellers when products they buy are damaged or perform unsatisfactorily. Earlier hearings had been conducted in fiscal year 1972, and as a consequence of the record developed, the Commission revised its earlier proposal. The revised proposal was released for additional public comment.

Consumer Credit and Special Programs

This Division is charged with developing and coordinating the Commission's consumer protection in the broad areas of consumer credit and packaging. Specifically, this includes the Truth in Lending Act, the Fair Credit Reporting Act, and the Fair Packaging and Labeling Act.

The staff continued to survey major credit card issuers to determine the extent of their compliance with the new amendment to the Truth in Lending Act banning unsolicited credit cards

and limiting a consumer's liability in the event of lost or stolen cards. Formal action to prohibit the issuance of unsolicited credit cards was taken in two instances (B. P. Oil Corp., Docket C-2210 and Arlen Realty d/b/a/ E. J. Korvettes and NAC Charge Plan, Docket C-2383).

In a related activity involving credit cards, the Commission concluded its challenge under the new amendment of one of

mills disclosed that a substantial amount of carpets did not conform to the standard as promulgated by the Department of Commerce.

In addition, the Division continued its enforcement of the standards for the surface flammability of small carpets and rugs and the flammability standard for wearing apparel.

The Division investigated approximately 57 burn injury cases brought to its attention by sources that included fire officials, newspaper reports, Members of Congress and the burn victims themselves.

On May 14, 1973, personnel assigned to enforcement of the Flammable Fabrics Act were transferred to the Consumer Product Safety Commission. That agency now has responsibility for the enforcement of the Flammable Fabrics Act.

Compliance

The Compliance Division is responsible for more than 7,500 Commission cease and desist orders issued under the Federal Trade Commission Act, Truth in Lending Act, Wool Products Labeling Act, Fur Products Labeling Act, and Textile Fiber Products Identification Act to prevent false, misleading, and deceptive trade practices. It also was responsible for the Flammable Fabrics Act for eleven months. Responsibility for enforcing that Act has since been transferred to the Consumer Products Safety Commission.

At the end of the fiscal year, 13 civil penalty suits were in litigation in the United States district courts. Penalties awarded during the year totaled \$999,000 including \$812,000 assessed against the J. B. Williams Company and its advertising agency for their advertisements of Geritol (354 F. ~~8~~81p. and

Both headquarters and the regional offices were active in conferences and seminars to improve the skills of state and local officials in carrying on consumer protection and antitrust programs. For example, an April 10 seminar at headquarters brought together 32 attorneys from 25 states, including three attorneys general, for discussion of problems of mutual interest in the antitrust area.

Liaison contacts in areas of mutual interest are maintained with organizations of state and local officials such as the Antitrust and Consumer Protection Committees of the National Association of Attorneys General, the Committee on Suggested legislation, the Regional Legislative Conferences of the Council of State Governments, and the National District Attorneys Association.

Industry Concentration

The Bureau focuses particular attention to industries with a high degree of concentration and limited competition. In this area, the Bureau pursued in the Xerox case and the breakfast cereal case, as well as in major investigations of the petroleum industry, other energy industries, natural gas, and the beer and wine industries.

Mergers and Interlocking Directorates

Merger law enforcement activities were similarly at a high level during 1973. Four major litigated merger matters (PepsiCo-Rheingold, Retail Credit Co., Heublein-United Vintners, and Associated Dry Goods-L.S. Ayers) were begun in 1973 while ongoing litigation continued in Warner-Lambert Parke Davis, Eaton, Yale & Towne, Kaiser Steel, and Budd-Gindy. Final Commission determinations resulting in divestiture orders were reached in three litigated matters, (Avnet, U.S. Steel, and United Fruit). Consent settlements were reached in seven major merger matters. Director interlocks were challenged both in the Alcoa case and in a case against General Electric and Chrysler.

Petroleum

Two complaints issued during 1973 charged coercive restrictions in gasoline dealership relationships with major oil companies.

Hearing Aids, Shopping Center Leases, Franchising, and Fair Trade

Alleged vertical restraints in the hearing aid industry led to settlement of two cases, Radioear and Sonotone, and to complaints against three respondents.

Charges of leasing restrictions in shopping centers had resulted in a recommendation for settlement of one case by year end.

In the area of restrictions imposed upon franchisees, the Commission accepted a major settlement in Tastee-Freez.

The Commission in Coming Glass held unlawful the abuse of fair trade exceptions to antitrust laws and issued a proposed complaint in another such matter.

General Enforcement Activity

Industry use of a basing point system involving alleged "phantom freight" was the subject of a proposed complaint concerning distribution and sale of softwood plywood. A consent order prohibiting reciprocal trading arrangements was issued against the Georgia-Pacific Co. A settlement was also reached in Hollow Metal Door, a case involving alleged agreement to restrain trade in the construction industry. A final order was entered by the Commission against Great Lakes Carbon in connection with long-term contracts for the production and sale of petroleum coke.

Antidiscrimination cases included litigated matters concerning the sale of private label milk and alleged illegal brokerage of fresh produce. Consent settlements were obtained in Sales Marketing Services, Inc. and Western Storecasting.

The Bureau also was involved in trials of cases involving pyramid selling of cosmetics, territorial limitations for distribution of soft drinks, vertical acquisition in the cement industry, and mergers in the drug and auto parts industries.

Compliance

Ensuring compliance with Federal Trade Commission orders is an essential part of antitrust enforcement. The Bureau's Compliance Division initiated 14 major compliance investigations in 1973 and certified three cases to the Department of justice for civil penalty proceedings. Five such proceedings were pending in the

courts at the end of fiscal 1973. The civil penalty proceeding in Head Ski Co. resulted in a judgment in favor of the government.

Accounting

The Accounting Division assists in both the Bureau's antitrust enforcement and the Commission's general economic investigations. In addition, it prepares the report Rates of Return in Selected Manufacturing Industries.

Export Trade

The Bureau's staff has partial responsibility for administration of the Webb-Pomerene Act. This responsibility includes supervising export associations, and inquiring into and making recommendations for reform.

The Bureau of Competition continues to pursue vigorously its traditional antitrust enforcement program - in antimerger work as well as in the general practice field. In 1973, however, the Bureau focused on potential barriers to entry in areas of high industry concentration and interdependent competitive strategies.

with profit data for their leading products (in excess of 1% of sales) on a standard industrial classification 5-digit product level. This level of detail, in the opinion of the staff, comes close to representing profitability for economically meaningful markets much closer than anything that currently exists from public sources. The report concludes that the benefits from making such information available to owners, analysts, and policymakers are substantial and vital to the efficient functioning of these enterprises and of our economy.

The purpose of the dairy industry study was to examine trends in structure and performance since 1962 when the Commission began to restrain the major dairy firms from a continuation of their intense merger activity of the 1950's. The investigation found that improvements in transportation equipment and the completion of interstate highways had linked previously separate local markets and thereby increased competition. Nevertheless, concentration had not decreased in local and regional markets because of the exit of hundreds of small, high-cost processors, most of whom served the rapidly shrinking retail home delivery market. Moreover, there has been no increase in demand, a further discouragement to entry.

Concentrated Industries

The Commission has approved studies of electrical machinery, autos, prescription drugs, and the energy sector. In each, a particular issue is being examined. In the case of electrical machinery an examination of the efficacy of the antitrust litigation of 1960 in stopping the price-fixing conspiracy will be made.

The Bureau's work, begun intensively in fiscal year 1972, has been slowed greatly because of the lack of suitable data. Attention has been directed toward acquiring for the Commission the data necessary to help plan a rational allocation of its antitrust resources. The outstanding effort in this regard is the development of a line-of-business profit-reporting form that will request large diversified firms to break out their financial data into segments more closely aligned to meaningful economic markets.

enterprises; periodically it collects, analyzes, and summarizes uniform and confidential reports from these enterprises; using the reports, it estimates national aggregates, and it compiles the Quarterly Financial Report for Manufacturing Corporations (QFR) containing statements of income and retained earnings, balance sheets, profit rates (rates of return), and related financial and operating statistics for industries grouped by type and asset size.

In fiscal year 1973, multi-billion-dollar enterprises accounted for more than half the total assets of all manufacturing corporations. The number of such corporations increased from 115 in the first quarter of 1972, to 124 in the first quarter of 1973. These corporate manufacturers averaged \$3.5 billion in total assets and accounted for 52% of the total assets of all 200,000 manufacturing¹ corporations in the United States. Three years earlier, there were 102 corporate manufacturers with assets exceeding 81 billion. Their average assets were \$2.6 billion and they accounted for 48% of the total assets of all manufacturing corporations.

Average profit rates (rates of return) were higher in 1972 than in 1971, and continued to rise in the first quarter of 1973. Profit rates for all manufacturing corporations on stockholders' equity and sales, both before and after taxes, for each quarter in the 1961-1972 period are give@ in Appendix IV-3, page 24.

¹ The total asset figure in Appendix IV-2, page 23, arises from an

APPENDIX IV-1

LARGE* MANUFACTURING AND MINING FIRMS ACQUIRED
1948-1972

GRAPH - TEXT NOT AVAILABLE - SEE IMAGE

APPENDIX IV-2

Composition of the QFR Sample, by Total Assets,
1st Quarter 1973

Asset Size	Total assets of all manufacturing corporations		Number of manufacturing corporations in QFR sample
	Million dollars	Per- cent ¹	
\$1,000 million and over	353,406	52	124
\$250 million to \$1,000 million	121,158	18	246
\$100 million to \$250 million	<u>51,265 7</u>		<u>327</u>
\$100 million and over	525,829	77	697
\$50 million to \$100 million	28,605 4		402
\$25 million to \$50 million	21,203 3		597
\$10 million to \$25 million	<u>23,647 3</u>		<u>1,462</u>
\$10 million and over	599,284	88	3,158
Under \$10 million	<u>85,096 12</u>		<u>7,927</u>
All asset sizes	<u>684,380</u>	<u>100</u>	<u>11,085</u> ²

¹ Figures are rounded and will not necessarily add to totals.

² Drawn from a universe in excess of 200,000.

SOURCE: Division of Financial Statistics, Federal Trade Commission.

APPENDIX IV-3

Profit Rates of AR Manufacturing Corporations 1961 - 1973

TABLE - TEXT NOT AVAILABLE - SEE IMAGE

REGIONAL OPERATIONS

As a federal law enforcement agency with responsibility for regulating many types of business activities, the Commission maintains twelve regional offices in various major metropolitan areas. The regional offices operated under the general supervision of the Federal Trade Commission's Executive Director. Offices are located in Atlanta, Boston, Cleveland, Chicago, Dallas, Kansas City, Los. - Angeles, New Orleans, New York, San Francisco, Seattle, and Washington, D.C.

Responsibility for carrying out

Casework and Investigations

A major goal of the Commission is to achieve more effective participation of regional offices in Commission law enforcement activities. Regional offices have been delegated authority to initiate preliminary investigations; to conduct investigational hearings; to issue subpoenas and accept returns; to negotiate consent settlement agreements for the Commission's approval; to draft proposed complaints for administrative litigation; and to serve as trial counsel in litigation proceedings.

Regional offices also continue to perform investigations at the request of the Commission's Bureau of Competition and Bureau of Consumer Protection.

In fiscal year 1973, regional office attorneys participated in an increased number of trials of cases, either on their own or in conjunction with attorneys from headquarters.

In addition to casework, regional offices made major efforts during the past year to uncover problem areas that might need corrective action by the Commission. Investigations, sometimes accompanied by public hearings, were continued into such diverse matters as:

Practices of traders on the Navajo and Hopi Indian Reservations;

Vocational schools;

Talent agencies;

Contracts for future consumer services;

Debt collection practices;

Marketing abuses in the ghetto;

Price fixing by title insurance companies;

New and used car dealer practices;

Retail merchandising of carpets; and

Restrictive leasing practices of shopping centers.

In addition to their law enforcement activities, regional offices, in fiscal 1973, continued to be heavily involved in other functions essential to the work of the agency. These included coordination and liaison activities with federal, state and local authorities, and groups active in consumer protection; and implementing business and consumer education programs.

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ADMINISTRATIVE LAW JUDGE

Administrative Law judges¹ preside at the trial of cases in which respondents contest allegations that they have violated one or more statutes administered by the Commission. The judges are responsible for

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GENERAL COUNSEL

The General Counsel's Office advises the Commission and its operating bureaus on legal, policy and procedural matters that cover the spectrum of consumer protection, antitrust, administrative law, and legislation.

Specifically, the General Counsel advises the Commission on administrative law matters. These include the Commission's procedural responsibilities under the Administrative Procedure Act and under the Commission's Rules of Practice and Procedure.

The Office advises the Commission on its responsibilities under the Freedom of Information Act, makes recommendations on all requests for access to Commission records, and reviews recommendations by the Bureaus on requests for confidential treatment of information submitted for confidential treatment.

The General Counsel also advises the Commission on all motions to quash subpoenas and special orders issued by the Commission in the course of Commission investigations or proceedings. During fiscal year 1973, this Office prepared recommendations on 65 motions to quash.

In addition to its advisory responsibilities, the General Counsel also represents the Commission on review of cease and desist orders in the courts of appeals and assists the Department of justice in preparing and arguing collateral cases brought by or against the Commission in the United States district courts and courts of appeals.

During fiscal 1973, the Office handled 114 cases. litigation was completed in 43 of these - 4 involving deceptive practices, 6 involving restraint of trade, 13 concerning proceedings for enforcement of Commission subpoenas, and 20 concerning collateral matters such as suits against the Commission for declaratory judgement and injunctive relief. As of June 30, 1973, 71 cases were pending in the various courts of appeals and district courts. (See Appendix VII-1, on page 34.)

During the year, various committees of Congress, individual Congressmen, and the Office of Management and Budget made numerous requests for reports and correspondence seeking the views and comments of the Commission on a broad range of legislative issues. The Office drafted responses for consideration by the Commission and participated in the preparation of statements by the Chairman and members of the staff who were called upon to testify before congressional committees.

The Office also developed comments on various proposals to amend the Federal Trade
preparation andpe-0.017.28.045 v. Floppio 0277(286) TJD de sig. 280020.0 TED)00 418 D2760ti tipat@d3Bj c56.32

the unanimous backing of the other Commissioners, characterized it as the "most important consumer legislation now pending in Congress". He urged its enactment without delay as a measure long overdue in terms of public interest.

APPENDIX VII-1

FTC CASES IN THE COURTS

This Appendix summarizes the significant Federal Trade Commission cases in the courts during fiscal year 1973, together with a brief discussion of what is involved in each case or group of cases.

RESTRAINT OF TRADE CASES

Two important Section 5 restraint of trade cases decided by the courts in fiscal year 1973 were Golden Grain Macaroni Co. (D. 8733), in the Ninth Circuit (San Francisco), and National Association of Women's and Children's Apparel Salesmen (D. 8691), in the Fifth Circuit (New Orleans). Certiorari was denied in Golden Grain Macaroni Co-

In the Golden Grain Macaroni Co. case, the Ninth Circuit affirmed and enforced in part the Commission's order requiring Golden Grain, the largest seller of dry-paste food products in the Pacific Northwest, to divest itself of all its interests in two other macaroni producers and to refrain from further acquisitions in the macaroni industry for a period of ten years. The Commission had decided that Golden Grain's acquisition of substantial interests in three macaroni manufacturing companies violated Section 5 of the Federal Trade Commission Act. The court agreed as to two of the acquisitions but held that with respect to the remaining company, the smallest of the acquired competitors, the issue of commerce was not litigated and this company should not be included in the scope of the order. The court agreed with the Commission that the record failed to support the contention that acquisitions were permissible under the "failing company" defense since it was not shown that Golden Grain was the "only available purchaser".

products market. The court deleted a provision in the order prohibiting Papercraft from selling its products to customers of CPS Industries, Inc., for a three-year period.

Pending cases filed in the court of appeals during fiscal year 1973 to review Commission action included: Alterman Foods, Inc. (D. 8844), in the Fifth Circuit (New Orleans), involving inducement of certain discriminatory promotional payments prohibited by Sections 2(d) and 2(e) of the Clayton Act as amended by the Robinson-Patman Act in connection with food shows; Harbor Banana Distributors, Inc., United Brands, Inc., and Chiquita Brands, Inc. (D. 8795), in the Fifth Circuit (New Orleans), involving price discriminations, inducement of price discriminations and acquisition of competitor assets; and Avnet, Inc. (D. 8775), in the Seventh Circuit (Chicago) involving review of a Commission order to divest an acquired firm in the market of supplying rebuilt automotive products in competition with the acquiring firm.

DECEPTIVE PRACTICE CASES

In fiscal year 1973, decisions in several significant deceptive practice cases in courts of appeals upheld the Commission. In *The Firestone Tire & Rubber Company* (D. 8818), the Sixth Circuit (Cincinnati) affirmed and enforced a Commission order to cease and desist fictitious advertising of tire safety.

Courts of appeals also upheld Commission orders issued in two cases under the Truth in Lending Act. In *Zale Corporation, et al.* (D. 8810), the Fifth Circuit (New Orleans) affirmed and enforced a Commission order to cease and desist numerous violations of Regulation Z promulgated under the Truth in Lending Act. The court upheld the issuance of the order against Zale, a holding company, although the proof of violations was limited to its wholly-owned subsidiaries. In *Charnita, Inc., et al.* (D. 8829), the Third Circuit (Philadelphia) affirmed and enforced a Commission order to cease and desist violations of the Truth in Lending Act in the sale of recreational and residential homesites.

Pending deceptive practice cases in courts of appeals at the close of the fiscal year included: *LaSalle Extension University* (D. 5907) in the Seventh Circuit (Chicago) involving misrepresentations about obtaining law degrees through a correspondence course; *John Clifford Heater* (D. 8821) in the Ninth Circuit (San Francisco) in which the Commission order would require restitution of monies obtained through deceptive practices; *Brown Auto Stabilizer Co., et al.* (D. 8863) in the Fifth Circuit (New Orleans) involving false advertising in the sale of a stabilizer device for automobiles; *Spiegel, Inc.*, (D. 8869) in the Seventh Circuit (Chicago) involving (ChiSTj 45.96 0 5g3c2 () Tj 3.4Commission (CS) 45.96 0 8.0-87488810 TD 02 T Tc 911 on restit 2.4 0 TD -0.036 Tc (through) 0.002

SUITS FOR ENFORCEMENT BROUGHT
BY THE COMMISSION

During the fiscal year 1973, the Commission filed an emergency petition under the All Writs Act for a preliminary injunction and temporary restraining order to prevent the takeover of the Rheingold Corporation by PepsiCo, Inc. (D. 8903). The Second Circuit (New York) denied the relief requested but directed the parties to enter into an agreement to "hold separate" the two companies pending further proceedings.

Under the Flammable Fabrics Act, the ~~injunction~~

The Commission was engaged, in cooperation with the Department of justice, in the conduct of fourteen separate proceedings for the enforcement of its, subpoenas during fiscal year 1973. Of these, eight were successfully concluded during the year, two are currently before the courts of appeals on appeals from district court orders granting enforcement and four are at various stages in the district courts.

The Commission was also involved in three contested seizure proceedings under the Flammable Fabrics Act during this period.

COLLATERAL SUITS AGAINST THE COMMISSION FOR INJUNCTIVE AND OTHER RELIEF

Collateral suits filed in Federal courts for injunctive, declaratory and other relief against the Commission continued to rise in fiscal year 1973, during which period the Commission was involved in defending approximately 35 such actions.

Of greatest significance to the Commission was the decision in National Petroleum Refiners Association (Trade Regulation Rule 215-21), in which the District of Columbia Circuit, reversing the lower court's decision, held that the Commission had statutory authority for the promulgation of substantive Trade Regulation Rules. The Association, which had challenged the Commission from putting into effect a Trade Regulation Rule requiring the posting of octane ratings on gasoline dispensing pumps, has now filed a petition for rehearing in the court of appeals.

Three separate Courts of Appeal (New York, New Orleans, and St. Louis) affirmed district court orders upholding the Commission's action denying three national soft-drink companies the joinder of bottling companies as indispensable parties in the pending administrative proceedings. In Coca-Cola Company, et al. (D. 8855), and PepsiCo, Inc. (D. 8856), petitions for certiorari to the U.S. Supreme Court have been filed, while the time for filing such a petition has not yet expired in the Seven-Up Company (D. 8857) case.

In two actions involving the validity of various portions of Regulation Z under the Truth in Lending Act, *N. C Freed Co. and International Roofing Corp.* (File 99-90), the Second Circuit (New York) and the District of Columbia Circuit, respectively, upheld the authority of the Board of Governors of the Federal Reserve System to promulgate the challenged portions of Regulation Z.

Following a full trial in *Coca-Cola Company, et al* (D. 8824), the District Court for the Northern District of Georgia has under consideration a request for an injunction seeking to prohibit the Commission from continuing its administrative proceeding against the company which seeks a refund of monies to participants in promotional games sponsored by Coca-Cola.

In *Jewel Companies, Inc.* (D. 8786-8790), the Seventh Circuit ruled that the district court lacked jurisdiction to consider issues raised by a complaint seeking to dismiss a pending administrative proceeding.

In *Bostic* (D. 8634), the United States Court of Appeals for the Fourth Circuit affirmed the lower court's assessment of \$80,000, one of the largest civil penalties in a litigated case.

The United States District Court for the District of Columbia was active in numerous cases affecting the Commission. In *Warner-Lambert Co.* (D. 8891), the court refused to enjoin the Commission from conducting its in Appeals in 886 0 f1442.8 -1.0168 Tc 0.06 Tc 8 -0.008 Tc (the) Tj 14.64 0 7

plaint. Injunctive relief against two Commission officials is requested in *William Edwards, et al. v. State-Wide Supply, Inc., et al.* (File 99-140), pending in the United States District Court for the Southern District of West Virginia. *Bestline Products, Inc. (D. C-1986)* involves a complaint in the United States District Court for the Northern District of California seeking to prohibit the agency from finding a compliance report to be in violation of a cease and desist order. In *Daniel C. Turoff v. Union Oil Co. of California* (File 99-135), as directed by the United States District Court for the Northern District of Ohio, the Commission filed an amicus curiae brief on the issue concerning the relationship of class actions with the Truth in Lending Act.

POLICY PLANNING AND EVALUATION

The Office of Policy Planning and Evaluation assists the Commission in developing priorities and enforcement procedures that will allocate the Commission's resources among its diverse statutory responsibilities in the most effective and efficient manner. The creation of the Office in 1970 reflects the Commission's awareness of the critical need to plan its regulatory activities so as to achieve maximum impact in protecting consumers and in preserving a competitive marketplace.

In carrying out its responsibilities, the Office works directly with the Chairman and the individual Commissioners, as well as with the three Bureaus and various other offices.

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The work of this Office includes:

Developing policy profiles and proashiev3TD /F0 12 Td 0 Tc

Substantive and effective policy planning and evaluation are enormously complex, exacting, and sometimes elusive undertakings. Planning is a continuing function; more must be done to ensure that the Commission's efforts achieve maximum benefits for the public.

The Office is in the process of generating guides for staff attorneys to use in calculating estimated benefits of investigations or programs before significant activities are undertaken. In cooperation with the Division of Management, the Office is also incorporating pre-evaluation estimates into the overall, computerized, management information system. Additionally, the March evaluation report is substantially devoted to benefit estimates, as were other individual evaluations in areas of reciprocity, law book publishing, used cars, auto parts distribution, petroleum, and interlocking directorates.

During fiscal year 1973, the Office completed a pilot version of an antitrust benchmark data system, consisting of indicators that signal the likelihood of antitrust problems in an industry. The Commission is concerned, however, that the utility of such a data system may be presently impaired by the lack of sufficient economic data on a "line of business" basis.

In the consumer protection area, individual data elements indicating need for possible enforcement attention were developed for several hundred consumer-spending categories. These included data on such things as:

Average price;

Total number of consumer transactions;

Total advertising expenditures;

Frequency and severity of product-related accidents threatening health or safety;

Total consumer spending;

Spending breakdowns for selected groups of consumers (aged, families with small children, low income, non-white and uneducated); and

Frequency of consumer complaints, reported both by product and by subject matter.

1 a Commission. These data sets formed the basis for resource allocation recommendations to the Commission. These data sets were previously for the Commission. (subject) Tj06

The Office's previously developed experimental recordkeeping - or inventory - system, called the Case Analysis and Evaluation System, is being merged continuously into two related computer systems. The first-14.16 TD -0.008 Tc TD -0.0 -0.0024 Tc (first) Tj 19.(-14.16eac5 Tc (Analysis04 -14.1 T

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FUNDS AVAILABLE
TO THE COMMISSION
DURING FISCAL YEAR 1973

For fiscal year 1973, funds of \$30,474,000 were authorized for Commission use by Public Law 92-399. The Commission's adjusted budget for fiscal year 1973 was \$30,205,481, which reflects transfers of \$43,519 to