

1986  
ANNUAL  
REPORT

U.S. FEDERAL TRADE COMMISSION  
WASHINGTON, D.C.

Annual  
Report  
of the

FEDERAL  
TRADE  
COMMISSION

For the Fiscal Year Ended

September 30, 1986

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FEDERAL TRADE COMMISSION

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TERRY CALVANI, Acting Chairman\*\*  
PATRICIA P. BAILEY, Commissioner  
MARY L. AZCUENAGA, Commissioner  
ANDREW J. STRENIO, JR. Commissioner

EMILY H. ROCK, Secretary

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\* Took oath of office April 21, 1986.

\*\* From October 7, 1985 to April 20, 1986.



LETTER OF TRANSMITTAL

October 20, 1988

The Honorable George Bush  
President of the Senate  
United States Senate  
Washington, D.C. 20510

The Honorable Jim Wright  
The Speaker of the House of Representatives  
House of Representatives  
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

It is a pleasure to transmit the seventy-second Annual



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 Issued

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## SUMMARY

The Federal Trade Commission enforces a variety of Federal antitrust and consumer protection laws. The Commission seeks to ensure that the nation's markets are competitive, function vigorously and efficiently, and are free from undue governmental as well as private restrictions. The Commission also seeks to improve the operation of the marketplace by eliminating deceptive and unfair practices, with emphasis on those practices that may unreasonably restrict or inhibit the free exercise and informed choice by consumers. The Commission's economic analysis activities support this law enforcement effort and contribute to the economic policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments.

During Fiscal Year

different practices and to weigh whether the initiatives would result in a net benefit to consumers. In addition, the Bureau of Economics completed several economic reports providing useful in-depth insight into areas of particular concern to the Commission.

#### RULE ENFORCEMENT

The FTC continued to commit resources carefully to its rulemaking proceedings. As in the past six years, this process involved analysis of whether individual cases or industry-wide enforcement offered the most appropriate remedies for eliminating conduct harmful to consumers. During the fiscal year, the Commission amended the Pre-sale Availability and Appliance Labeling Rules, issued a Notice of Proposed Rulemaking for the Retail Food Store Advertising and Marketing Practices Rule, and proposed regulations under the Smokeless Tobacco Act.

#### COMPETITION AND CONSUMER ADVOCACY

The Commission continued its program of responding to requests for evaluations of the consumer welfare implications of proposed government action. Staff comments were submitted to several federal, state, and local government bodies presenting views in areas in which the Commission staff has special expertise or experience. For example, the staff submitted comments at the request of the Illinois state legislature concerning proposed legislation to permit competing physicians to determine jointly the price at which they would participate in PPOs, HMO, and other health care programs. Although it is difficult to measure the extent to which the staff's comments influenced the result, one press report characterized the staff's comments as "a development critical to the defeat of S.B.2202 thus far."

#### CONSUMER AND BUSINESS EDUCATION

The Commission, through its Bureau of Consumer Protection and regional offices, maintained an active consumer and business education program. The program provided information to consumers and industry on major Commission decisions, enforcement programs, statutes, and rules, and continued to be a cost-effective way of obtaining compliance with the law.

The staff developed several new consumer booklets in cooperation with private organizations, including Money Matters, which won a Blue Pencil Award from the National Association of Government Communicators, and was developed in cooperation with the American Association of Retired Persons (AARP). The Commission also worked in cooperation with two other organizations in developing consumer information. Over

a million copies of these and other FTC publications were distributed during the fiscal year.

#### MANAGEMENT IMPROVEMENTS

The Commission expended 1,107 workyears and \$62.7 million in fiscal 1986. The agency expended virtually all of its regular appropriation. It returned \$87,000 to the Treasury from its 1985 space consolidation appropriation of \$3.8 million.

Consolidation of the FTC's five satellite buildings in Washington, D.C. into the 601 Pennsylvania Avenue Building was planned and orchestrated

to enjoin the acquisition by PepsiCo of the United States assets of Philip Morris Co.'s Seven-Up division. Thereafter, the parties abandoned the transaction. The Commission also voted to seek a preliminary injunction against Occidental Petroleum's acquisition of Tenneco Polymers, Inc. Following the court's grant of a temporary restraining order and notwithstanding its subsequent denial of a preliminary injunction, the Commission issued an administrative complaint.

The Commission accepted seven final consent agreements in merger

Following the

## ENERGY AND NATURAL RESOURCES

Resources devoted to this program are employed for the investigation and prosecution of anticompetitive mergers and acquisitions in the petroleum and other natural resource industries. In addition, the Commission examines antitrust issues under this program relating to the Outer Continental Shelf Lands Act, the andAct,

lithium industry by issuing a consent order against Lithium Corporation of America.

#### HEALTH CARE

This program covers investigation and prosecution of antitrust violations in the health care industry, including boycotts against cost-containment plans of medical insurers and agreements among hospitals or other health care professionals to restrict truthful price advertising or other forms of competition.

During fiscal 1986, the Commission continued its efforts to promote competition in the health care sector of our economy. The Commission was particularly active in law enforcement efforts to prohibit providers from collectively coercing higher fees from third-party payers. In the Supreme Court, the Commission obtained affirmance (reversing the Seventh Circuit) of its decision that Indiana dentists violated the antitrust laws when they collectively refused to submit x-rays to insurers who need them for cost-containment purposes.

In other areas, the Commission pursued law enforcement actions to elimiof j 1.68 0 ande(005)ai.500TD(4902j T1396) 3L

In addition to traditional law enforcement activity, the Commission and its staff provided advisory opinions and informal guidance to health care professionals seeking to insure that their proposed activities, including new forms of health care marketing and delivery, and dispute resolution services, conform to the requirements of the antitrust laws. The Commission and its staff also provided advice and comments to the Congress, the states, and the public on matters involving competition in the health care field.

## TRANSPORTATION

This program focuses on investigation, litigation, and advocacy in regulated and non-regulated transport industries, including automobile retailing.

During fiscal 1986, the Commission continued a program of advocating a greater role for competition in taxicab markets, chiefly through staff testimony. Chicago was among the cities where Commission views were presented. In the Amerco matter (U-Haul), staff continued an antitrust action involving allegations of sham litigation. Several investigations into collusion in automobile retailing were pursued.

## HORIZONTAL RESTRAINTS

The Horizontal Restraints program is responsible generally for the investigation of and litigation against collusion among competitors. This program includes analysis of the structure and conduct of bid depositories, the activities of trade associations and standards-setting organizations, and the impact of government regulatory activities on competitors.

During fiscal 1986, the Commission continued to devote substantial resources to eliminating anticompetitive agreements among competitors, especially among professionals. The Commission has focused its efforts on regulations issued by state boards and private professional and trade associations that may have the purpose, or the effect, of fixing or stabilizing prices or reducing output and that may cause substantial injury to consumers. In implementing its program against anticompetitive horizontal restraints, the Commission has used various means: intervention and advocacy, cooperative efforts resulting in voluntary compliance, consent orders, and litigation. The Commission issued decisions and orders in eleven matters in fiscal year 1986: a litigated order in Superior Court Trial Lawyers Association (SCTLA), involving a concerted refusal by attorney-respondents and other members of SCTLA to accept appointment to represent indigent criminal defendants in the District of Columbia in order to coerce the District to increase the fees for the attorneys' services; a litigated order in The Electrical Bid Registration Service of Memphis, Inc., involving the rules and practices

of a bid depository in the construction industry that restricted price competition by preventing certain kinds of price negotiations; a consent order in Rhode Island Board of Accountancy, involving the adoption by a state regulatory board of an absolute prohibition against advertising and solicitation of business by certified public accountants; a consent agreement in Roswil, Inc., involving a conspiracy among competing grocery chains to prevent the collection and dissemination of comparative retail grocery prices to consumers; a consent order in Michigan Watchmakers Guild, Inc., involving the publication and dissemination by a trade association of suggested minimum price lists for the cleaning and repair of watches, clocks and jewelry; a consent order in Independent Insurance Agents of America, and two other related groups, involving boycotts by associations of insurance company agents; and a consent order against members of the wall covering trade association involving a conspiracy to restrain competition in the sale of wallpaper. The Commission also continued litigation in several other alleged horizontal restraint cases initiated in fiscal year 1985. The Commission contributed to efforts leading to repeal of several other restrictions on commercial activities of state-licensed professionals.

#### INTERNATIONAL ANTITRUST

This program includes investigation and prosecution of antitrust violations that have international features, as well as international liaison activities with foreign antitrust officials.

During this reporting period a total of twenty-seven full phase and initial phase investigations were conducted under the international antitrust program involving such matters as: possible horizontal price fixing in fine art sales, imported and domestic semiconductor chips, imported light bulbs, and alcoholic beverages; possible attempted monopolization of the markets for heat expansion tanks and indomethacin; and potential anticompetitive restraints from a transnational joint venture involving melamine manufacturers. Also, as already noted, in a case against National Decorating Products Association, the Commission issued a consent order to conclude a case involving alleged horizontal restraints in the wallcovering industry.

The international program participated in a variety of intervention matters and international liaison activities involving transnational competition and antitrust law enforcement issues that affect the domestic economy. For example, the Commission intervened in several trade law proceedings involving such products as imported apple juice, 256K computer chips, and softwood lumber, and provided legal and economic analyses which sought to identify and quantify the economic costs to consumers and the national economy of proposed trade relief measures. Through its international liaison activities, the Commission



staff ensured compliance with the notification provisions of bilateral and multilateral international antitrust cooperation agreements and understandings with foreign nations. These agreements minimize international law and policy conflicts as well as facilitate United States antitrust law enforcement efforts involving international commercial transactions and/or the acquisition of evidence located abroad. The total number of international notifications and cooperative contacts and requests for assistance with foreign antitrust officials continued to increase in fiscal 1986. In addition, the Commission, in cooperation with the Department of Justice and the State Department, continued its participation on the OECD Committee of Experts on Restrictive Trade Practices, and, at the request of the United States Trade Representative, the interagency MOSS initiative, and two subcommittees of the Interagency Committee on Service Industries Development.

#### MARKET POWER

This program is directed to the investigation and prosecution of conduct involving monopolization and attempts to monopolize, and to potentially anticompetitive conduct by firms that possess market power.

The Commission staff continued investigations into possible abuses of market power, including two investigations of attempted monopolization in fiscal year 1986.

During the year, the Bureau of Economics and the Bureau of Competition also continued to study whether various public utilities were improperly extending their monopoly authority.

#### DISTRIBUTIONAL RESTRAINTS

This program includes the investigation and prosecution of anticompetitive resale price maintenance, price discrimination, and other unlawful vertical practices.

The Commission issued a decision in Boise Cascade Corp., finding that a distributor of office supplies knowingly received discriminatory prices from various vendors of such supplies in violation of the Robinson-Patman Act. Boise Cascade appealed this decision to the United States Courts of Appeals for the District of Columbia.

As already noted, the Commission issued a consent order against Lithium Corp. of America that prohibits it and other respondents from maintaining any arrangement under which it would be the exclusive buyer of lithium extracted in the People's Republic of China. The Commission also accepted a consent agreement in Max Factor & Co. that would settle Robinson-Patman Act charges that Max Factor granted discriminatory promotional allowances to certain purchasers of its

cosmetic products. Finally, the Commission continued a number of other investigations involving possible distributional restraints.

#### FOOD

This program is directed to the investigation and prosecution of anticompetitive mergers and other antitrust violations in the food and beverage industries.

During fiscal 1986, the staff conducted several investigations in the soft drink industry. As the result of two of these, already discussed in greater detail under the "Mergers" heading, the Commission authorized the staff to seek preliminary injunctions and authorized the issuance of administrative complaints. The other



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cleaners' performance. Sunbeam Corporation, marketer of Oster brand air cleaners, was ordered not to misrepresent the ability of air cleaners to eliminate indoor pollutants. In addition, the company must have competent and reliable evidence for all future claims about any air cleaner's strength, capacity, ability to eliminate pollutants, or performance.

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reliability, capacity, ability to eliminate pollutants, or performance.  
evidence for all future claims about any air cleaner's strength, capacity, ability to eliminate pollutants, or performance.

on their heating and air conditioning bills by installing duty cyclers energy control devices. Electro Tech Manufacturing, Inc., entered into an agreement with the Commission to settle these charges, and the Commission has accepted a consent agreement subject to final approval with Electronic Systems International, Inc., to settle the charges.

The Commission also issued an administrative complaint charging that R.J. Reynolds Tobacco Co., Inc. misrepresented the purpose and results of a major government-funded study in an advertisement. An Administrative Law Judge subsequently ruled that the challenged statement on smoking and health is not subject to the Commission's jurisdiction. The judge issued an order granting the company's request to dismiss the complaint and stayed the proceedings pending a Commission ruling. Complaint counsel appealed the ALJ's ruling to the Commission.

An administrative complaint was also issued against Pittsburgh Penn Oil Co. The company was charged with misrepresenting its automotive oils, automatic transmission fluids, and antifreeze by falsely claiming the products met established standards. After the complaint was issued, the company agreed to a permanent

it tests cigarettes' tar, nicotine, and carbon monoxide content. The new procedures are designed to identify and measure accurately those cigarettes which cannot be tested satisfactorily by the current method. The Commission authorized new ratings for the tar and nicotine content of Brown & Williamson's Barclay cigarettes that have a modified filter. Brown & Williamson can use these ratings until the Commission implements the modified testing procedures or until the company changes the tar and nicotine content of the Barclay cigarettes by 20 percent or more.

Congress passed the Comprehensive Smokeless Tobacco Health Education Act of 1986 requiring health warnings on smokeless tobacco packaging and in its advertising. As the Act directs, the Commission proposed regulations concerning format and display of three mandated warnings.

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bought its "DuraSeal" asphalt-sealant franchises could expect to earn up to \$60,000 the first year. The court issued a preliminary injunction prohibiting the practices and freezing the assets of an officer of the company, so that the assets may be used for possible future consumer redress.

The Commission also filed a suit against North American Office Systems, Inc., charging that the company deceptively markets and sells photocopy supplies through a telephone "boiler room" operation. The complaint charges that, as a result, consumers have paid excessive prices for goods, have unknowingly paid hidden charges, and have suffered other injury. The Commission is seeking preliminary and permanent injunctions and refunds for customers of the company.

Moksha Wendell Smith, a defendant in the Commission's suit against Paradise Palms Vacation Club, agreed to settle charges that he misrepresented vacation timeshare interests in Ocean Shores, Washington, and Lake Tahoe, Nevada. Under the settlement, Smith would be permanently enjoined from making misrepresentations in future timeshare, real estate, or recreation program sales.

The Commission ruled that Figgie International, Inc., violated the FTC Act by representing that its Vanguard heat detectors do not provide consumers with the necessary warning to escape from most residential fires. The Commission said that claims that Vanguard heat detectors give "immediate early warning" are deceptive, and ordered the manufacturer not to misrepresent the devices' ability to provide such warning. Figgie was also ordered to notify past purchasers of heat detectors that smoke detectors give earlier warning than heat detectors in nearly all residential fires, and to include this fact in any future promotional materials.

The Commission voted to modify the Pre-Sale Availability of Written Warranty Terms Rule. The amendment will reduce the costs of complying with the Rule by providing retailers with a choice of displaying the warranty text near the product or making it readily available to any customer upon request. The modifications will ensure that consumers receive warranty information before a sale, but will encourage retailers to take a more innovative and flexible approach to warranty disclosure. Staff estimates that the changes made in the rule will reduce retailers' paperwork compliance burden by almost 3.5 million work-hours per year. In another warranty-related matter, the Commission has formed an advisory committee to develop recommendations for amending its rule on Informal Dispute Settlement Procedures. The advisory committee will use a negotiated rulemaking process to develop specific recommendations for amending the rule. These amendments will encourage wider use of informal procedures, such as

mediation and arbitration, for settling warranty disputes between businesses and consumers.

## CREDIT PRACTICES

The Credit Practices program encompasses enforcement of a variety of credit statutes that protect consumers from unlawful practices in the granting of credit, the maintenance of credit information, the collection of debts, and the operation of credit systems.

The Commission issued two consent orders related to alleged violations of the Fair Credit Reporting Act (FCRA). Foley's, a division of Federated Department Stores, was ordered to notify credit applicants when they have been denied credit on the basis of information from credit reporting agencies, and to provide the applicant with the name and address of the agency. Wright-Patt Credit Union was ordered to notify credit applicants who were denied credit because of insufficient information in their credit reports, and to give consumers the name and address of any credit bureau that provided the reports used as the basis for denying credit.

The Commission also issued a consent order for alleged violations of Section 5 of the FTC Act. Service One International Corp., a national credit-counseling service doing business as First Credit Services, was ordered not to misrepresent its ability to assist consumers in obtaining MasterCard or Visa credit cards. The company was also ordered not to misrepresent the terms or amounts of refunds it offers, and to give previous customers denied credit the option of receiving full refunds or participating in a new credit-counseling service without additional charges.

The Commission approved consent orders against six former officials of Credit Establishing Bureau charged with misleading consumers by falsely and deceptively claiming the company could improve their credit records and arrange for them to receive major credit cards. In addition, the consent orders issued against company founders Steven Hull and George Tannous require them to provide consumer redress in the form of a six-week consumer education program directed at people with credit problems similar to those of the company's clients.

Consumers will receive \$2.4 million in redress from Evans Products Co. and Evans Financial Corp. (EFC) in a bankruptcy court settlement. A complaint issued in 1985 charged that Evans and EFC deceptively and unfairly represented that they would provide buyers of thousands of pre-cut homes with guaranteed long-term mortgage loans. The companies allegedly failed to provide the promised loans, or provided the loans at higher than promised interest rates, causing economic injury to consumers and the loss of many homes.

Strawbridge & Clothier, a chain of department and discount stores,



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he could obtain home mortgages at rates substantially below prevailing market rates for potential homeowners, when, in fact, he did not have commitments for the mortgage funds at the advertised rates.

The Commission granted a request from the state of Wisconsin for an exemption from the Credit Practices Rule for transactions in which the amount financed does not exceed \$25,000. The rule is designed to protect consumers from unfair or deceptive practices by creditors regulated by the FTC, and applies to any loan or extension of credit for personal, family, or household purposes, except for real estate purchases. The Commission also granted a request from the state of New York for an exemption from the provision of the rule that pertains to cosigners. Comments were sought on a request from the state of California for an exemption from the rule's cosigner provision.

The Commission staff proposed a guide to consolidate and organize nearly 1,000 pages of informal staff interpretations of the Fair Debt Collection Practices Act. Since the Act was passed in 1977, the Commission staff has issued hundred

separate, identical order was issued against Roy B. Kelly, a former officer of the firm.

The Commission obtained a \$2.5 million settlement against Leland Industries, Inc. resolving Commission charges that Leland and related defendants misrepresented to investors crucial information about lotteries for oil and gas rights on federal lands. As part of the settlement, three Leland officers also agreed to pay \$10,000 each to reimburse part of the government's legal costs. Between 1981 and 1983, approximately 5,000 customers invested between \$4,000 and \$100,000 in such lotteries using Leland's services. Under a separate agreement, Peter LaBarrie, a former Leland salesman, is bound by provisions similar to the Leland settlement, but is not obligated to pay restitution.

In the first case the Commission has brought against allegedly deceptive investment schemes involving cellular telephone lotteries, the Commission filed a complaint in federal district court against American National Cellular Corp. The Commission obtained a temporary restraining order prohibiting the company from misleading potential investors about the chances and profitability of winning lotteries for the right to build cellular telephone systems. The Commission charged that the company failed to disclose crucial information to potential investors and misrepresented such information. The Commission has also instituted criminal contempt proceedings against three defendants, Premier Cellular, Inc., Charles Michael Fischer, and Gerald Woods, charging violations of court orders, including asset freeze provisions.

Another application-preparation service, The Cellular Corp., agreed not to misrepresent the sale of cellular telephone license application services in a stipulated injunction filed in federal district court. The Commission had charged the company, two related companies, and three individuals with misleading potential investors about the chances and profitability of winning lotteries for the right to build cellular telephone systems. The defendants must establish a fund of \$400,000 to pay for the preparation, completion, and filing of applications for the FCC's cellular telephone lottery. In addition, defendant Kent Maerki must pay a \$100,000 fine within one year. The Commission accepted a consent agreement in which Albert Schneider, an officer of the Cellular Capital Corp., one of the related companies, agreed not to misrepresent the services he provides, or the chances and profitability of winning lotteries.

A complaint was filed in federal court charging Rare Coin Galleries of America, Inc., a related company, and two individuals with misrepresenting the grade and investment value of coins they have sold nationwide. The complaint alleges that the defendants significantly over graded their coins, and that many of the coins were worth substantially less than the price the customers paid for them. The court

granted the Commission's request for a temporary restraining order and asset freeze.

Michael Peter Nissen and David J. Swain, defendants in the suit against Trans-Alaska Energy Corp., were sentenced to serve 60 days in prison for violating a court order the Commission obtained to preserve assets for consumer redress. These were the first such judgments the Commission has ever won for violations of asset freeze orders arising from its cases. In addition, Nissen was placed on probation for three years and ordered to repay the \$10,000 he diverted from the redress fund. Robert A. Kobek, another defendant in the suit, agreed to a stipulated permanent injunction and final order to settle charges against him. A fourth defendant, Alan F. Goda, pled guilty to criminal contempt charges and will pay \$50,000 into a restitution fund for violating the court-imposed asset freeze.

The Commission issued a Notice of Proposed Rulemaking and convened public hearings on the Retail Food Store Advertising and Marketing Practices Rule, which requires that retail food stores have any advertised item in stock and readily available at or below the advertised price. Under the proposed amendments, grocers would be able to comply with the rule by offering rain checks or substitutes of comparable value when they run out of advertised items, or by advertising that the items are available only in limited quantities.

The Commission terminated the Health Spa Rulemaking and directed its staff to explore additional law enforcement initiatives in this area.

## ENFORCEMENT

The Enforcement program includes enforcement of Commission orders and several statutes and Commission rules addressing consumer protection issues. The primary goal of the program is to promote a free and competitive market in which consumers can obtain and make use of truthful purchasing information and benefit from fair market practices.

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violated the rule by failing to send consumers

industry on major Commission decisions, programs, statutes, and rules. Increased information about goods and services assists consumers to make informed choices and encourages competitive business practices. The Commission considers the consumer and business education program to be a cost-effective way of obtaining compliance with the law.

In cooperation with the American Association of Retired Persons (AARP), the Office developed and co-produced television video features promoting the consumer booklet, *Money Matters*. The booklet suggests how to select and use professionals who provide financial services, including attorneys, financial planners, real estate br

In the consumer protection area, economists provided estimates of the benefits and costs of alternative policy approaches. Potential consumer protection actions were evaluated not only for their immediate impact, but also for their longer-run effects on price, product variety, and overall consumer welfare.

Although the FTC is primarily an enforcement agency, it is also charged with analyzing data and publishing information about the nation's industries, markets, and business firms. Much of this work is undertaken by the Bureau of Economics. In 1986, economists conducted a number of studies on a broad array of topics in antitrust, consumer protection, and regulation. Research economists also provided Commissioners with economic advice in pending matters.

ANTITRUST

Economists participated in all investigations of alleged antitrust violations and in the presentation of cases in support of complaints. Economists also advised the Commission on all proposed antitrust actions. These activities absorbed the bulk of the Bureau's resources assigned to support directly the Commission's antitrust responsibilities.

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and Competition Advocacy Program, contributing to several staff

capital improvements, enhanced use of contractual services, elimination of redundant or unnecessary procedures, and the strengthening of existing programs.

The agency's planned space consolidation was completed in 1986 within the \$3.8 million appropriated by Congress for this purpose. A lease was signed with the management of the 601 Pennsylvania Avenue Building in Washington, D.C. for sufficient space to permit the long-awaited consolidation of staff activity previously located in four satellite buildings. Substantial effort was directed toward developing physical layouts for office and joint use space, preparing moving contracts (including the technical aspects for moving various types of equipment) and planning and coordinating the actual move of nearly one half the Washington, D.C. staff. This included the planning for and installation of a new and enhanced telecommunication system that is operated by a newly acquired digital switch (PBX).

Additionally, the General Services Administration delegated operational and maintenance authority and responsibility to the FTC for the Headquarters Building beginning July 1, 1986.

The agency used approximately 1107 workyears and spent \$62.7 million for the fiscal year. The workyears used were 7.8 percent fewer than in fiscal 1985. Careful control of funding levels and workyears were once again necessary to accomplish objectives with decreased resources.

This year's human resource program was focused on developing and retaining employees. Specific human resource initiatives included an extensive training program for our secretaries; a retirement planning program; an individual computer analysis of each employee's benefits; and the appointment of an employee assistance counselor to provide short term counseling or referral to an appropriate agency for longer term counseling.

Efforts were continued to integrate EEO principles and policy into the human resource management process. As part of these efforts, the Minority Advisory Committee and management played a major role in planning and developing more focused affirmative employment initiatives. These initiatives included refinement in performance management training, with emphasis on the importance of feedback and the link between EEO and effective performance management. Substantial efforts were also initiated to expand development opportunities, such as rotational assignments. In addition, the Commission placed more emphasis on establishing systems for monitoring progress and resolving problems. Some of these initiatives included refinement of data reflecting employment trends and accomplishments and strengthening guidance and management's accountability in problem-solving activities.

Regional offices continued to function as miniature FTC's in fiscal year 1986. Emphasis was on the implementation of a broad range of enforcement, competition advocacy, and outreach activities.

The Executive

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PART II (Investigative Stage)  
CONSENT AGREEMENTS ACCEPTED AND  
PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

Champion International Corp.

The Commission accepted a consent agreement with Champion International Corp. settling antitrust charges stemming from champion's acquisition of St. Regis Corp. According to the proposed complaint accompanying the agreement, the acquisition could have reduced competition in the West Coast liner board market. The agreement required Champion to divest a St. Regis liner board mill in Tacoma, Washington, and not to acquire for 10 years any interest in any company involved in manufacturing liner board in the West Coast market without prior Commission approval. The consent agreement was later withdrawn by the Commission.

Max Factor & Co.

Max Factor & Co. agreed to make promotional allowan

also agreed not to make any representations contrary to that statement.

Cosmo Communications Corp.

Cosmo Communications, a manufacturer and seller of telephones, agreed not to misrepresent the capabilities of its phones and to disclose that its touch-pulse telephones do not generate tones. Cosmo's push-button telephones look like touch-tone but produce only pulses like rotary dial telephones. The agreement prohibits the company from misrepresenting the compatibility of its telephones with tone-accessed services, including alternative long-distance service and home-accessed computer services.

GCS Electronics, Inc.

GCS Electronics agreed not to, make misleading claims about the capabilities of its portable Mark II Executive Phone. GCS has agreed not to misrepresent the range of radiotelephone communication devices or their ability to transmit and receive messages simultaneously. The company is also prohibited from making range-related claims using phrases such as "up to," unless the range can be obtained by an appreciable number of consumers.

Viobin Corp.

Viobin, a subsidiary of A. H. Robins, agreed not to make false and unsubstantiated claims about its wheat germ oil products. Under the agreement, Viobin must inform consumers that the benefits claimed in its long-running advertising campaign are not supported by scientific evidence. Both companies are prohibited from misrepresenting the ability of their wheat germ oil products to improve physical fitness or performance.

PART II (Investigative Stage)  
CONSENT ORDERS ISSUED

MAINTAINING COM'age)

ca Inc. (IIAA) and the Independent Insurance Agents Association of Montana agreed not to encourage their members to refuse to deal with companies based on the companies' sales policies. In a draft complaint accompanying the order, the Commission alleged that IIAA and its Montana affiliate attempted to prevent The Hartford from bypassing Hartford agents and selling homeowners and automobile insurance directly to members of the American Association of Retired Persons. In a related complaint and order, the FTC charged that the Independent Insurance Agents and Brokers of California urged its members to refuse to deal With Reliance Insurance Co. when Reliance, through its United Pacific Co. subsidiary, developed a plan to sell low-priced auto insurance directly to consumers. The California group agreed not to urge its members to take action against insurance companies who use direct marketing.

#### Lithium Corp. of America

Lithium Corp. of America (LCA) was ordered not to enter into any agreement fixing prices or restrict f TD 0 Tc ( ) Tj 1



interfere with its members' use of truthful, non-deceptive advertising about optometric goods and services.

Michigan Watchmakers Guild

Under a consent order the Michigan Watchmakers Guild agreed

um Corp. in settlement of charges that Occidental's proposed acquisition of MidCon Corp. would violate section 7 of the Clayton Act. The complaint accompanying the agreement alleged that the originally proposed \$3 billion acquisition could substantially

was ordered to tell credit applicants when it uses information from credit reporting agencies as a basis for denying credit. Under the order, Federated must also tell rejected applicants the name and address of the credit reporting agencies it contacted. The order settles issues outlined in the draft complaint that Foley's, a Federated division operating 14 department stores in Texas, repeatedly violated the Fair Credit Reporting Act when denying credit applications.

George Tannous  
James F. Herndon  
John C Anderson

Peter S. Everts  
Steven M. Hull  
Victor J. Hakim

Six separate consent orders were issued in which former officials of Credit Establishing Bureau, a credit repair clinic, were ordered not to mislead consumers with claims the company could improve their credit records and, arrange for them to receive major c

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exclude certain distributors in computing "average" distributor earnings unless he explains the exclusion.

National Energy Associates, Inc.

National Energy Associates was ordered not to falsely advertise that its duty cyclers could save consumers from 15 to 40 percent on their home energy bills. The company was also ordered not to make unsubstantiated claims for any energy-control device. Duty cyclers are devices that allegedly increase the efficiency of home heating systems. The company was ordered not to make

the service and did not receive a credit card, a notice giving them the option of receiving a full refund or participating in FCS' new credit counseling service without additional charges.

#### Sunbeam Corporation

Sunbeam Corporation, marketer of Oster brand air cleaners, agreed not to misrepresent the ability of air cleaners to eliminate indoor pollutants. In addition, the company must have competent and reliable evidence for all future claims about any air cleaner's strength, capacity, speed of operation, or any other performance factors.

#### Wright-Patt Credit Union, Inc.

Wright-Patt Credit Union, one of the nation's largest credit unions, agreed to tell consumers who are denied credit because of insufficient information in their credit reports, that the adverse action was taken on the basis of such information. The agreement requires the company to comply with the Fair Credit Reporting Act.

#### Wyoming Board of Podiatry

The Wyoming Board of Podiatry agreed not to prohibit its members from truthfully advertising their services and products. Under the agreement, the board cannot restrict or discourage podiatrists from truthfully advertising their goods and services by adopting rules or policies prohibiting such advertising, by suspending or revoking a podiatrists's license as a result of such advertising, or by declaring such advertising illegal or unethical. This agreement is the first Commission agreement to settle charges of anticompetitive conduct with a state board of podiatry.



firm in the industry and could remain so for a substantial period of time. The Commission alleged that the acquisition could also make it possible for PPG and the remaining firms in the industry to collude, resulting in the possibility of lower output, higher prices or both.

#### CONSUMER PROTECTION MISSION

##### Electro Tech Manufacturing, Inc.

The Commission's complaint charged that Electro Tech Manufacturing falsely advertised that consumers could save 20 percent or more on heating and air conditioning bills by installing a duty cyclers. Duty cyclers are devices that allegedly increase the efficiency of home heating and cooling units by causing the thermostat to turn the units on and off more frequently than it would ordinarily. The complaint further alleged that the company claimed to have reliable tests to substantiate energy savings claims, when it did not.

##### Electronic Systems International, Inc.

The Commission's complaint alleged Electronic Systems International falsely advertised that consumers could save from 20 to 40 percent on their home energy bills by installing duty cyclers.

PART III (Adjudicative Stage)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

Detroit Auto Dealers Association

Fifty Detroit-area motor vehicle associations, dealerships, or dealers, from the more than 200 respondents identified in the complaint issued by the Commission, agreed to settle charges that they had illegally conspired not to advertise in the classified sections of newspapers or to advertise any vehicle prices. The consent agreements settled Commission charges that the advertising restrictions injured consumers by illegally reducing competition among the dealers. Such restrictions can reduce consumers' access to important information and increase dealers' ability to maintain higher prices. The dealerships, associations, and individuals agreed not to restrict or conspire to restrict any motor vehicle advertising in the classified section of any newspaper or the advertising of any price, term, or condition of sale of any motor vehicle. Litigation on other parts of the Commission's complaint continued against the respondents who settled the advertising charges, as well as against the other respondents named in the complaint.

Roswil, Inc.

Roswil, Inc. agreed to refrain from engaging in concerted action that restricts the gathering or reporting of comparative grocery-price data. The consent agreement settled charges that the grocers conspired to suppress price competition and deprive consumers of comparative price information. According to the complaint, Roswil and two other area grocers had agreed to prevent an independent firm from conducting comparative price surveys in their Springfield, Missouri stores unless the survey firm bought the items it checked. The Commission alleged that the requirement to pay for items whose prices it checked made the survey prohibitively expensive, and the grocers' concerted action led to the termination of the program. Under the consent order Roswil may not: require price checkers to buy the surveyed items; deny price checkers the same access to Roswil's stores as customers; or coerce any price checker, publisher or broadcaster into discontinuing price reporting. Roswil must also take several steps to increase the likelihood price surveys will be resumed in Springfield. According to the proposed order, the



company must reimburse the local cable television station up to \$1,000 of its costs if it decides to broadcast a comparative grocery-price program. Roswil must also notify the public that such a program is being aired.

#### CONSUMER PROTECTION MISSION

##### Buckingham Productions, Inc.

Buckingham Productions, marketers of the "Rotation Diet" and several other weight-reduction plans, agreed not to misrepresent the effectiveness of its programs, products, and services. The agreement also restricts Buckingham's use of endorsements and requires that it disclose any relevant relationship between an endorser and the company.

##### Electronic Systems International, Inc.

Electronic Systems International, maker of "Savit" duty cyclers, agreed to stop making allegedly unsubstantiated efficacy claims about its products and services. Duty cyclers are devices that allegedly increase the efficiency of home heating and cooling units by causing the thermostat to turn the units on and off more frequently than it would ordinarily. Duty cyclers retail for \$400 to \$500.



#### MidCon Corp.

MidCon Corp. agreed to sell its interest in the Acadian Gas Pipeline System, which serves markets in Louisiana and Texas, to settle charges that its acquisition of United Energy Resources, Inc. would increase concentration in the transportation and sale of natural gas in the Baton Rouge-New Orleans corridor of Louisiana. According to the complaint, MidCon and United Resources are competitors; MidCon, through its 50 percent interest in the Acadian system, transports natural gas to users in the Baton Rouge-New Orleans corridor; United Resources owns an extensive gas transmission system serving the same area. In addition to the required divestiture, the order prohibits MidCon from acquiring, without prior Commission approval, any interest in additional pipelines that sell a substantial volume of natural gas in the Baton Rouge area for a period of ten years.

#### Oklahoma Optometric Association

The 300 member Oklahoma Optometric Association was ordered to cease restricting its members from operating franchises and branch offices and from advertising truthfully their products and services. The order settled charges that the association adopted rules that unlawfully restrained competition among its members and deprived consumers of the convenience and potential cost savings benefits of retail optical franchises and branch offices in their purchases of optometric services, optical goods and services. The association represents the interests of approximately 90 percent of the practicing optometrists in Oklahoma.

#### Rhode Island Board of Accountancy

The Rhode Island Board of Accountancy was ordered not to prohibit accountants in the state from seeking business by truthful advertisements or other non-deceptive forms of solicitation. The consent order settled Commission charges that the board's regulatory practices deprived individuals and businesses of information about accountants' services, unreasonably restrained competition among accountants and injured consumers. The board also allegedly prevented accountants from offering to provide services to other accountants' clients. The board, which is the sole licensing authority for certified public accountants (CPAs) and public accountants (PAs) in the state, was ordered to notify all state-licensed CPAs and PAs and applicants for licenses about the agreement. However, the

board may continue restrictions authorized by the state legislature against dishonest or fraudulent practices and against persons who falsely identify themselves as accountants. The order permits the board to seek state legislation concerning the practice of accounting.

#### Wallcovering Trade Associations

The Commission issued orders against National Decorating Products Association Inc. (NDPA), of St. Louis, Mo.; Eastern Decorating Products Association, of Westport, Conn., NDPA's New England regional affiliate; and Decorating Products Dealers of Greater New York Inc., a local affiliate of NDPA based in Bayside, N.Y., settling charges that the groups conspired to fix prices of wallharm2160identif

energy-savings capability of their "Energy Computer" duty cyclers. The order settles charges that the company made allegedly false claims that consumers could save 20 percent or more on their heating and air conditioning bills by installing the duty cyclers. Electro Tech sold its duty cyclers for approximately \$400.

Pittsburgh Penn Oil Co.

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electrical subcontracting work. He ordered The Electrical Bid Registration Service

R. J. Reynolds Tobacco Company, Inc.

An Administrative Law Judge dismissed a complaint against R. J. Reynolds Tobacco Company ruling that its statement on smoking and health was an editorial and therefore not subject to the Commission's jurisdiction. The Commission's complaint charged that the company misrepresented the purpose and results of a major government-funded study in an advertisement. The complaint also alleged that in light of claims made in the ad, the omission of certain information about the

## Hospital Corporation of America

The Commission ordered Hospital Corporation of America (HCA) to divest two hospitals and one hospital management contract in the Chattanooga, Tennessee, area on the ground that the acquisitions may substantially lessen competition in the general hospital market in that area. The order requires that, within 12 months, HCA divest North Park Hospital and Diagnostic Center Hospital, both in Hamilton County, Tennessee and any medical office buildings associated with the hospitals. The divestitures must be approved by the Commission and must be to different acquirers. HCA must also, within a year, terminate its management contract with Downtown General Hospital, also in Hamilton County, and divest related real estate to a Commission-approved acquirer.

## Superior Court Trial Lawyers Association

The Commission ruled that the District of Columbia Superior Court Trial Lawyers Association conducted an illegal boycott to coerce the city government into raising the fees it paid for their legal services. The Commission ordered the group not to conduct such a fee-related boycott in the future. An Administrative Law Judge had ruled that while the association had engaged in an illegal boycott to raise prices, special circumstances in the case warranted dismissing the complaint. The association's members are private lawyers who compete with each other to represent indigent criminal defendants

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## ORDER MODIFICATIONS

## MAINTAINING COMPETITION MISSION

## Allied Corp.

The Commission modified a consent order issued in 1980 concerning Allied Corp. and its subsidiary Bendix Corp. by deleting a requirement for prior approval of acquisitions of any interest in companies that make or sell certain machine-tool products. The order settled charges that Bendix's acquisition of Warner & Swasey Co. had anticompetitive effects in several areas of machine-tool production. Allied Corp. became subject to the order when it acquired Bendix in January 1983. The Commission ruled that the provision was no longer necessary since Bendix and Allied have discontinued the manufacture or sale of the machine-tool product referred to in the order.

## American Medical International, Inc.

The Commission approved a request by American Medical International, Inc. (AMI) to modify an order issued in 1984 requiring the divestiture of French Hospital in San Luis Obispo, California. The Commission modified the order so that AMI can retain a security interest in French Hospital until the acquirer finishes payment. However, AMI must redivest the hospital if it is reacquired under that security interest. The modified order also does not require AMI to divest the stock of French Hospital Corp., which ran the hospital, or the data processing equipment that AMI installed in the hospital.

## Atlantic Richfield Co.

The Commission set aside a 1979 order which settled a complaint issued in 1976 challenging Atlantic Richfield's (ARCO) acquisition of Anaconda Copper Co. The original order required the company, among other things, to divest five Anaconda copper interests, including Anamax. ARCO has divested the other properties. The Commission said that the Anamax divestiture was no longer necessary because of developments in the copper industry.

## Atlas Supply Co.

The Commission denied a request from Atlas Supply Co. and its parent companies to set aside a 1951 order but modified the order

by deleting one provision. The deleted provision restricted the joint purchasing activities of Atlas and its parent companies. The Commission denied the request to set aside portions of the order which require the companies to comply with the Robinson-Patman Act. Those provisions prohibit the companies from obtaining illegal allowances or discriminatory prices in their purchase of automotive products.

Flowers Industries, Inc.

The Commission modified a 1983 consent order

**U.S. Steel Corp.**

The Commission modified an order issued in 1924 with U.S. Steel Corp. by deleting a requirement that the company include specific price and transportation information on its contracts and invoices. The order settled a complaint that was issued in 1921 charging that U.S. Steel's pricing methods artificially increased prices.

**CONSUMER PROTECTION MISSION****American Home Products Corp.**

The Commission modified an order with American Home Products removing some restrictions on the company's advertising for Preparation H. The Commission noted that the Food and Drug Administration, which has jurisdiction over labeling, has proposed allowing companies to make specified relief claims for hemorrhoids or their symptoms on package labels. The FTC modified its order to allow the company to use in its advertising any claims that the FDA has tentatively approved.

**Beecham, Inc.**

The Commission modified an order with Beecham concerning representations regarding Proslim's value as a weight reduction product. The modification terminates a perpetual obligation that the company file advertising and labeling with the Commission at six-month intervals. The Commission concluded that it was in the public interest to relieve Beecham of the costs of compliance with this provision.

**Chesebrough-Pond, Inc.**

The Commission modified an order with Chesebrough-Pond prohibiting the company from making several specific claims about Vaseline's use and effectiveness. The modifications will allow the company to claim that Vaseline provides a protective barrier to the skin and is effective for relief of itching. The Commission modified another order provision to allow the company to compare Vaseline's effectiveness to that of other products as long as it has a reasonable basis for such comparison.

**General Mills Fun Group, Inc.**

The Commission released General Mills from its responsibilities

under an order issued in 1979 prohibiting misrepresentations in advertising by its toy producing subsidiary, General Mills Fun Group. The Commission stated however that the order remains binding on the subsidiary's successor, Kenner Parker Toys, Inc. General Mills spun off the toy producing subsidiary and stated it had no intention of reentering the business. Kenner Parker Toys became an independent business in November 1985.

National Talent Associates, Inc.

The Commission modified a consent order with National Talent Associates by eliminating some information the Commission considers less significant from the disclosures National Talent makes to prospective clients. The consent order permanently prohibits the company from misrepresenting its

## Occidental Petroleum Corp.

In a separate matter, the Commission also authorized its staff to file an enforcement action under section 7A(g)(2) of the Hart-Scott-Rodino Act to seek a temporary restraining order and a preliminary injunction preventing Occidental Petroleum from proceeding with its cash tender offer for MidCon Corp. shares until it complied with the HSR second request and the extended HSR waiting period expired. Prior to filing the injunction action the Commission accepted a consent agreement with Occidental Petroleum that resolved the matter.

## PepsiCo, Inc.

The Commission authorized its staff to seek preliminary injunctions to block PepsiCo, Inc.'s proposed acquisition of The Seven-Up Co. The Commission alleged the proposed acquisition could reduce competition in the distribution and sale of carbonated soft drinks in the United States. Prior to the filing of the injunction action PepsiCo abandoned its intention to acquire Seven-Up.

## PPG Industries, Inc.

The Commission authorized its staff to seek a preliminary injunction to, prohibit PPG Industries, Inc.'s \$41.8 million acquisition of Swedlow, Inc. The Commission alleged the merger could substantially reduce competition in the manufacture and sale of aircraft transparencies: windows, windshields and canopies used in private, commercial and military airplanes and helicopters. (q) Tj 5.64 0 TD 0.0286 Tc Tj 4.92 1.8 0 T

FEDERAL TRADE COMMISSION

brought against allegedly deceptive investment schemes involving cellular telephone lotteries. The federal court ordered a temporary restraining order and preliminary injunction against defendants and froze the defendants' assets and appointed a temporary receiver.

Cassette Library, Inc.

The Commission obtained a settlement with Cassette Library providing refunds of up to \$200 to certain customers, and prohibiting the company from misrepresenting any merchandise or service it offers. The complaint charged that Music Library Associates, Inc.

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issued a preliminary injunction and froze the assets of a company officer. The complaint charges the company with falsely representing that consumers who bought its "DuraSeal" asphalt-sealant franchises could expect to earn up to \$60,000 in their first year of operation.

Engage-A-Car Services, Inc.

The Commission filed a complaint seeking a temporary restraining order, an asset freeze, preliminary and permanent injunctions and consumer redress against Engage-A-Car Services. The complaint charged seven defendants with allegedly misrepresenting the profitability of their auto leasing franchises and the services they offered potential franchisees. The Commission estimates consumer injury from these practices at approximately \$24 million. The federal court granted a temporary restraining order against the defendants and an order freezing the assets of one corporate defendant and the four individual defendants to preserve the possibility of restitution to consumers, which could include refunds of franchising fees.

Evans Products Co.

The Commission obtained a bankruptcy court settlement in this matter. Under the settlement, several thousand eligible buyers of pre-cut homes will receive \$2.4 million in redress. The Commission had charged that the defendants in the matter had misrepresented the quality of their products and the services they offered potential franchisees. The Commission estimates consumer injury from these practices at approximately \$24 million. The federal court granted a temporary restraining order against the defendants and an order freezing the assets of one corporate defendant and the four individual defendants to preserve the possibility of restitution to consumers, which could include refunds of franchising fees.

tion program to improve automobile credit advertisers' compliance with the Truth in Lending Act.

Green Tree Acceptance, Inc.

The Commission filed a complaint against Green Tree Acceptance for allegedly violating federal credit laws by not telling consumers why they were denied credit. The Commission asked the court to require the company to pay civil penalties, to prohibit future violations of the laws and to provide correct notices to certain consumers. The company provides financing in 25 states to consumers purchasing mobile homes. The complaint charged the company with violating the disclosure requirements of the Equal Credit Opportunity Act and the Fair Credit Reporting Act.

Hopkins Dodge Sales, Inc.

The Commission sought a permanent injunction and civil penalties against Hopkins Dodge Sales. The FTC complaint charged that the automobile dealer allegedly violated federal credit laws by giving consumers incomplete credit information in its ads. The Commission also alleged that the dealer failed to bring its advertising into compliance with the Truth in Lending Act after being contacted by the FTC staff.

Intra-Medic Formulations, Inc.

The Commission obtained a permanent injunction against Intra-Medic Formulations, its president, and three wholly-owned subsidiaries. The complaint charged the four mail order companies with making false and deceptive claims about their weight-control and baldness-cure products.

Leland Industries, Inc.

The Commission obtained a settlement against Leland Industries in which consumers will share \$2.5 million in refunds. In 1983, the Commission sought an injunction based upon charges that defendants allegedly misrepresented important information to investors in lotteries for oil and gas rights on federal lands. Approximately 5,000 customers invested between \$4,000 and \$100,000 in such lotteries using Leland's services.



Moksha Wendell Smith

The Commission obtained a permanent injunction against Moksha Wendell Smith, a defendant in an  
action seeking reliefMoks    o    o    o    o    o    o    o    o    o    o    o    o

Rare Coin Galleries of America, Inc.

The Commission filed a

Thermo Products Company

The Commission filed a complaint seeking civil penalties and an injunction against Thermo Products Company for violating the "R-Value" Rule. The complaint charged that the company overstated the amount of protection its home insulation provided.

Trans-Alaska Energy Corp.

The Commission obtained criminal contempt convictions against three Trans-Alaska Energy defendants, Alan F. Goda, David J. Swain, and Michael Peter Nissen, for violating a federal court order aimed at preserving assets

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possibly as much as \$100,000 on a \$9,600 investment was promised, consumers did not receive any return on their investments. Volcano Mining has never processed any ore itself, despite its claims that it did,

recent year or the percent of distributors who actually achieved the results claimed.



Leland Industries, Inc.

Three Leland officers, Stephen M. Thompson, H. Joel Stanley and Paul R. Colavecchi, agreed to pay \$10,000 each in a settlement in which consumers share \$2.5 million in refunds. In 1983, the Commission sought an injunction based upon charges that defendants allegedly misrepresented important information to investors in lotteries for oil and gas rights on federal lands. Approximately 5,000 customers invested between \$4,000 and \$100,000 in such lotteries using Leland's services.

Mesa Realty, Inc.

Mesa Realty agreed to a \$30,000 civil penalty consent decree to settle Commission charges that it violated the Truth In Lending Act by failing to disclose required information in its ads for home mortgages. The Commission took this action as part of its real estate credit advertising project, designed to increase compliance with federal credit laws.

National Talent Associates, Inc.

National Talent Associates agreed to pay a \$150,000 civil penalty to settle charges they violated a consent order issued in 1975. The company was charged with misrepresenting its ability to place children in paid modeling positions.

Network Marketing, Inc.

Network Marketing, a nationwide mail-order marketer of watches, paid a \$45,000 civil penalty to settle charges it violated the law by failing to ship merchandise on time, by not providing timely refunds to consumers, and by not honoring its warranties in a timely manner.

New York Feather Co., Inc.

New York Feather agreed to pay \$100,000 in civil penalties to settle charges it violated both federal law and a Commission order issued in 1951 against the company by misrepresenting the amount of down filling in its pillows. This consent resulted from the ongoing effort to ensure compliance with the Commission's feather and down industry guidelines.

## Northern Feather International, Inc.

Northern Feather International agreed to pay \$100,000 in civil penalties to settle charges it misrepresented the down and feather content of its pillows and comforters in violation of an order issued in 1956. Northern Feather was charged with labeling and its products as containing down or a specific percentage of down, when the products actually contained substantially less down than stated.

## Strawbridge and Clothier

Strawbridge and Clothier, a chain of department stores, agreed to pay a \$70,000 civil penalty to settle charges it violated the Equal Credit Opportunity Act by failing to tell applicants why it turned them down for credit. The complaint also alleged that the company violated the Fair Credit Reporting Act by failing to provide all credit applicants it rejected in 1984 with the notices required by the statute.

## Tuff-Tire America, Inc.

Ross Artus, president of Tuff-Tire America, agreed to pay \$13,000 in civil penalties to settle charges he misrepresented his tire sealant franchises in violation of the Franchise Rule and the FTC Act. Under the consent decree, Artus agreed to comply with the Franchise Rule and to have a reasonable basis for any future earnings claims. He further agreed not to misrepresent the performance of any tire sealant product.

## SUPREME COURT DECISION

## Indiana Federation of Dentists

The Supreme Court of the United States reinstated a Commission decision finding that the Indiana Federation of Dentists engaged in unlawful anticompetitive practices. The Court held: "The factual findings of the Commission regarding the effect of the Federation's policy of withholding X-rays are supported by substantial evidence, and those findings are sufficient as a matter of law to establish a violation of § 1 of the Sherman Act, and, hence, § 3 of the Federal Trade Commission Act. \* \* \* The judgment of the Court of Appeals is accordingly reversed."





Michael Lynch, September 1986. These experiments were designed to determine conditions under which sellers would develop reputations that would cause them to supply high quality goods despite the fact that buyers are unaware of quality before purchase. The author concluded that if sellers could not develop reputations for poor quality, then the market would consist entirely of poor quality products. The need to attract repeat customers is not sufficient incentive for the seller to build a reputation for supplying good quality, while the imposition of a requirement for truthful advertising or labeling is sufficient.

#### WORKING PAPERS

Economic Working Papers are preliminary, published work products of the Bureau of Economics, resulting from original research by Bureau staff, either in connection with ongoing agency activities or independent analyses. The papers usually entail relatively minor allocations of official time.

On the Extent of the Market: Wholesale Gasoline in the Northeastern United States, (W1ited d TD 0.0.28 0 TD 0

The "Steiner Effect": A Prediction from a Monopolistically Competitive Model Inconsistent with any Combination of Pure Monopoly or Competition, (WP #141), Michael Lynch, August 1986.

Market Definition CoUnd

The Commodity Composition of U.S. Intra-Firm Exports, Anita M. Benvignati, December 1985.

Looking for Rivalry in Structure Performance Studies, David R. Ross, October 1985.

Does Firm Size Affect R&D Intensity?, Wesley M. Cohen and David C. Mowery, December 1985.

Purposive Diversification of R&D in Manufacturing, John T. Scott and George A. Pascoe Jr., January 1986.

PIMS and the FTC Line of Business Data: A Comparison, Cheri T. Marshall, February 1986.

Adjusted Concentration Ratios in Manufacturing, 1972 and 1977, Leonard W. Weiss and George A. Pascoe Jr., July 1986.

Collusion Versus Market Share, Len Nichols, Jerry L. Stevens, and Manuel L. Jose, August 1986.

#### CONGRESSIONAL TESTIMONY AND COMMENTS

During 1986, the Commission and its staff was requested by both houses of Congress to provide testimony related to several different subject areas. The testimony and written comments analyzed the impact and implications of 9 separate pieces of proposed legislation.

#### HOUSE

Commission testimony delivered by Anne Fortney before the House Banking, Finance and Urban Affairs subcommittee on Consumer Affairs and Coinage. The testimony opposed H.R.237, which sought to repeal the attorney exemption of the Fair Debt Collection Practices Act, and recommended instead that Congress clarify the extent of the exemption.

Staff testimony before the House Subcommittee on General Oversight and the Economy opposing H.R.3824, the "Motor Fuel Sales Competition Improvements Act of 1985." The testimony pointed out that the proposed statutory alteration of existing gasoline supply contracts and vertical divorcement of retail gasoline stations by wholesale dealers would increase fuel distribution costs,

eliminate legitimate price competition, and raise the prices of motor fuels to consumers.

Commission



Commission preheating brief to assist the DOC in determining the size of dumping margins for dynamic random access memory semiconductors of 256 kilobits and above imported from Japan. The brief recommended that DOC use actual sales prices in Japan rather than an estimate of Japanese production costs to make its final dumping margin determination.

Commission brief following the Post-Conference Brief the Commission filed with the International Trade Commission on June 12, 1986 to assist the ITC in making its preliminary finding of injury to the U.S. softwood lumber industry from the importation of softwood lumber from Canada. The brief to the DOC offered a legal and economic analysis for application of the countervailing duty statute and concludes that various Canadian government practices are not subsidies to Canadian lumber producers that justify imposing a U.S. tariff.

#### DEPARTMENT OF ENERGY

Commission comments for the DOE's annual report to Congress regarding utilities' financing, supply, and installation activities in connection with the Residential Conservation Service Program. The comments reported the Commission's review of two utility waiver petitions and its activities concerning regulated utility diversification.

#### FEDERAL COMMUNICATIONS COMMISSION

Staff comments in the FCC proceedings concerning reimposition of a rule requiring cable systems to carry all local television stations. The reply comments recommend that the FCC not reimpose a mandatory carriage rule and seek repeal of the compulsory license.

#### FEDERAL ENERGY REGULATORY COMMISSION

Staff comments in the FERC proceedings on the regulation of electricity sales for resale and transmission services. The comments encouraged FERC to urge or require the use of marginal cost pricing in the wholesale market rather than average cost pricing under current regulations. The comments also suggested that FERC persuade states to implement peak load or marginal cost pricing in setting retail rates.

Commission preheating brief to the ITC on the electric shaver escape



no injury to domestic softwood lumber producers resulting from Canada's stumpage fee systems.

#### NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Staff comments on NHTSA's proposal to change the average fuel economy standard for automobiles manufactured in model years 1987 and 1988. The comments described the substantial short-term costs to society of meeting the statutory goal of 27.5 miles per gallon and recommends that NHTSA retain the current standard of 26 miles per gallon.

#### POSTAL RATE COMMISSION

Staff comments to assist the PRC in its study of the subsidization of preferred classes of mail. The comments pointed out that the current pricing policy for preferred mail encourages excessive use of subsidized mail services and leads to an inefficient allocation of resources.

#### STATES AND THE DISTRICT OF COLUMBIA

##### Alabama

Staff comments to the Alabama House of Representatives on its proposed Funeral Bill, which would allow only licensed funeral establishments to sell funeral goods and services. The comments discussed the ways in which the legislation's restrictions could harm consumers by impeding the development of the funeral industry.

## Arizona

Staff comments to the Arizona Board of Optometry supporting the Board's plan to adopt a regulation to permit optometrists to practice in retail stores and other businesses. The comments, however, objected to other proposed regulations that would prohibit optometrists from paying referral fees or splitting fees with others, which might encourage the development of alternative health-care delivery systems, such as health maintenance or preferred provider organizations.

## District of Columbia

Staff comments to the D.C. City Council on a bill that would impose strict licensing requirements on nurse-anesthetists, nurse-midwives and other similar health care providers. The bill would also establish specific guidelines for the collaboration of such nurses with doctors. The comments stated that staff favors competition among all health care providers because consumers potentially pay lower prices and receive better service.

Staff comments to the D.C. City Council on the proposed "Wine, Beer and Spirits Franchise Act of 1986." The comments criticized the bill because it would regulate the contractual relations between suppliers and wholesalers of alcoholic beverages, thereby raising distribution costs and retail prices to consumers.

## Florida

Staff comments to the Florida Board of Dentistry to assist the Board in interpreting a state statute that prohibits dentists from exploiting patients for their own financial gain by, among other things, accepting rebates or splitting fees in return for patient referrals. The comments recognized the potential conflict of interest that could arise from dentists' referrals to other practices they may partially own, but points out that such referrals could benefit consumers. In the absence of additional evidence of abuse, staff urges the Board to consider construing the Florida law to require dentists to disclose to patients their financial interests in any practices to which they refer such patients.

## Hawaii

Commission comments to the Hawaii House of Representatives

opposing H.B. 1376, which would prohibit producers, refiners, or their affiliates from establishing and operating new retail gas stations in Hawaii. The comments stated that the proposed legislation would prevent potentially efficiency-enhancing vertical integration between gasoline refining and distribution, which would raise the price of motor fuel to consumers.

Staff comments to the Hawaii State Office of the Auditor

comments discussed how the planned measure's antitrust exemption could harm competition and raise consumers' health care costs.

Staff testimony before the Chicago City Council's Committee on Local Transportation supporting a proposal that would ease entry restrictions on taxicabs, eliminate minimum fares, legalize jitney services and package deliveries, and remove limitations on shared rides. The testimony addressed the procompetitive benefits of relaxing existing taxicab regulation.

#### Indiana

Commission amicus brief to the Seventh Circuit Court of Appeals in *Lombardo, et al. v. Our Lady of Mercy Hospital, et al.*, on behalf of two osteopathic surgeons who had alleged that private physicians at a hospital in Dyer, Indiana helped to implement a policy that unfairly restricts competition by osteopathic doctors. The brief argued that the hospital's action was not exempt from antitrust scrutiny under the state action doctrine. The hospital had denied surgical privileges to plaintiffs because their training was not approved by the American Board of Surgery.

#### Kansas

Staff comments to the Kansas legislature on two measures to amend existing state laws regulating the funeral industry. The staff comments urged the legislature to apply the same regulatory standards to cemeteries and funeral homes, which are competing sellers of the same goods and services. As an alternative to trust requirements, the comments also suggest performance bonds as a means of protecting consumers without impeding competition. Finally, the comments encouraged the legislature to adopt whatever methods it deems appropriate to permit truthful pre-need solicitation of funeral, goods and services.

#### Kentucky

Commission amicus brief before the Sixth Circuit Court of Appeals in *Parker v. Kentucky Board of Dentistry, et al.*, on behalf of the plaintiff, Dr. Parker, who had advertised his areas of practice in the local yellow pages. The brief argued that because Dr. Parker's advertising is commercial speech and not misleading, the state cannot prohibit it. Additionally, the brief noted that the advertisement contained additional information that prevented it from

misleading consumers and that unnecessary restrictions on advertising

New Jersey

Staff comments to the New Jersey Senate Labor, Industry, and Professions Committee opposing a proposed bill that would prevent most hostile takeovers of New Jersey corporations. The comments noted that federal law provides adequate protection to shareholder interests in takeovers and states that such acquisitions, including hostile ones, can increase productivity and stimulate managerial excellence. The comments pointed out that the New Jersey proposal could harm shareholders by depriving them of gains they might otherwise realize through acquisitions.

New York

Staff comments to the New York State Assembly Agriculture Committee recommending that the state remove its territorial licensing restrictions on milk dealers. The comments stated that the restrictions are unnecessary to protect consumers' health and welfare and that they increase the retail price of milk.

the remainder of the report is available in the public version of the report. The report is available in the public version of the report. The report is available in the public version of the report.

See also the report on the New York State Assembly Agriculture Committee.

Texas

Staff testimony before

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