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ANNUAL  
REPORT

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

Annual  
Report  
of the

FEDERAL  
TRADE  
COMMISSION

For the Fiscal Year Ended

September 30, 1988

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LETTER OF TRANSMITTAL

May 16, 1990

The Honorable Dan Quayle  
President of the Senate  
United States Senate  
Washington, D.C. 20510

The Honorable Thomas Foley  
The Speaker of the House  
House of Representatives  
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

It is a pleasure to transmit the seventy-fourth Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended September 30, 1988.

By direction of the Commission.

Janet D. Steiger  
Chairman

FEDERAL TRADE COMMISSION  
1988 ANNUAL REPORT

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and other competition-related issues. Staff comments generally endorsed market solutions as superior to regulatory approaches. The staff also filed amicus curiae briefs in federal appellate courts concerning several major issues related to the agency's missions.

## ECONOMIC ANALYSIS

In fiscal 1988, Federal Trade Commission economists continued to make policy recommendations and to produce reports on topics of interest to the public. While direct support of enforcement, particularly antitrust, activities absorbed the bulk of the resources of the Bureau of Economics in fiscal 1988, the Bureau was also responsible for analyzing data and publishing information about the nation's industries, markets, and business firms. The Bureau conducted a number of studies on a broad range of antitrust, consumer protection and regulatory topics. This work resulted in published reports on resale price maintenance, air and trucking deregulation, state regulation of corporate takeovers, the cost of railroad regulation, the effects of hospital certificate of need laws, and other topics. These major reports provide insight into the effects of government regulation on competition and consumer welfare.

## ADMINISTRATION AND MANAGEMENT

The Commission continued to make substantial gains in office automation during fiscal 1988. The staff installed several hundred personal computers, each loaded with standard software, and printers in offices throughout the agency. Work continued on expanding the use of the Commission's "Voicemail" communications system. Numerous enhancements to the capabilities of the Commission's central computer system were completed during the year.

In the Human Resource Management area, efforts focused on improving recruitment programs for attorneys, economists, and secretaries. The Division of Personnel completed plans for a drug-free workplace and a leave sharing program, and developed a new job series and title (Federal Trade Investigator). Substantial progress occurred in ongoing Equal Employment Opportunity matters. The agency carefully managed its fiscal 1988 budget, spending \$66.2 million and approximately 986 workyears, about 2.1 percent fewer than in 1987. The Commission continued in its commitment to bolster its ten regional offices, although overall budget constraints forced the agency to defer action planned for fiscal 1988.

## MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission is devoted to preventing unfair

methods

narily under Section 13(b) of the FTC Act when the Commission deems such action appropriate to prevent violations of the antitrust laws. In fiscal year 1988, the Commission authorized nine preliminary injunction actions: American Maize/UST; Princ

merger program in fiscal 1988. In the Occidental Petroleum/Tenneco matter, Tenneco, Inc. entered into a consent agreement whereby if divestiture were ordered in the Occidental

under the Energy Policy and Conservation Act with regard to the International Energy Program by monitoring industry meetings, providing antitrust advice to other agencies of the United States government, and preparing and issuing reports on the competitive impact of the International Energy Program to the President and to Congress. The Commission also continued to fulfill its obligations under the Deep Seabed Hard Mineral Resources Act, and Industrial Fuel Use Act.

#### HEALTH CARE

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Hospital of Prince George's County, the medical staff of a hospital in Maryland agreed not to boycott or use other means of coercion to prevent the delivery of health care services by health maintenance organizations, A medical staff in Georgia, in Medical Staff of Memorial Medical Center, agreed not to deny or restrict hospital privileges to certified nurse midwives unless the staff has a reasonable basis. The fourth matter, Robert E. Harvey, M.D., concerned an allergy clinic in Texas which entered into a proposed agreement

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markets and examining proposed federal and state legislation in such markets. When requested, the Commission offered advice regarding the competitive impact of various proposals, and intervened in regulatory proposals when the Commission believed it necessary or appropriate. These advocacy activities included the areas of motor vehicle sales, motor carrier services, trucking regulation, and taxicab regulation.

The Commission continued its litigation involving the MidCon/United Energy merger, which is discussed also under the Mergers and Energy and Natural Resources headings. In that matter, an administrative law judge dismissed an administrative complaint challenging MidCon Corp.'s merger with United Energy Resources, Inc., charging that the merger would substantially lessen competition in the transportation of natural gas.

#### HORIZONTAL RESTRAINTS

Under this program, the Commission investigates industries and persons for evidence of horizontal restraints and relationships that may have the effect of raising prices, impeding entry or expansion or otherwise adversely affecting competition, and files advocacy comments to promote competition. The Commission continued to devote substantial resources to eliminating anticompetitive agreements among competitors, especially in markets for professional and health care services. In implementing its program against anticompetitive horizontal restraints, the Commission has used various means, including advocacy before regulatory agencies and state legislatures, cooperative efforts resulting in voluntary compliance, investigations, consent orders and litigation.

During fiscal 1988, the Commission's staff conducted numerous investigations of allegedly anticompetitive regulations of state licensing boards and private professional and trade associations. These investigations and other investigations involving private actions involved competition among pharmacists, veterinarians, accountants, funeral service providers, engineers, and architects.

The Commission issued two consent orders to settle charges concerning horizontal restraints in residential real estate multiple listing services. In Florence Multiple Listing Service, and Multiple Listing Service Mid County, Inc., it was charged that the services restrained competition among residential real estate brokers by placing various restrictions on members.

The Commission issued a final order requiring an optometric board to stop prohibiting truthful advertising in Massachusetts Board of Registration in Optometry, and it issued a number of consent orders or entered into proposed consent orders to prevent horizontal restraints in the health care sector. These consent matters, which are listed under the Health Care heading, include orders against a group of physicians who





avenues, including filing advocacy comments. The Commission staff has continued investigations into possible abuses of market power, including possible abuse of the patent process and other practices that may raise rivals' costs as a means to destroy competition. The Commission staff is examining additional circumstances in which nonprice predation may be an effective anticompetitive tool. Additionally, Commission staff carefully consider all complaints about alleged predatory prices.

#### DISTRIBUTIONAL RESTRAINTS

Under this program, the Commission investigates and attempts to eliminate or prevent distributional arrangements that adversely affect competition, such as anticompetitive resale price maintenance, price discrimination, and nonprice vertical restraints. During fiscal 1988, the Commission continued to investigate and initiated new inquiries into possible unlawful restraints on the distribution of goods or services in the marketplace.

The Commission staff continued to review the Fred Meyer Guides, which advise businesses regarding discriminatory advertising and promotional allowances and to monitor for violations of the Robinson-Patman Act, which prohibits discriminatory prices and promotional allowances or discounts.

The Commission obtained a consent judgment against Union Carbide Corp., a matter which is also described

filed a preliminary injunction in Illinois Cereal Mills/Elder Grain, concerning dry corn mill products; and filed a preliminary injunction in McCormick/Specialty Brands, concerning food spices. Three consent orders were issued against acquisitions in the retail grocery stores industry: American Stores/Luck Stores; Supermarket Development (Furr's)/Safeway; and Von's/Safeway.

#### EVALUATION, PLANNING AND DEVELOPMENT

This program includes general management of the Bureau of Competition, evaluation of investigational and advocacy activities, and researching and analyzing significant antitrust issues. During fiscal 1988, the Bureau continued its participation in the Commission's competition advocacy program, The Bureau staff wrote, and the Commission authorized the staff to submit several briefs, analyses, or comments in a program designed to encourage and foster competition wherever the Commission's expertise might be helpful or persuasive. These activities deal with various economic sectors, including health care marketing and delivery, certificate-of-need regulation in the health care field, dentistry, motor vehicle sales, trucking regulation, taxicab regulation, and liquor sales. For example, the Commission joined the amicus curiae brief of the United States urging the Supreme Court to construe narrowly the state action exemption in the Patrick v. Burget case. The Supreme Court generally adopted the reasoning of the government's brief.

Work has also continued on a variety of ongoing responsibilities, including evaluation of current Bureau investigations, management of the Bureau's efforts in competition advocacy, providing guidance to the public regarding Commission policies, research and analysis of significant antitrust issues, and supplying information to management on Maintaining Competition Mission activities.

#### COMPLIANCE

This program includes the Commission's efforts to assure compliance with Commission orders to cease and desist from certain conduct, orders for divestiture, and other forms of relief as well as its efforts to investigate and act against instances of noncompliance. During the fiscal year, the Commission, through the Department of Justice, filed five civil penalty complaints alleging that a total of seven corporations and three individuals had violated the premerger notification requirements of the Hart-Scott-Rodino Act by failing to comply with reporting and waiting period requirements before consummating certain stock acquisitions. In each case, a proposed consent judgment was filed simultaneously with the complaint.

Three of the cases concerned the use of an investment banking firm

allegedly to avoid filing under the act: Wickes Companies, Inc.; First City Financial Corp.,

tices, and Enforcement. These program areas are supported by the Office of Consumer and Business Education and the Economic and Consumer Policy Analysis program.

#### ADVERTISING PRACTICES

Under the Advertising Practices program, six consent orders were issued by the Commission and litigation of deceptive advertising complaints previously filed against North American Philips, Kraft, and R.J. Reynolds Tobacco Company continued.

In New Medical Techniques, a manufacturer and distributor of counter top water distillers agreed not to misrepresent the ability of its devices to provide pure water. The resulting consent order also requires that the company refrain from falsely representing that such devices are approved or endorsed by any person or organization.

In two separate complaints, the Commission alleged that a marketer and a manufacturer of artificial tanning devices had falsely claimed that their products do not pose the risk of skin aging or skin damage. The companies, Silver Group and Sun Industries, agreed to orders prohibiting them from misrepresenting the safety of their products.

A consent order against Great Earth International prohibits the company from making certain claims about its food supplements. The Commission alleged that the company falsely claimed that three of its food supplements would enable users to lose weight, build muscle, or promote healing. Jerome Milton, maker of Shane toothpaste, is required, under a consent order, to have adequate substantiation for claims of superiority in reducing plaque and efficacy in curing or alleviating gum problems associated with gingivitis and periodontitis.

A consent agreement subject to final approval would require General Nutrition to pay a total of \$600,000 for research in nutrition, obesity, or physical fitness. The money is to be divided equally among the American Diabetes Association, the American Cancer Society, and the American Heart Association. The agreement settles charges the company made false and unsubstantiated claims that a diet supplement, Healthy Greens, was effective in reducing the risk of cancer. The agreement also settles additional charges from a separate investigation that the company falsely claimed six other food supplements would promote

The marketer of Dream Away diet pills agreed to pay \$1.1 million in consumer redress because of allegedly false advertising claims that taking Dream Away would enable consumers to lose weight while sleeping and without exercising or dieting. Under the settlement, filed in federal district court, the defendants also agreed not to misrepresent Dream Away, Advanced Dream Away, or any food, drug, or device.

Three permanent injunctions were entered in federal district court in the matter of Solar America and Solar Michigan. These companies agreed not to misrepresent that their solar energy heating systems could significantly reduce residential heating fuel consumption and would pay for themselves in a short time. The Solar Michigan order also requires the company to provide refunds to consumers. Richard Hauber, the former president and founder of the Solar America, agreed not to misrepresent the savings potential of any energy-conservation product.

#### MARKETING PRACTICES

Telemarketing

would have to pay only a small fee to claim the prizes. However, the complaint alleges, in most instances the consumers won nothing of value and usually paid \$69 or \$79 in processing fees, only to receive catalogs from which they could order several small items for free. World Wide sells promotional materials, such as pens, key chains, and mugs to small businesses, with total sales of \$60 million.

Complaints were filed in federal district court against several companies that allegedly violated the Franchise Rule. Lady Foote International, a shoe store franchisor, allegedly failed to give potential investors important information about likely earnings, and misrepresenting the kind of assistance the company would provide. In settlement of the charges, Frank Fioravanti and Leon Coleman, principal officers and owners in the now defunct company, agreed to pay \$25,000 each in civil penalties. A default judgment was issued by a federal court ordering American Legal Distributors not to make any misrepresentations in the sale of distributorships of prepaid legal plans. The court also ordered defendants not to violate the Franchise Rule and to collectively pay more than \$3 million in refunds to consumers.

U.S. Music Club was alleged to have made false and misleading claims in the sale of franchises to sell discount coupons for records, cassette tapes, compact discs, video tapes, and athletic shoes. A federal court issued a temporary restraining order forbidding further misrepresentations and violations of the Franchise Rule, and also froze the defendants' assets. In addition, the Commission filed a complaint in federal court alleging that Mytel International deceptively marketed and sold photocopy supplies through a network of telemarketing sales companies. The complaint alleges that repeated misrepresentations were made in selling the supplies over the phone to small businesses and nonprofit organizations around the country.

Other actions include the Commission's issuance of a consent order against a computer company, NEC Home Electronics, settling charges it deceptively advertised the memory capacity of its desktop microcomputer.

representations and unsubstantiated claims concerning casket durability. The Commission charged Montgomery Ward & Co. with allegedly making false and unsubstantiated claims in selling its service contracts. The company agreed not to make future misrepresentations concerning service contract coverage and products' need for maintenance, adjustment, or servicing.

Five matters involving funeral homes resulted in the payment of civil penalties and consumer redress. The Crane Weiland Funeral Directors, R. N. Horton Co. Morticians, Ware Crest, Inc. and Manning Funeral Chapel agreed to pay \$30,000, \$15,000, \$10,000 and \$12,500 respectively in civil penalties to settle allegations that they violated the Funeral Rule by failing to give consumers required information. The rule requires that funeral providers give detailed and accurate information about prices and legal requirements to people who are arranging funerals. Simon Funeral Chapel, and its owner, agreed to pay a \$10,000 civil penalty and \$7,500 in consumer redress for violating the Funeral Rule by failing to give consumer required information and by charging consumers for certain services without their permission. A complaint was filed against Niday Funeral Home alleging violations of the Funeral Rule and requesting that the court order defendants to pay civil penalties and be prohibited from violating the rule in the future.

The Commission alleged that Wayne Phillips Seminars, an Arizona-based company that markets real estate investment and other financial advice materials, failed to honor its money-back guarantees. In a stipulated order and judgment settling the allegations, the company and its owner must pay refunds to consumers and are prohibited from misrepresenting their money-back guarantees. The company marketed various audio tapes, books, and other materials, sold in sets for \$50 to \$350, that promoted making money in real estate and saving money on income tax.

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The Commission granted in part and denied in part Arizona's petition for a statewide exemption from the Funeral Rule. As a basis for the partial denial, the Commission concluded that certain provisions of the Arizona law did not afford consumers a level of protection as great as the level of protection afforded by the federal law.

#### CREDIT PRACTICES

Two district court actions involving travel companies were initiated under this program. A preliminary injunction was issued by a federal court against World Travel Vacation Brokers, and a previously issued asset freeze continued. The court found that the defendants had falsely advertised a \$29 airfare to Hawaii when, in fact, they added the cost of the airfare to the cost of the accommodations.

The Commission filed a complaint in federal district court against BankCard Travel Club alleging that the company deceptively bills consumers for membership fees and fails to honor requests for promised cancellations, refunds, or credits. BankCard has approximately 400,000 members who each paid an annual fee of \$49.20, with gross revenues of approximately \$20 million.

A complaint was filed in BankCardin

The Commission obtained a temporary restraining order and asset freeze against Creative Advertising Specialty House. The California-based "marketing research" firm is charged with allegedly promising consumers a free power motorboat worth over \$1000 for responding to a market survey, and instead sending a \$70 rubber dinghy and a \$250 bill for shipping. The Commission is seeking temporary and permanent injunctions and a redress order.

The Commission filed a complaint and consent decree with Continental Transactions for violations of the Fair Debt Collection Practices Act. The complaint alleged that Continental engaged in a pattern of false representations and verbal harassment in collecting debts, disclosed consumers' debts to third parties, and ignored consumers' valid disputes. Continental agreed to cease these practices, pay a \$10,000 civil penalty and provide consumers with two notices disclosing their rights under the Act.

The Commission made allegations that Nationwide Credit Services mislead consumers by falsely and deceptively claiming the companies could improve consumers' credit records, remove bankruptcies from their credit reports, and arrange for consumers to receive major credit cards. The complaint also alleged that the companies harassed consumers who allegedly owed them money. The Commission is seeking a permanent injunction and consumer redress.

The Commission granted California an exemption from the cosigner provision of the Credit Practices Rule. The rule is designed to protect consumers from unfair and deceptive practices by creditors. Although it need not comply with the cosigner provision, California will still be covered by other provisions of the rule.

#### SERVICE INDUSTRY PRACTICES

A federal district court order was issued against nine defendants, including Atlantex Associates, a Miami-based boiler room, selling partnerships in an oil and gas drilling operation. The order requires defendants to pay \$12 million plus interest into a consumer redress fund, and prohibits them from misrepresenting the risk of the investment and the income to be gained from it.

A permanent injunction was issued against Rainbow Enzymes and three other defendants, and redress was ordered paid to consumers. The Commission had charged defendants with misleading consumers into paying \$3,000 each to participate in manufacturing a cleaning fluid for which there was no market, and also encouraging these consumers to recruit others to take part. The court ordered Rainbow Enzymes, Stanley Massie, and Jack Schaefer to pay \$4.2 million in redress to consumers. The former president of Rainbow Enzymes, Rita Mills McCoy, agreed to

pay \$15,000 into the consumer redress fund. The case against other individuals named in the original complaint is still pending.

The Commission obtained a temporary restraining order and asset freeze against three branches of Austin Galleries and two individuals. The defendants allegedly bilked consumers by selling fake Salvador Dali, Marc Chagall, and Pablo Picasso prints which they portrayed as good investments. According to the complaint, most of the prints, which were sold for between \$200 and several thousand dollars, were worth \$50 at most because they were not authentic works. The Commission is seeking a permanent injunction against any misrepresentations in the sale of artwork and to order the companies to pay redress to consumers.

A federal district court issued a preliminary injunction against a second art gallery, Federal Sterling Galleries, alleged with selling fake Salvador Dali prints which were falsely portrayed as low-risk, highly liquid investments. The court ordered default judgments against three defendants, ordering them to pay \$4,6 million in consumer redress. The gallery had sales of approximately \$5 million.

John Pace and Wayne Pederson, two former officials of Schoolhouse Coins, a nationwide telemarketer of coins for investment, have agreed not to misrepresent the value and profit potential of coins or other investments they sell. According to staff estimates, the defendants' sales of coins totaled several million dollars per year, with many customers investing between \$10,000 and \$20,000. The Commission obtained \$1 million consumer redress judgments against Pace and Pederson individually.

Preliminary injunctions were issued against defendants in the matter of Lynn Murphy & Company, involved Preliminary Injunctions in the Matter of Lynn Murphy & Company, TD 0 Tc (he Tj 14.ionshree al 35rledelTj numj 35.76m12 0 TD 0.0085

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initiate the rulemaking amendment proceeding to address whether the rule should remain in effect unchanged, or should be amended or repealed. Under the rule, funeral providers must disclose price and other information to consumers who visit the funeral home and over the telephone to people who ask.

The Commission terminated a proceeding that had been opened to examine whether to amend the Vocational Education Rule to establish certain requirements for proprietary vocational and home study schools. The Commission noted that the Department of Education had informally proposed new regulations applicable to all schools participating in the Guaranteed Student Loan Program.

Commission staff, at Congress' request, conducted a study of Medigap and specified disease and hospital indemnity insurance to determine the extent to which, if at all, unfair or deceptive acts or practices are currently being used in the sale of such insurance.

The Commission continued its participation in the nationwide databank, jointly developed with the National Association of Attorneys General, designed to help participating law enforcement officials identify and prosecute fraudulent telemarketers. During fiscal year 1988, the Council of Better Business Bureaus, the U.S. Secret Service, and the U.S. Postal Inspection Service began participating in the program. Telemarketing fraud costs consumers and businesses an estimated \$1 billion a year.

## ENFORCEMENT

Civil penalties were ordered in seven actions brought under the Enforcement program. The owners of Rocky Mountain Circulation were allegedly selling magazine subscriptions without providing the magazines and not making refunds to consumers who canceled their orders under the Cooling-Off Rule. A consent judgment requires the payment of \$20,000 in civil penalties and prohibits future violations of the rule or the making of certain misrepresentations. McCall Publishing Co. agreed to pay \$400,000 in civil penalties to settle charges it illegally billed consumers for magazine subscriptions that consumers did not expressly order, in violation of the unordered merchandise statute and Section 5 of the FTC Act.

Two companies that sell imitation perfumes nationwide, Parfums de Paris and Favorite Fragrances, were allegedly violating the Mail Order Rule by failing to make timely shipments or refunds, and by failing to send proper notices when shipments would be delayed. The companies and their president agreed to pay \$75,000 in civil penalties and to abide by the Mail Order Rule in the future.

The Commission, filed a complaint against Terralab Engineers, a Salt Lake City testing laboratory, for alleged violations of the testing and





American Bar Association on a consumer credit booklet, and with the American Numismatic Association on a consumer brochure to alert consumer about investing in rare coins. On a pilot basis, the office distributed camera-ready consumer articles in a national supplement going to 12,000 editors and received coverage in 60 newspapers.

In addition, the Office developed and distributed two business booklets, one in cooperation with the Direct Marketing Association. The Office also participated in the planning and presentation of a national newspaper business conference for advertising managers on the subject of fraudulent advertising. The conference was conducted under the auspices of American Newspaper Publishers Association and the U.S. Office of Consumer Affairs.

More than 2.3 million copies of consumer and business publications were distributed by the Commission, the Consumer Information Center, and through associations and organizations, such as the American Association of Retired Persons, whose members may have particular interest in the Commission's activities.

### ECONOMIC ACTIVITIES

The FTC's Bureau of Economics provides economic support to the agency's antitrust and consumer protection activities, advises the Commission about the likely effects of government regulation on competition, and analyzes economic events in the American economy as they relate to antitrust, consumer protection, and regulation.

In the antitrust area, the Commission's economists offered advice on the economic merits of potential antitrust actions. Situations where the marketplace performed reasonably well were distinguished from situations where the market might be improved by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding, to provide expert testimony, and to devise remedies that would improve market competition.

In the consumer protection area, economists provided estimates of the benefits and costs of alternative policy approaches. Potential consumer protection actions were evaluated both for their immediate impact and for their longer-run effects on price and product variety.

Although the FTC is primarily an enforcement agency, Congress also has charged it with the responsibility for 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 1988, the Commission's economists conducted a number of studies on a broad array of topics in antitrust, consumer protection, and regulation.



## ANTITRUST

In supporting the Commission's antitrust activities, Commission's economists participated in all investigations of alleged antitrust violations and in the presentation of cases in support of complaints. They also advised the Commission on all proposed antitrust actions. These activities consumed the bulk of the Bureau's resources. In addition, the economists conducted several studies during 1988, including reports on resale price maintenance, airline and trucking industries deregulation, state regulation of corporate takeovers, and the costs of railroad regulation.

## CONSUMER PROTECTION

In the consumer protection area, the Commission's economists evaluated proposals for full phase investigations, consent negotiations, consent settlements, and complaints. In addition, the economists routinely provided day-to-day guidance on individual matters and made policy recommendations directly to

EXECUTIVE DIRECTION,  
ADMINISTRATION AND MANAGEMENT,  
REGIONAL OFFICES

The Office of the Executive Director carries out administrative and management responsibilities for the Commission as well as providing management direction to the agency's ten regional offices. The Executive Director administers these functions through a series of divisions including Personnel, Budget and Finance, Procurement and General Services, Information Services, Automated Systems and the Library. In fiscal 1988 major management initiatives included:

REGIONAL OFFICES

The Commission extended its presence throughout the U.S. through its ten regional offices. The regional offices serve as "mini-FTCs," engaging in the full range of Commission enforcement and advocacy activity within their respective regions. They also serve a valuable "outreach" function, maintaining important contacts with state and local enforcement officials, consumer groups, and trade associations. The Commission continued its effort to bolster staffing in the regional offices, although overall budget constraints

Justice and Health and Human Services for review. A new Leave Sharing Program was developed and implemented so that all interested employees could participate.

#### EQUAL EMPLOYMENT OPPORTUNITY

The Office of EEO emphasized increased understanding of the implications of FTC policies and actions - and how employees perceive such actions. Specific EEO-Human Resource Management initiatives were established. Initiatives were designed to address specific performance management and affirmative recruitment issues and to enhance management's involvement in the complaint resolution process.

#### INFORMATION SYSTEMS SUPPORT

Significant progress was made during 1988 in improving the quality and effectiveness of the information systems and related services provided to assist the Commission and its staff in their work.

The Automated Systems Division made major improvements in office automation, central computing, and litigation support systems. Several hundred personal computers and printers were installed, each equipped with standard software (for word processing, spreadsheets, legal research, and other applications) and communications capabilities (communications software and access to a "backbone" communications network). Work continued on expanding the use of the "voicemail" system on the Commission's PBX telephone system to improve efficiency in receiving and distributing information to the public; new systems were installed in the Public Reference Branch and the Planning and Information Hotline Dispatcher Desk.

Major advances in Commission-wide central computing systems included: complete redesign of two systems using standard computer programming languages; continued progress in integrating systems that share related information; implementation of new systems to support joint federal/state enforcement efforts with respect to telemarketing fraud and liaison efforts with the Department of Justice; and making commonly used administrative information more accessible to management and administrative staff.

In response to staff's increasing need for technical assistance and service, the agency implemented a computerized tracking and reporting system to improve responsiveness. Litigation support included data analysis and programming support services for numerous investigations and litigation cases.

The Library Services Branch responded to numerous requests for reference information, computer searches on commercial databases, and interlibrary loan transactions.

several bibliographies, acquisition of

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PART II (INVESTIGATIVE STAGE)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

American Stores Co.

(See page 34).

Certain Sioux Falls Obstetricians

Eleven obstetricians in the Sioux Falls, South Dakota, area agreed not to engage in collective, coercive activities that interfere with the residency program of the University of South Dakota School of Medicine. The complaint accompanying the agreement made allegations that a conspiracy among the doctors began when the medical school recruited the area's first perinatologist for its full-time faculty. When the perinatologist began advertising for patients, and the medical school continued recruiting additional practicing obstetricians, it is charged, that the obstetricians threatened a boycott of the OB/GYN residency program. The complaint alleged that a twelfth obstetrician acted in combination with them. That doctor refused to sign the consent agreement and a separate administrative complaint was issued against him. (See Lee M. Mabee, M.D., p. 41.)

Eugene M. Addison, M.D.

Fourteen physicians in the Huntsville, Texas, area agreed not to deal collectively with health maintenance organizations or health plans, boycott them, or deny hospital staff privileges because the applicant is associated with them. The agreement settled allegations in an accompanying complaint that the physicians first acted collectively in negotiations with HMOs to obtain more advantageous terms of participation, and then when those efforts were unsuccessful, collectively refused to participate with HMOs, and engaged in an effort to restrict the hospital privileges of physicians affiliated with HMOs. The complaint alleged that these actions limited competition and increased prices to consumers.

Florence Multiple Listing Service, Inc.

(See page 34.)

Iowa Chapter of American Physical Therapy Association

The Iowa Chapter of the American Physical Therapy Association agreed not to restrict member therapists from being employed by physicians. The complaint issued with the agreement charged that the association had adopted a resolution saying it was illegal and unethical for physical therapists to work for doctors, called on its members to report any such therapists and threatened disciplinary action against such therapists.

West Point-Pepperell, Inc.

West Point-Pepperell, Inc. entered into a proposed consent agreement concerning its acquisition of J.P. Stevens & Co., Inc. The Commission accepted a hold-separate agreement, allowing West Point to make the acquisition but requiring it to run most of the Stevens' assets as an independent business. Under the agreement, the company agreed to divest certain towel and sheet making facilities. The complaint accompanying the agreement charged that the acquisition could substantially reduce competition in the manufacture and sale of sheets and towels manufacture



PART II (INVESTIGATIVE STAGE)  
CONSENT ORDERS ISSUED

## MAINTAINING COMPETITION MISSION

## American Stores Co.

American Stores Co. entered into a consent agreement under which it could acquire Lucky Stores, Inc. The agreement requires American Stores to divest between 31 and 37 grocery stores in California. The complaint accompanying the consent agreement charged that the acquisition could substantially reduce competition among grocery stores in sections of California, and in parts of Illinois, Iowa, and Indiana. American also agreed to divest Lucky's common limited partnership interest in Eagle Food Centers, L.P., which operates grocery stores in the Midwest in competition with American's stores. Under the agreement, American must seek prior Commission approval before acquiring grocery stores in specified areas in California.

## Florence Multiple Listing Service, Inc.

Florence Multiple Listing Service, Inc. agreed to settle charges that it restrained competition among residential real estate brokers by restricting membership. The complaint accompanying the consent agreement alleged that the service told prospective members that as conditions of membership, they must own a real estate business for at least six months before application, agree not to join another multiple listing service, agree not to compete with Florence, and are subject to a two-thirds vote of acceptance by the existing membership. It was charged that Florence's actions limited consumers' ability to choose among a variety of firms competing over price, terms and services and limited competition.

## Medical Staff of Doctors' Hospital of Prince George's County

The Medical Staff of Doctors' Hospital of Prince George's County, Maryland, agreed not to organize or further any agreement among physicians to refuse to deal with or coerce anyone for the purpose of preventing delivery of health care services by health maintenance organizations or other health care facilities. The agreement settled charges in an accompanying complaint that the medical staff had restrained competition and had illegally coerced and pressured the owner of the hospital and HMO not to open a planned HMO

facility in Prince George's County. According to the complaint, the staff's actions deprived consumers of the benefits of competition and restricted competition among physicians and the HMO.

#### Medical Staff of Memorial Medical Center

The Medical Staff of Memorial Medical Center in Savannah, Georgia, agreed not to deny or restrict hospital privileges to certified nurse midwives unless the staff has a reasonable basis for believing that such restrictions would serve the interest of the hospital in providing for the efficient and competent delivery of health care services. The agreement settled charges in an accompanying complaint that the staff conspired to avoid competition by denying a certified nurse midwife's application for hospital privileges without a reasonable basis. According to the complaint, the staff's conduct unreasonably restrained trade and deprived consumers of the benefits of competition.

#### Multiple Listing Service Mid County, Inc.

Multiple Listing Service Mid County, Inc., of Brooklyn, New York, agreed to end various practices that have allegedly restrained price and service competition among residential real estate brokers. Under the agreement, Mid County is prohibited from requiring that any applicant or member operate a full-time office, fixing any division of commission between selling and listing brokers, adopting policies for



### Tarrant County Medical Society

The Tarrant County Medical Society of Fort Worth, Texas agreed not to restrict its members' truthful advertising. The complaint accompanying the consent agreement charged that the society imposed limitations on the size and duration of newspaper advertisements and telephone listings by its members. The complaint also alleged that the conspiracy restricted competition among physicians and deprived



Sun Industries, Inc.

Sun Industries, one of the country's largest manufacturers of artificial tanning devices, allegedly made false claims that its products are "safe," can be used safely without eye protection, and do not pose the risk of skin damage, including the risk of skin aging and skin cancer. The order prohibits the company from misrepresenting the safety of its products. In addition, the order requires that Sun must include a warning statement in its ads and promotional materials for one year. After the first year, the company must include the warning in any ads making health or safety claims.

## PART III ADMINISTRATIVE COMPLAINTS

## MAINTAINING COMPETITION MISSION

## Coca-Cola Company of the Southwest

The Commission charged in an administrative complaint that Coca-Cola Co. of the Southwest's acquisition of certain San Antonio Dr Pepper Bottling Co. assets substantially lessened competition in the production, distribution, and sale of soft drinks in the San Antonio area. According to the complaint, Coca-Cola of the Southwest bought the Dr Pepper and Canada Dry franchises and related assets from San Antonio Dr Pepper for about \$14.5 million in 1984. The other assets of Dr Pepper Bottling became the Big Red Bottling Co. The complaint charged that the acquisition hurt competition by significantly weakening the Big Red Bottling Co., reduced competition between soft drink brands and increased the likelihood of collusion and that Coca-Cola Company of the Southwest will unilaterally exercise market power. The Commission alleged that these factors would likely lead to increased prices and restricted output of carbonated soft drinks.

## Illinois Cereal Mills, Inc.

The Commission charged in an administrative complaint that Illinois Cereal Mills, Inc.'s acquisition of Lincoln Grain Co. from Elders Grain, Inc. could substantially reduce competition in the production and sale of dry corn mill products in the United States. The complaint charged that the acquisition could hurt competition in industrial dry corn milling and in the specific products produced by dry corn mills for food use, such as cornmeal and corn flour. The Commission sought a preliminary injunction against the acquisition seeking rescission of the transaction or appointment of a receiver pending the completion of administrative hearings to determine the legality of the purchase. After an emergency judge in Chicago denied the Commission's request for a temporary restraining order, a preliminary injunction was issued by the U.S. District Court for the Northern District in Illinois, ordering that the acquisition be undone and that the contracts between Illinois Cereal and Elders be rescinded. The effect of the order was stayed pending appeal in the Seventh Circuit, U.S. Court of Appeals.

Lee M. Mabee, M.D.

The Commission issued a complaint charging 12 obstetricians in Sioux Falls, South Dakota, with illegally



PART III (ADJUDICATIVE STAGE)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

New York State Chiropractic Association

(See page 43.)

Pacific Resources, Inc.

Pacific Resources, Inc. entered into a proposed consent agreement under which it agreed to obtain Commission approval before acquiring certain gas or oil assets in Hawaii. The agreement stems from a 1987 administrative complaint alleging that the proposed \$32 million acquisition, which was abandoned, of Shell Oil Co.'s Hawaiian petroleum products and gasoline assets would, if consummated, reduce competition in the supply of gasoline and diesel fuel in the state and could increase prices for gas or diesel fuel in the state. The Commission sought a preliminary injunction against the acquisition pending completion of administrative hearings to determine the legality of the purchase, which the U.S. District Court for the Western District of Washington issued. Under the agreement, Pacific must obtain Commission approval before acquiring any terminalling, refining or gasoline retail marketing assets in Hawaii. It must also obtain approval before entering into any terminalling agreement, such as a long-term lease, for more than 50 percent of a terminal's capacity.

Tenneco, Inc.

(See page 44.)

CONSUMER PROTECTION MISSION

General Nutrition, Inc.

General Nutrition, one of the nation's largest health food chains, settled allegations that it made false and unsubstantiated claims that a food supplement, Healthy Greens, was effective in reducing the risk of cancer. The consent agreement also settled allegations from a separate investigation that the company falsely claimed six other food supplements would promote weight loss and muscle growth or

retard aging. The order requires that, in lieu of consumer redress, GNC pay a total of \$600,000 for research in nutrition, obesity, or physical fitness. The money is to be divided equally among the American Diabetes Association, the American Cancer Society, and the American Heart Association. The company also agreed not to misrepresent government reports or scientific tests.

PART III (ADJUDICATIVE STAGE)  
CONSENT ORDERS ISSUED

MAINTAINING COMPETITION MISSION

Jose F. Calimlim, M.D.

Thirty-one anesthesiologists in the Rochester, New York, area agreed not to conspire to deal with third-party payers on collectively determined terms or to coerce third-party payers. The complaint accompanying the agreement initially named 35 doctors but four have since retired. The agreement settled a 1985 administrative complaint that charged that the anesthesiologists illegally conspired to raise the fees paid to them for anesthesia services by engaging in collective negotiations over the pricing terms of third-party payers and threatening not to participate in certain plans offered by third-party payers and had concertedly departed from Blue Shield when it refused to accede to the anesthesiologists' demand for higher reimbursement. The complaint alleged that the conspiracy effectively eliminated competition among anesthesiologists and increased fees for their services.

New York State Chiropractic Association

The New York State Chiropractic Association agreed not to conspire to deal with third-party payers on collectively determined terms, act on behalf of its members in negotiating with third-party payers, or coerce third-party payers. The agreement settled a 1987 administrative complaint that charged that the association's members had agreed to act as a united front to coerce an increase in payment levels and coverage from a health insurance company. After the health insurance company refused to accede to the demands, the association, it is charged, solicited its members to resign from their participation t

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## Olin Corp.

An administrative law judge ruled that Olin Corp.'s \$49.5 million acquisition of certain FMC Corp. assets lessened competition. The decision upheld a 1985 administrative complaint challenging the acquisition. The judge found that the acquisition lessened competition in the manufacture and sale of sanitizing chemicals for swimming pools. Olin and FMC were two of the largest producers and sellers of the products. The judge ruled that the acquisition made Olin a dominant firm. Olin was ordered to divest the FMC assets except the technology for the production of cyanamide assets. Under the order, for ten years Olin must obtain Commission approval before acquiring any interest in a company that makes swimming pool chemicals. The Commission heard oral argument on respondent's appeal of the decision.

CNT's appeal

which in turn is used to produce a wide variety of plastic objects. The complaint alleged that the acquisition could reduce competition in the production of both PVC and VCM. In addition to the divestiture, Goodrich must for ten years receive Commission approval before acquiring an interest in any producer of VCM in the United States.

#### Massachusetts Board of Registration in Optometry

The Commission ruled that the Massachusetts Board of Registration in Optometry had illegally conspired to restrain competition among optometrists by promulgating and enforcing regulations prohibiting optometrists from truthfully advertising price discounts, prohibiting optical and other commercial establishments from advertising the names of optometrists or availability of their services, and prohibiting the use of testimonial or sensational advertisements. The Commission found that state law does not mandate that the Board prohibit truthful advertising of discounts by optometrists, nor has the state otherwise clearly articulated an intention to supplant competition in that way. Under the order, the board is prohibited from restraining truthful advertising but may adopt and enforce reasonable rules to restrict false or deceptive advertising within the meaning of state law.

### ORDER MODIFICATIONS

#### MAINTAINING COMPETITION MISSION

##### General Railway Signal Company

The Commission modified a 1964 consent order with General Railway Signal Company, a manufacturer of railroad signaling and control systems and equipment, to allow the company to engage in activities

## Interco, Inc.

The Commission modified a 1978 order with Interco, Inc., a distributor of footwear, wearing apparel, and accessories, to permit Interco and its two subsidiaries to suggest retail prices in documents if they include a statement that the prices quoted are suggested only. The Commission also set aside the provision prohibiting the companies from listing suggested retail prices on tags attached to the products the companies ship to sellers.

## MidCon Corp.

The Commission modified a 1986 consent order with MidCon Corp., a national gas pipeline owner and operator, to remove a requirement that the company divest its ~~MidCon~~ MidCon

Ogilvy Group, Inc., The

The Commission modified a portion of a 1983 consent order with The Ogilvy Group, and denied a request for further modification. The order settled charges that the advertisements Ogilvy developed for Thompson Medical Co.'s Aspercreme product misled consumers by making unsubstantiated effectiveness claims and by saying the product contained aspirin, when in fact it did not. The Commission modified portions of the order to match the language in the Thompson order.



Information Resources, Inc. on the grounds that the acquisition could substantially reduce competition in

Owens-Illinois, Inc.

(See page 41.)

Pacific Resources, Inc.

(See page 42.)

Schering-Plough Corp.

The Commission authorized its staff to seek a preliminary injunction against the proposed \$150 million acquisition by Schering-Plough Corp. of The Cooper Companies, Inc.'s contact lens assets on the grounds that the acquisition could substantially reduce competition in the sale of contact lenses. Schering-Plough and Cooper's subsidiary CooperVision, Inc. are among the top five producers and sellers of soft contact lenses. Before court papers were filed, the parties abandoned the transaction.

SPX Corp.

The Commission authorized its staff to seek a preliminary injunction against the proposed \$32.3 million acquisition by SPX Corp. of Stanadyne Holding Corp.'s valve lifter assets on the grounds that the acquisition could substantially reduce competition in the manufacture and sale of hydraulic valve lifters in the United States. Valve lifters are part of the valve train in the engines of cars and light trucks. SPX and Stanadyne are two of only four companies in the United States that produce hydraulic valve lifters for these types of engines. Before court papers were filed, the parties abandoned the transaction.

#### CONSUMER PROTECTION MISSION

Action Credit Systems, Inc.

The Commission filed a complaint charging Action Credit Systems, a major credit repair clinic, with falsely claiming to improve consumers' credit reports and to arrange for consumers to receive major credit cards. In addition, the complaint alleges that Action Credit falsely claimed that the Fair Credit Reporting Act allowed it to remove negative information, such as bankruptcies, from credit reports. The company guaranteed results. The Commission asked the court to grant a preliminary injunction prohibiting these practices and to order defendants to pay consumer redress.

American Legal Distributors, et al.

The Commission obtained a default judgment ordering American Legal Distributors and its two officers not to make any misrepresentations in the sale of their distributorships of prepaid legal plans. The court also ordered them not to violate the Franchise Rule and to pay refunds of more than \$3 million to consumers.

Amy Travel Services, Inc.

The Commission obtained an order against Amy Travel for misrepresenting the cost of vacation packages, obtaining credit card numbers under false pretenses, and billing consumers credit card accounts without authorization. The company was permanently barred from engaging in similar practices and was ordered to provide restitution of \$6.6 million to consumers.

Atlantex Associates, Ltd.

The Commission obtained a redress judgment against Atlantex Associates, and several related firms and individuals. Defendants were ordered to pay \$12.1 million into a consumer redress fund. Atlantex was charged with falsely claiming it could guarantee investors long-term, low-risk, high-level income from partnerships in an oil and gas drilling operation.

Austin Galleries, et al.

The Commission filed a complaint charging Austin Galleries with making sales of counterfeit graphic art. The court entered preliminary injunctions against all defendants, prohibiting them from selling graphic art purportedly created by Picasso, Moreau, Chagall, and Dali.

BankCard Travel Club, et al.

The Commission filed a complaint charging BankCard, a nationwide travel club, with deceptively billing consumers for membership fees and failing to honor requests for promised cancellations, refunds, or credits. The Commission sought a temporary restraining order and preliminary and permanent injunctions against the defendants and an order to pay consumer redress.

Beverly Hills Coin Gallery, Inc.

The Commission filed a complaint charging Beverly Hills Coin Gallery with over grading coins and thereby misstating the investment value of the coins sold by them. The court froze defendants' assets, appointed a receiver and entered preliminary injunctions against three individual and three corporate defendants. In addition to a permanent injunction, the Commission asked the court to order consumer redress.

Bliss Holidays International, Inc., et al.

The Commission filed a complaint against Bliss Holidays International for allegedly deceiving consumers by selling vacations that were never provided and misrepresenting costs and other terms of the vacations. The court entered a temporary order prohibiting the defendants from engaging in deceptive sales practices and freezing corporate and individual assets. The Commission is seeking a permanent injunction and consumer redress.

C-M Fiber, Inc., et al.

The Commission filed a complaint against C-M Fiber and its owner for violating the R-Value Rule by overstating the R-value and coverage of their loose-fill cellulose insulation. The Commission asked the

the Commission

looked filed by C-M Fiber, Inc. in 1988. TD 0 c6TTm0 T Tc

prompt refunds. The court issued a preliminary injunction prohibiting these practices and froze the defendants' assets.

Dream Away by Nutri Marketing, et al.

The Commission obtained a settlement with the marketers of Dream Away diet pills to disgorge \$1.1 million because of false advertising claims that taking Dream Away would enable consumers to lose weight while sleeping and without exercising or dieting. The defendants also agreed not to misrepresent the performance, efficacy, or safety of any food, drug, or device. In addition, the defendants must disclose prominently in any ads for weight control or reduction that dieting and/or exercise is required in order to lose weight.

Federal Sterling Galleries, Inc.

The Commission obtained permanent injunction against Federal Sterling Galleries. The defendants were charged with making sales of counterfeit Dali graphic art by misrepresenting that prints were authentic limited editions of Dali art productions. The court also awarded \$4.6 million as consumer redress. The Commission filed a motion for summary judgment against the remaining individual defendant.

Figgie International, Inc.

The Commission filed a complaint asking the court to order Figgie International to pay redress to consumers who bought Vanguard brand heat detectors based on the company's false claims that the heat detectors give consumers sufficient warning to escape from most residential fires. The Commission issued a final order in 1986, ruling that Figgie's heat detector performance claims were deceptive.

International Marketing Data, et al.

The Commission filed a complaint against Creative Advertising Specialty House, a California-based "marketing research" firm, operating under the fictitious business name International Marketing Data. The company was charged with allegedly promising consumers a free power motorboat worth over \$1000 for responding to a market survey, and instead sending a \$70 rubber dinghy

and a \$250 bill for shipping. The court issued a preliminary injunction and froze the defendants' assets.

#### James Quincy

The Commission obtained a settlement with James Quincy to settle charges that he misrepresented vacation timeshare interests in Hawaii, Lake Tahoe, Nevada, and Washington state. The settlement prohibits Quincy from having any connection with the timeshare business in the future. Quincy was head of the sales organizations that promoted memberships in the Harbor Village Club and Paradise Palms Vacation Club. He is currently serving a seven-year federal prison sentence after being convicted on 41 counts of fraud-related crimes in connection with timeshare sales.

#### Jeffrey Roberts

The Commission obtained a settlement prohibiting Jeffrey Roberts, former president of Credit Rite, a major credit repair clinic, from misrepresenting his ability to improve consumers' credit reports and requiring him to honor refund promises.

#### Lynn Murphy & Co., Inc.

The Commission filed a complaint against Lynn Murphy & Co. alleging that defendants misrepresented the grade and investment value of coins sold by them and also misrepresented services in connection with the sale of bullion to customers. The complaint charges that defendants failed to purchase bullion as required, failed to repurchase products in accordance with their agreements and failed to make refunds to customers entitled to same. The court entered preliminary injunctions against all defendants and has frozen defendants' assets and appointed a receiver to oversee asset administration.

#### Mytel International, Inc., et al.

The Commission filed a complaint charging Mytel International with deceptively marketing and selling their International ~~red~~unds

The complaint also charged that Mytel authorized, condoned, or assisted in these practices.

Nationwide Credit Services, Inc.

The Commission filed a complaint against Nationwide Credit Services and A-1 Credit Services, major credit repair clinics charging they falsely claimed that the companies could improve consumers' credit records, remove bankruptcies from their credit reports and arrange for consumers to receive major credit cards. The complaint also alleged that the companies unfairly harassed consumers who supposedly owe them money. The Commission asked the court to grant a permanent injunction prohibiting these practices and order defendants to pay consumer redress.

Nationwide Mortgage Corp., et al.

The Commission obtained a permanent injunction against twelve defendants in the matter of Nationwide Mortgage Corp. The complaint charged the defendants misrepresented loan terms and caused more than 100 homeowners to lose their homes, file for bankruptcy, or try to refinance their loans at great expense. The complaint also charged that the defendants claimed to offer long-term loans, when in fact they c ( ) Tj 2.16 0 TD -

Numis Group, Inc.

The Commission obtained settlements with John Pace and Wayne Pedersen, former officials of Numis Group, a nationwide telemarketer of coins for investment. The agreements settled charges that defendants, in telephone sales and written promotional materials, falsely claimed that their coins were a low-risk investment and that customers could reasonably expect to resell coins at a substantial profit. In addition to the two permanent injunctions against sales misrepresentations, the Commission obtained \$1 million judgments against the defendants individually. Any money collected will be used for consumer refunds.

Numismatic Funding Corp., et al.

The Commission filed a complaint charging Numismatic Funding with misrepresenting the grade and investment value of rare silver coins. The court ordered an asset freeze and preliminary injunctions against all defendants.

Overseas Unlimited Agency, Inc.

The Commission filed a complaint charging Overseas Unlimited Agency with fraudulent promotion of overseas employment matching services. The complaint charges that consumers were led to believe that defendants had a job bank for employment with

overseas employment matching services. The complaint charges that consumers were led to believe that defendants had a job bank for employment with



Rainbow Enzymes, Inc., et al.

The Commission obtained a redress judgment against Rainbow Enzymes for \$4.2 million. The complaint charged that the defendants misled people into paying \$3,000 each to participate in manufacturing a cleaning fluid for which there was no market, and also encouraging these people

agreed to pay \$75,000 in refunds to consumers and also agreed not to engage in the challenged practices. The complaint charged defendants with misrepresenting its "gift" or "bonus" vacation packages offered as part of a product promotion.

Terralab Engineers, Inc., et. al.

The Commission filed a complaint against Terralab Engineers, a test laboratory, and its owner for violating the R-Value Rule by improperly conducting tests that home insulation manufacturers use as the basis for claims to consumers, and by failing to maintain the proper records concerning the tests conducted. The Commission asked the court to order the defendants to pay a civil penalty and to obey the Rule in the future. This was the first case in which the Commission charged a testing laboratory with violating the R-Value Rule.

United States Music Club, Inc.

The Commission filed a complaint charging U.S. Music Club with making false and misleading claims in the sale of its franchises to sell discount coupons for records, cassette tapes, compact discs, video tapes, and athletic shoes. The court issued a temporary restraining order forbidding further misrepresentations and violations of the Franchise Rule, and also froze the defendants' assets.

Wayne Phillips Seminars, Inc.

The Commission obtained a permanent injunction and redress judgment of \$241,000 against Wayne Phillips Seminars. The Arizona-based company which markets real estate investment and other financial advice materials was charged with failing to honor its money-back guarantees.

#### CIVIL PENALTY ACTIONS

#### MAINTAINING COMPETITION MISSION

Donald J. Trump

Donald J. Trump agreed in a consent judgment to pay \$750,000 in civil penalties to settle charges that he failed to comply with federal premerger notification requirements under the Hart-Scott-Rodino

securities through the investment banking firm of Bear Stearns & Co. This is the third case the government has brought concerning the use of an investment banking firm in a stock acquisition to avoid filing under the act. The complaint accompanying the judgment charged that Trump acquired stock in Holiday Corp. and Bally Manufacturing Corp. in an amount beyond the dollar threshold at which he should have filed notification. Trump eventually made the appropriate filings but not within the time frame established by the act. The complaint was filed in U.S. District Court for the District of Columbia at the request of the Commission by the Justice Department.

First City Financial Corp., Ltd.

First City Financial Corp., Ltd. agreed in a consent judgment to pay \$400,000 in civil penalties to settle charges that it did not comply with the federal premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 when it acquired voting securities through the investment banking firm of Bear Stearns & Co. This is the second case the government has brought concerning the use of an investment banking firm in a stock acquisition to avoid filing under the act. The complaint accompanying the judgment charges that First City acquired stock in Ashland Oil, Inc. in an amount beyond the dollar threshold at which it should have filed notification. First City eventually made the appropriate filings but not within the time frame established by the act. The complaint also named Roxboro Investments, Ltd. The complaint was filed in U.S. District Court for the District of Columbia at the request of the Commission by the Justice Department.

Lonrho PLC and Diamond A. Cattle Co.

Lonrho PLC and Diamond A. Cattle Co. each agreed in a consent judgment to pay \$122,000 in civil penalties to settle charges that the companies did not comply with federal premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 when Lonrho acquired half of Diamond. According to the complaint accompanying the judgment, Diamond sold half of its voting securities to Lonrho in October 1986 but the companies did not make notification about the transaction until November. The complaint did not allege that the companies intentionally violated the law or that the acquisition itself would violate the antitrust laws. The complaint also names Robert O. Anderson,

Chairman of Diamond. The complaint was filed in U.S. District Court for the District of Columbia at



Ed. C. Smith & Bro. (Ware Crest)

Ware Crest, former owner of Ed. C. Smith & Bro. Funeral Directors, agreed to pay \$10,000 in civil penalties to settle charges it violated the Funeral Rule by failing to provide consumers with price lists and an itemized statement of goods and services selected at the time and in the manner required by the Rule.

Frank E. Bush, Inc.

In a settlement in federal district court, Philip Goutell, president of Frank E. Bush and Conceptual Trends, agreed to pay \$300,000 in civil penalties to settle charges that he violated the Mail Order Rule. Goutell also agreed to a permanent injunction prohibiting further misrepresentations of mail order products.

Lady Foot International, Inc., et al.

Lady Foot International, a seller of women's discount shoe store franchises, agreed to pay \$50,000 in civil penalties to settle charges it violated the Franchise Rule. The company was charged with failing to give potential investors important information about likely earnings and misrepresenting the kind of assistance the company would provide franchisees.

Manning Funeral Chapel, Inc.

Manning Funeral Chapel agreed to pay \$12,500 in civil penalties to settle charges that it violated the Funeral Rule. The company was charged with failing to provide consumers with price lists and an itemized statement of goods and services selected at the time and in the manner required by the Rule, failing to provide consumers with other required disclosures, and failing to itemize prices.

McCall Publishing Co.

McCall Publishing agreed to pay \$400,000 in civil penalties to settle charges that it illegally billed consumers for magazine subscriptions that they did not expressly order. In addition, the company attempted to collect money for the magazines. Under the consent decree, McCall is prohibited from taking such actions in the future.

## M&amp;M Car World

M&M Car World, a California used car dealership, agreed to pay \$10,000 in civil penalties to settle

### Simon Funeral Chapel

Simon Funeral Chapel agreed to pay \$10,000 in civil penalties and \$7,500 in consumer redress to settle charges it violated the Funeral Rule. The company was charged with failing to provide consumers with price lists and an itemized statement of goods and services selected at the time and in the manner required by the Rule, failing to provide consumers with other disclosures required by the Rule, and performing and charging for embalming without securing prior authorization. This is the first case in which a party has been ordered to give refunds for violating the Funeral Rule.

### Thermo Products Company, Inc., et al.

Thermocon International, formerly Thermo Products Co., Inc., and its former owner agreed to pay a civil penalty of \$30,000 to settle charges that it violated the R-Value Rule by overstating the R-value and coverage of its spray applied cellulose insulation. The consent decree prohibits the Texas insulation manufacturer and its former owner from violating the R-Value Rule in the future.

## APPELLATE COURT DECISIONS

### Boise Cascade Corp.

On January 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit remanded the decision of the Commission holding Boise Cascade in violation of Section 2(f) of the Robinson Patman Act for further Commission proceedings. The court held that dealer specific evidence of lack of competitive injury from the challenged price discounts given to the dealer was relevant to rebut a presumption of competitive injury arising under the Robinson Patman Act.

### Louisiana-Pacific Corp.

On May 3, 1988, the U.S. Court of Appeals for the 9th Circuit dismissed for lack of appellate jurisdiction the Commission's appeal of a federal District Court's order. The District Court ordered the Commission to reopen a consent order against Louisiana-Pacific to consider whether and how the consent order should be modified, altered or set aside.



## Superior Court Trial Lawyers Association

On August 26, 1988, the U.S. Court of Appeals for the District of Columbia Circuit vacated a final order entered by the Commission and remanded the case to the Commission for further proceedings. The court ruled that proof of market power was required to find that the boycott violated federal antitrust laws.

## ECONOMIC REPORTS COMPLETED

Economic reports usually entail a substantial commitment of resources and report original research concerning an issue of current or long term policy interest to the Federal Trade Commission.

The Effect of State Certificate-of-Need Laws on Hospital Costs: An Economic Policy Analysis, Daniel Sherman, January 1988. Study evaluates the effects of CON regulation on hospital costs using 1983-1984 data for a national sample of 3708 hospitals. Study finds no evidence that CON programs have led to the resource savings they were designed to promote, but rather indicates that reliance on CON review may raise hospital patient treatment costs.

Resale Price Maintenance: Economic Evidence from Litigation, Pauline Ippolito, April 1988. Report reviews all 203 public and private RPM cases from 1976 to 1982 (pre-Monsanto decision). Finds that case records are consistent with several of the efficiency-enhancing rationales for the use of RPM (e.g., "free rider" and more recent agency theories). Only 15 percent of cases appear consistent with collusion theories of RPM that would be associated with reduced consumer welfare.

An Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services, Timothy P. Daniel, April 1988. The study presents the results of two surveys of funeral services consumers, one conducted in 1981 and the other conducted in 1987. Comparisons are drawn between services provided and costs incurred without benefit of the rule (1981) and after passage of the rule (1987). A comparison is also made of differences in service and cost to those surveyed in 1987 between those who purchased funeral services and goods from providers complying with the rule and those that were not.

Regulation of Advertising: Capital Market Effects, Alan Mathios and

Mark Plummer, May 1988. Report finds that firms who lose litigated FTC advertising cases can suffer a 5 percent loss in market value. The report also examined NAD, NARB, and Lanham Act cases.

Minimum Quality Versus Disclosure Regulations: State Regulation of Interstate Open-ended Investment Company and Common Stock Issues, John Hilke, May 1988. The report comprises two studies, one of which examines state regulation of opened-end investment companies (mutual funds), and the other examines state regulation of common stock issues. Each study compares the effects of minimum quality regulation and disclosure regulation on investor return, risk, and other factors.

The Deregulated Airline Industry: A Review of the Evidence, Jonathan D. Ogur, Curtis Wagner, and Michael G. Vita, January 1988. Report summarizes the available evidence on the effects of deregulation. The main conclusions are: 1) airline safety has improved since deregulation; 2) requiring general aviation to follow safety rules similar to those already followed by commercial airlines could significantly improve safety; 3) increasing airport landing fees during congested periods would significantly reduce delays; 4) frequency of flights to small cities has risen since deregulation; and 5) deregulation has significantly lowered prices of commercial air travel and permitted more people to fly.

Deregulation in the Trucking Industry, Diane S. Owen, May 1988. Study examines the effects of deregulation in the trucking industry brought about by the Motor Carrier Act of 1980 and subsequent state deregulatory actions, and concludes that deregulation has led to lower prices, more efficient, reliable, and innovative service, and a significant overall reduction in the nation's logistics costs.

#### WORKING PAPERS

Economic Working Papers are preliminary, unpublished 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.

The Analysis of Causality in Escape Clause Cases, (WP#157), Kenneth Kelly, November 1987.

Costs of the Voluntary Restraint Agreements on Steel: Reply, (WP#158), David G. Tarr, November 1987.

The Impact of Alternative Forms of State Regulation of AT&T on Direct Dial Long Distance Telephone Rates, (WP#159), Alan Mathios and Robert P. Rogers, December 1987.

The Impact of Automobile Fuel Economy Standards, (WP#160), Andrew N. Kleit, February 1988.

Enforcing Time Inconsistent Government Regulations, (WP#161) Andrew N. Kleit, March 1988.

Strategic Business Behavior and Antitrust, (WP#162), Charles A. Holt and David T. Scheffman, April 1988.

State Regulation of Takeovers and Shareholder Wealth: The Case of New York's 1985 Takeover Statutes, (WP# 163), Laurence Schumann, April 1988.

The Costs of Railroad Regulation: A Further Analysis, (WP#164), Christopher C. Bamekov and Andrew N. Kleit, May 1988.

Vertical Integration as Strategic Behavior in a Spatial Setting: Reducing Rival's Revenues, (WP#165), David Levy and David Reiffen, June 1988.

MISCELLANEOUS ECONOMIC POLICY RESEARCH CENTER (EDR-36), A-640 (STAT)

Can the Stock Market Predict Merger Success?, David J. Ravenscraft and George A. Pascoe, July 1988.

CONSUMER AND COMPETITION ADVOCACY

OFFICE OF CONSUMER AND COMPETITION ADVOCACY

The competition and consumer protection missions of the Commission are to seek to prevent unfair methods of competition and unfair or deceptive acts and practices. The number and reach of laws and regulations have made various governmental entities important participants the

generally. In real estate markets, the Staff identifies consumer benefits that include lower search costs, increased information, the increased use of innovative technologies, and lower prices for loan packages. (V880047)

#### Federal Communications Commission

Comments to the FCC on the role of commercial FM translators in the radio broadcast service. The staff comments said that consumer benefits may result from a less restrictive regulatory environment. On 7/6/06 (from) Tj 2  
Federal C





the county and to eliminate regulation of fares would be beneficial to consumers. Deregulation of the taxicab business, the staff letter noted, would increase the number of taxis available to consumers, lower fares, and increase employment opportunities. (V870028)

#### Massachusetts

Letter to the Massachusetts Port Authority on its Proposal for Airport Capacity Efficiency (PACE) which would change the basis for calculating landing fees at Logan Airport. The staff letter said that PACE would be a step toward more efficient pricing because it considers cost variables                      increaTj 2.04 0.0117 Tc (vari



Montana

Letter to the Montana Board of Dentistry on certain regulations of

benefits of price competition in Ohio's motor freight industry. (V880017)

Oregon

Letter to the Oregon Liquor Control Commission on requirements that manufacturers and

South Carolina

Letter

difficult to accomplish and quite rare, an excessively strict law may deter businesses from vigorous but legitimate price competition. The letter [dj 10.4489](#) examining edatory TDing0ca0 , 0 TD --19923 egitimate p

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