

1990  
ANNUAL  
REPORT

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

Annual  
Report  
of the

FEDERAL  
TRADE  
COMMISSION

For the Fiscal Year Ended

September 30, 1990

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FEDERAL TRADE COMMISSION

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ANDRE J. STRENIO, JR., Commissioner  
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DONALD S. CLARK, Secretary

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\* From November 18, 1983 to September 25, 1990.

\*\* From November 29, 1988 to October 24, 1989.

\*\*\* Sworn in October 25, 1989.





FEDERAL TRADE COMMISSION  
1990 ANNUAL REPORT

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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 function competitively, and are vigorous, efficient, and free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, the Commission's efforts are directed to stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the Commission undertakes economic analysis to support its law enforcement efforts and to contribute to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments.

In addition to carrying out its statutory enforcement responsibilities, the Federal Trade Commission advances the policies underlying Congressional mandates through cost-effective non-enforcement activities, such as consumer education. This report itemizes the Commission's accomplishment in fiscal Year 1990.

## MAINTAINING COMPETITION

The Bureau of Competition and the Commission's ten regional offices assisted the Commission in fulfilling its mission of maintaining competition in the U.S. economy. In the merger area, even though the number of Hart-Scott-Rodino premerger filings was down, the number of merger investigations and enforcement actions was significantly higher. In fiscal 1990, the Commission reviewed mergers in many sectors of the economy and measures were taken to ensure compliance with Commission orders requiring divestitures and prior approvals of acquisitions.

Outside the merger enforcement area, the Commission continued efforts to eliminate private and public restraints on competition, maintaining competition in the health care industry and challenging anticompetitive agreements among competitors, especially competitive restraints involving professionals.

## CONSUMER PROTECTION

In fiscal 1990, the Commission challenged as false, misleading, or unsubstantiated, a number of advertising claims which presented risk of substantial harm to Consumers. As part of this effort, the Commission accepted a number of consent agreements while issuing administrative complaints and pursuing administrative litigation in other matters.

The Commission also concluded investigations of alleged fraudulent or deceptive tactics in the sale of items and continued its efforts to



combat alternative investments and health fraud. In addition, the Commission worked to ensure that warranty information was made available and understandable to consumers prior to sale and that

ADMINISTRATION AND MANAGEMENT

A number of organizational changes during fiscal 1990 were designed to improve the delivery of ADP support services to Commission staff. The



parties to the first four mergers terminated their plans to proceed with the acquisitions before the Commission filed for injunctive relief. In *Imo*, a consent requiring prior approval for certain acquisitions was accepted after the court granted the Commission's motion for a preliminary injunction and an administrative complaint challenging the \$69 million acquisition was issued. In *Donnelley*, the parties consummated the acquisition after the court denied the Commission's request for a preliminary injunction to block the acquisition.

The Commission issued divestiture orders to settle antitrust concerns in seven transactions. The order in *Arkla, Inc./Transark Transmission Co.* required the divestiture of certain pipeline interests; the order in *MTH Holdings, Inc./Grand Union Company* required the divestiture of grocery stores in Vermont and New York; *Societe Nationale Elf Aquitaine* was allowed to acquire *Pennwalt Corp.* after the parties agreed to divest certain polyvinylidene fluoride/vinylidene fluoride assets in Thorofare, New Jersey. The order in *Archer-Daniels-Midland Company/Dixie Portland Flour Mills, Inc.*, required the divestiture of flour mills in three states; in *Emerson Co./McGill Manufacturing Co.*, the divestiture of flour mills in three states.

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New York State's Prescription Plan in an effort to increase the program's reimbursement rate for prescriptions. Both matters were later withdrawn from adjudication; consent agreements were accepted for public comment in October 1990. Separate consent agreements were accepted with four other alleged participants in the boycott. In College Football, the Commission challenged the marketing of college football telecasts.

The Commission issued twenty-one consent agreements in ten matters during the year. Complaints accompanying the nine separate orders accepted in Cleveland Oldsmobile Connection, Dowd Oldsmobile, Inc., Earl Oldsmobile, Inc., Fred Stecker Oldsmobile, Inc., Ganley Oldsmobile, Inc., Gene Norris Oldsmobile-GMC, Inc., Hern Oldsmobile-GMC Truck, Inc., Reliable Oldsmobile, Inc., and Zalud Oldsmobile, Inc., alleged that the association and its members agreed not to advertise new car prices. Four related consent agreements settled complaints that involved a pharmacy price-fixing boycott in Pharmaceutical Society of the State of New York, Long Island Pharmaceutical Society Inc., Pharmaceutical Society of Orange County, Inc., and Westchester County Pharmaceutical Society, Inc. Three separate orders accepted in Metro MLS, Inc., Bellingham-Whatcom County Multiple Listing Bureau, and Puget Sound Multiple Listing Association, settled charges that the firms restricted the publication of properties in their separate multiple listing services. In New Jersey Movers Tariff Bureau, Inc., the order settled charges that the bureau used joint tariffs to illegally, set rates for the intrastate transport of household goods in the state of New Jersey. The order in Nippon Sheet Glass Company, Ltd./Pilkington PLC involved an ancillary, agreement relating to the acquisition of shares of Libby-Owens-Ford. In addition, three consent agreements accepted for comment last year against licensed professionals were made final; Structural Engineers Association of Northern California, Inc., involved allegations that the association illegally, restrained competition by restricting truthful advertising; Oklahoma State Board of Veterinary Medicine involved allegations that veterinarians were restricted from entering into certain business arrangements with non-veterinarians; and American Institute of Certified Public Accountants involved allegations that the institute restrained competition by restricting fee arrangements and truthful advertising. Finally, the Commission accepted a consent in Lee M. Mabee, M.D., to settle charges that he participated with others in an illegal boycott of the residence, program of the University of South Dakota School of Medicine. A related consent was accepted last year that settled similar charges against other participants in the same boycott.

The Supreme Court reversed the decision of the Court of Appeals for the District of Columbia and upheld the Commission's order against Superior Court Trial Lawyers Association. The Supreme Court ruled that

the 1983 strike by court-appointed lawyers to obtain higher reimbursement rates was an attempt to fix prices and restrain trade. The lower court issued an Order affirming and enforcing the Commission's order in its entirety.

In *New England Motor Rate Bureau*, the First Circuit Court of Appeals reversed in part the Commission's decision that prohibited the bureau from filing collective rates for the intrastate freight transfer of property in the state of Massachusetts. The court ruled that the bureau's activities were exempted from the federal antitrust laws by the "state action" doctrine.

Two

in an

and Services, referred to generally as the "Fred Meyer Guides." The Guides, first issued in 1972, are designed to



Economic and Consumer Policy Analysis program and a management program that includes the Office of Consumer and Business Education.

### SERVICE INDUSTRY PRACTICES

Consumers annually spend hundreds of millions of dollars or more on alternatives to traditional investments. Many of the sales of certain alternative investments - especially precious metals, gemstones, rare coins and purportedly, rare art works sold as investments - are based on fraud and misrepresentations. Under this program, the Commission continues to bring cases and to coordinate with other federal and state law enforcement authorities in order to protect consumers from this kind of fraud.

Health fraud also remains a wide-spread problem, and actions to combat this type of fraud are conducted under this program. Consumers spend billions of dollars to purchase health care services. Many prospective patients base their decisions, in part, on promotional materials that misrepresent the likely success or efficacy of certain medical procedures or the discomfort or inconvenience that should be anticipated in undergoing them. These advertisements may seem credible to consumers because the advertiser is a physician or other health care professional or because the consumer does not have the information necessary to evaluate their effectiveness.

In fiscal year 1990, approximately \$19.5 million in consumer redress was ordered in cases involving investment fraud. The Commission obtained settlements containing judgments of over \$15 million for distribution to customers of companies charged with falsely representing the grading and/or value of rare coins. Other redress orders involved fraudulent telemarketing schemes involving cellular telephone lotteries, gold and silver mines, and fake art. Three orders were issued against defendants involved in an overseas employment service, requiring a total of \$950,000 in consumer redress.

Five complaints filed in federal district court against companies charged with investment fraud are pending final action. A complaint was also filed against the instructor of a permanent makeup workshop, charging misrepresentation of the training provided and certification awarded.

### MARKETING PRACTICES

The fraudulent telemarketing of consumer goods and services is a primary focus of this program. Industry sources estimate that consumers lose as much as one billion dollars a year to fraudulent telemarketers. Over \$10.1 million in consumer redress was ordered in fourteen cases filed under the telemarketing program. Two important trade regulation

rules, the Funeral and Franchise Rules, are also enforced under this program. Five Funeral Rule violation cases were settled for a combined total of \$110,000 in civil penalties and \$14,350 in consumer redress. A group of southwest Texas land promoters agreed to refund \$2.5 million to consumers who purchased undeveloped land under allegedly false pretenses. A timeshare resale company agreed to pay \$1.25 million in redress to settle charges it made false claims as to the availability of buyers for timeshare resales and made false promises to clients that they would receive a \$1,000 government bond if it failed to sell the customer's timeshares.

The Commission issued an administrative complaint charging that false claims were made in a 30 minute commercial advertising government grants to consumers to start smayh\$1.440 and 258764(w)01j 2280 TD(0.01j82.96

particularly in connection with a government study. Four additional consent agreements were accepted by the Commission subject to final approval. An agreement with a company and six individuals charged with making false and unsubstantiated claims in connection with program-length commercials, requires payment of \$1.5 million in consumer redress.

The Commission issued an administrative complaint charging a company with making false and unsubstantiated claims about the effectiveness of its exercise device, and with failing to disclose that the device may break and cause injury to the user. A consent agreement with the defendants settled the charges. The Commission also filed a complaint in federal district court against the makers of certain diet pills charging the claims that the pills will help users lose weight without dieting or exercise are false and misleading.

#### CREDIT PRACTICES

credit

Credit issues are of great concern to consumers. The Commission continued to administer a strong credit program, focusing on areas of specific concern such as the confidentiality of consumers' personal financial histories and equal access to credit. Efforts to educate consumers about the risks and benefits of credit, and their responsibilities and rights continued to be a priority of this program.

Several credit cases were settled during fiscal year 1990. Four Equal Credit Opportunity Act investigations resulted in a total of \$427,500 in civil penalty judgments. An additional \$64,500 in civil penalties were ordered in four other credit cases.

## ENFORCEMENT

Under this program the Commission enforces its cease and desist orders, as well as the majority of trade regulation rules, guides, and special statutes. The last category includes laws governing the labeling of fur, textile and wool products and tobacco and smokeless tobacco advertising. The Commission's consumer protection enforcement efforts encompass investigations, periodic compliance reviews, and, when warranted, rulemaking proceedings. Consumer education and guidance to affected industries to encourage voluntary compliance also are important to the success of this program.

In sixteen cases settled in fiscal year 1990, \$1,199,500 in civil penalties were ordered. Settlements included \$850,000 against four companies charged with violating prior Commission orders. A computer company was ordered to pay \$275,000 for violating an order enjoining it from representing that any computer hardware or software is available for sale to the public when, in fact, it is not available in reasonable quantities. A \$375,000 judgment was entered against a major drug manufacturer for making unsubstantiated therapeutic performance claims in violation of a 1985 order.

Seven judgments were entered against dealerships charged with violating the Used Car Trade Regulation Rule by failing to display Buyers Guides on the used vehicles they offered for sale. Civil penalties imposed in these cases totaled \$174,000. Complaints filed in federal district court against two other dealerships are pending final action.

Judgments totaling \$145,000 were entered against four companies charged with violating the Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (the R-value Rule). A firm charged with violating the Mail Order Rule was ordered to pay a \$30,000 civil penalty.

The Commission accepted a consent agreement with a wholesaler of women's clothing to settle charges it violated the Textile Act by failing to label its products as to country of origin and mislabeling the fibers of its products.

A Notice of Proposed Rulemaking was issued to amend the Mail Order Trade in in TD 0 0c (Order) 8 Feb 05D 0 Tc







an in-house parts inventory and repair capability, and installed an enhanced service order tracking and reporting system for use with the ASD Help-Desk and Hotline.

New agency-wide systems implemented



reached with the submission of the report for fiscal 1989. In fiscal 1991, the Division will evaluate the format of the report and produce recommendations for improving its effectiveness.

#### LIBRARY

The Library maintained the Commission's comprehensive research collection in legal, business, and economic

Commission. The level of resources expended increased for the first time in a decade, from 894 workyears in fiscal year 1989 to 903 workyears in 1990. Starting in fiscal year 1990 the Commission's appropriation was supplemented by fees collected in conjunction with premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Legislation permitted the Commission to collect and spend up to \$20 million in such fees, but actual collections in fiscal 1990 amounted to only \$13.7 million. The fee shortfall forced the Commission to undertake a severe cost reduction program in the second half of the fiscal year. The Commission spent \$70.1 million inclusive of the filing fees in fiscal 1990.

#### HUMAN RESOURCE MANAGEMENT

Consistent with modest growth in the agency's budget, the Commission increased its recruitment activity during fiscal 1990. On-campus recruitment efforts led to the selection of high calibre entry level attorneys and economists. The recruitment circle also identified numerous Summer legal interns who were exposed to the Commission's work through a proactive program of training and on-the-job experience. The Commission also Piloted an alternative work schedule arrangement which was well-received by the employees, management and the union. A central feature of this alternative work schedule plan was the option for employees to work a regular schedule consisting of 80 hours in 9 work days each pay period as an alternative to the traditional 10 8-hour days every two weeks. The agency continued to strengthen its human resource posture by improving training delivery, and other client services.

#### REGIONAL OFFICES

The Commission's regional offices continued to play a key role in fulfilling the agency's two missions in fiscal 1990. In addition to engaging in the full range of enforcement and advocacy activities in all range of enforcement and

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PART II (INVESTIGATIVE STAGE)

engaged in the production of UPP or PG in the United States or Canada. Before the consent was accepted, the Commission's staff filed a motion for a preliminary injunction: to prevent further acquisitions of the assets, to rescind the acquisitions already consummated, and to seek rescission for the parties' violation of the filing and waiting period requirements of the Hart-Scott-Rodino Act. That complaint charged that ARCO obtained "beneficial ownership" of the Union Carbide assets before complying with the provisions of the premerger notification reporting requirements under the H-S-R Act. After the consent order becomes final, the Commission will ask the Department of Justice to file the stipulated final judgment requiring each party to pay \$1 million in civil penalties to settle the charges.

Bellingham-Whatcom County Multiple Listing Bureau

(See page 29.)

Central Soya Company, Inc.

(See page 29.)

consent alleged that E-Z-EM's acquisition of its competitor created a virtual monopoly in the already highly concentrated barium market. Under terms of the consent, E-Z-EM agreed to divest all of the acquired assets within twelve months to a Commission approved acquirer. In addition to a prior-approval provision for certain future acquisitions, E-Z-EM must give the Commission prior written notice before selling or disposing of any assets or stock to anyone engaged in the barium diagnostic products business for a period of ten years.

Fred Stecker Oldsmobile, Inc.

(See page 30.)

Ganley Oldsmobile, Inc.

(See page 30.)

Gene Norris Oldsmobile - GMC Inc.

(See page 30.)

Gerald S. Friedman, M.D.

(See page 31.)

Hern Oldsmobile - GMC Trucks, Inc.

(See page 30.)

Institut Merieux S.A.

(See page 31.)

Long Island Pharmaceutical Society Inc.

(See page 32.)

Metro MLS

(See page 33.)

New Jersey Movers Tariff Bureau, Inc.

(See page 34.)

Nippon Sheet Glass Co., Ltd.

(See page 34.)

Pharmaceutical Society of Orange County Inc.

(See page 32.)

Pharmaceutical Society of the State of New York Inc.

(See page 32.)

Puget Sound Multiple Listing Association

(See page 35.)

Reading Hospital & Medical Center

(See page 35.)

Reckitt & Colman plc

Reckitt & Colman plc entered into a consent agreement under which it could acquire the Boyle-Midway Division of American Home Products Corporation. The agreement requires Reckitt & Colman to divest its rug cleaning products business to a Commission approved acquirer within eight months. According to the order, if the assets are not divested within the specified time period, Reckitt & Colman must divest its Woolite cleaning assets within six months. The complaint accompanying the agreement charged, among other things, that Reckitt & Colman violated the FTC Act by failing to divest the assets within the specified time period.

Roche Holding Ltd.

The Commission accepted a proposed consent agreement that would permit Roche Holding Ltd.'s acquisition of



cannot be sold by T&N or a Commission appointed trustee, T&N will be required to include the J.P. Industries' engine bearings manufacturing facilities in McConnelsville, Ohio along with the other T&N assets to be divested.

Westchester County Pharmaceutical Society Inc.

(See page 32.)

Zalud Oldsmobile, Inc.

(See page 30.)

#### CONSUMER PROTECTION MISSION

American Life Nutrition, Inc.

American Life Nutrition, a wholesale dealer of dietary food supplements, was charged with making allegedly false and unsubstantiated therapeutic claims in its Chinese-language advertising for five of its products. The order prohibits the respondents from making false and unsubstantiated health efficacy claims for their dietary food supplement products in the future.

CPC International, Inc.

CPC International, a major seller of food products, was charged with making allegedly false, misleading and unsubstantiated advertising claims about the effect of Mazola Corn Oil and Mazola Margarine on serum cholesterol levels. CPC agreed not to make such misrepresentations in future advertising. The FTC investigation was conducted in cooperation with ten states.

Hal Morris

Hal Morris and Money Money Money Inc., were charged with making allegedly false claims in a 30-minute commercial advertising the availability of government grants. The infomercial, called "Money Money Money" is one of a series produced by the respondents. The respondents agreed not to air the infomercial again and agreed to pay \$175,000 in consumer redress.

IVF Australia, Ltd.

IVF Australia, one of the largest providers of infertility services in

the United States, allegedly misrepresented the success rate of its in vitro fertilization services. The company agreed not to make such representations in the future. The allegations did not concern the quality of the infertility services provided, but addressed only success-rate claims in Advertisements.

PART II (INVESTIGATIVE STAGE)  
CONSENT ORDERS ISSUED

## MAINTAINING COMPETITION MISSION

## American Institute of Certified Public Accountants

The American Institute of Certified Public Accountants agreed not to restrict certified public accountants from accepting contingent fees or commissions for professional services to clients for whom they are not providing financial statement reviews or other attest services. The complaint accompanying the consent charged that the association restricted CPAs from providing services to clients under a contingent fee or commission fee arrangement. According to the complaint, the association barred CPAs from accepting commissions on a client's purchase of any products recommended by the CPA, and barred CPAs from offering assistance to clients for a fee contingent on the amount of the client's recovery. In addition, the complaint further alleged that the association complaint complaint complaintco4recom6.68 0 dhm4T

#### Archer-Daniels-Midland Company

Archer-Daniels-Midland Company agreed to divest two wheat flour mills to settle charges resulting from its acquisition of Dixie Portland Flour Mills, Inc. Under terms of the consent agreement, A-D-M agreed to divest Dixie's wheat flour mills in Milner, Georgia and Knoxville, Tennessee or possibly a mill in Cleveland, Tennessee to an acquirer pre-approved by the Commission. The complaint accompanying the consent agreement charged that the acquisition could substantially, lessen competition and enhance the likelihood of collusion among firms that produce and sell bulk bakery wheat flour in the southeastern United States. In addition, the consent agreement requires A-D-M to obtain prior Commission approval for ten years before acquiring any wheat flour milling assets in the Southeast.

#### Arkla, Inc.

Arkla, Inc. entered into a consent agreement concerning its 1986 acquisition of Transark Transmission Co. The Commission charged that the acquisition could hurt competition in the pipeline transportation of natural gas in Arkansas and Oklahoma. Under the consent agreement, Arkla agreed to divest the Transark pipeline or a portion of its own pipeline that runs through the two states to an acquirer approved by the Commission. In addition, for a period of ten years, Arkla must obtain prior Commission approval before acquiring any gas pipeline in Arkansas and Oklahoma.

#### Bellingham-Whatcom County Multiple Listing Bureau

The Bellingham-Whatcom County Multiple Listing Bureau of Bellingham, Washington, agreed not to restrain competition among residential real estate brokers, in the area by refusing to publish certain types of listings in its multiple listing service. According to the complaint accompanying the consent, Bellingham-Whatcom refused to publish property listings that had an exclusive or reserved clause under which the seller would pay a reduced commission or possibly no commission. Under terms of the order, Bellingham is prohibited from refusing to publish such listings.

#### Central Soya Company, Inc.

The Commission accepted a consent agreement that would settle charges concerning Central Soya Company, Inc.'s acquisition of

A.E. Staley Manufacturing Co.'s assets used in the manufacture and sale of soy protein concentrate. The complaint issued with the agreement alleged that the acquisition eliminated competition between Central Soya and Staley, increased Central Soya's ability to exercise market power unilaterally, and increased the likelihood of collusion. Under terms of the agreement, Central Soya must obtain prior Commission approval for ten years before acquiring any assets or stock of any company engaged in the manufacture of soy protein concentrate in the United States.

Cleveland Oldsmobile Connection  
Dowd Oldsmobile, Inc.  
Earl Oldsmobile, Inc.  
Fred Stecker Oldsmobile, Inc.  
Ganley Oldsmobile, Inc.  
Gene Norris Oldsmobile-GMC, Inc.  
Hern Oldsmobile-GMC Truck, Inc.  
Reliable Oldsmobile, Inc.  
Zalud Oldsmobile, Inc.

The Cleveland Oldsmobile Connection and eight of its members were ordered not to restrict or interfere with the advertising practices or policies of any dealer or dealer association concerning the publication of the price or condition of sale of any motor vehicle. Each complaint, issued separately with each consent order, names the dealer association, formerly known as the North Coast Nine, and eight of its member Oldsmobile dealers located in the Cleveland area: Dowd Oldsmobile, Inc., Earl Oldsmobile, Inc., Fred Stecker Oldsmobile, Inc., Ganley Oldsmobile, Inc., Gene Norris Oldsmobile-GMC, Inc., Hern Oldsmobile-GMC Truck, Inc., Reliable Oldsmobile, Inc., and Zalud Oldsmobile, Inc. According to each of the complaints, the association and its members conspired for five years to refrain from advertising the prices of new, current model Oldsmobiles. The consent agreements also prohibit any communication with competing Oldsmobile dealers about price advertising and prohibit dealers from using the association as a forum for organizing and implementing an illegal no-price-advertising agreement among Oldsmobile dealers in the future.

Dowd Oldsmobile, Inc.

(See above.)

Earl Oldsmobile, Inc.

(See page 30.)

Emerson Electric Co.

Emerson Electric Co. entered into a consent agreement that permitted its acquisition of McGill Manufacturing Co. The agreement requires Emerson to divest, within twelve months, the McGill Mounted Ball Bearing Business located in Malden, Indiana to a Commission approved acquirer. The complaint accompanying the agreement charged that the acquisition could substantially lessen competition in the production and distribution of mounted ball bearings. Emerson is the largest domestic producer of mounted ball bearings; McGill ranks fifth. The cast iron bearings are used to hold rotating shafts such as those used in conveyors, fans, and blowers. According to the agreement, Emerson agreed to hold the assets separate until the required divestitures were made. Finally, for a period of ten years, Emerson is prohibited from acquiring any domestic firm engaged in the manufacture or sale of mounted ball bearings.

Fred Stecker Oldsmobile, Inc.

(See page 30.)

Ganley Oldsmobile, Inc.

(See page 30.)

Gene Norris Oldsmobile-GMC, Inc.

(See page 30.)

Gerald S. Friedman, M.D.

A California physician, Dr. Gerald S. Friedman, agreed not to enter into any contracts with other physicians that require those physicians to use only his dialysis facilities and services. Dr. Friedman owns one mobile in-patient dialysis service and controls over ninety-percent of the out-patient dialysis treatments through his three dialysis centers in the Upland and Pomona, California areas. The complaint issued with the order, alleged that Dr. Friedman engaged in an illegal tying arrangement by requiring physicians

who used his out-patient dialysis facilities also to use his in-patient dialysis services whenever their patients were hospitalized. The complaint alleged that through this arrangement, Dr. Friedman was able to charge higher than competitive prices for in-patient care at his treatment facilities. The complaint further alleged that Dr. Friedman, who had exercised market power in out-patient care, used the tying arrangement to circumvent Medicare's regulation that only set a limit on the reimbursement amount for outpatient dialysis services. Under terms of the consent, Dr. Friedman is prohibited from entering into any conditional contracts with physicians for the use of dialysis facilities and from denying medical privileges to any physician who has chosen other in-patient facilities.

Hern Oldsmobile-GMC Truck, Inc.

(See page 30.)

Institut Merieux S.A.

The consent order settled charges that Institut Merieux S.A.'s \$798 million acquisition of Connaught BioSciences, Inc. would reduce competition. Institut Merieux is engaged in the manufacture and sale of rabies vaccine and in the development of inactivated polio vaccine; Connaught manufactures and sells inactivated polio vaccine and is engaged in the development of rabies vaccine. According to the complaint issued with the consent, the acquisition would cause Institut Merieux to be the dominant firm in the manufacture and sale of rabies vaccine and inactivated polio vaccine in the United States, Under terms of the order, Institut Merieux is required to lease Connaught's Toronto, Ontario, Canada rabies-vaccine business, "52 and reologyvated





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Rhone Poulenc S.A.

Rhone-Poulenc S.A. entered into a consent agreement under which it could acquire the Marschall Dairy Products Division of Miles, Inc. Under terms of the agreement, Rhone-Poulenc, for a period of five years, is required to grant four-year

and charging competitive prices, and from providing a second opinion on the work of another structural engineer. The complaint alleged that these methods restrained competition by depriving consumers of the benefits of selecting structural engineering services through advertised prices and competitive business policies.

Westchester County Pharmaceutical Society, Inc.

(See page 32.)

Zalud Oldsmobile, Inc.

(See page 30.)

#### CONSUMER PROTECTION MISSION

Black & Decker, Inc.

Black & Decker allegedly misrepresented that its Automatic Shut-Off Iron had the exclusive endorsement of a national organization with expertise in appliance fire safety. The company agreed not to misrepresent endorsements of its products in the future.

Heilig-Meyers Co.

Heilig-Meyers Co. allegedly understated its annual percentage rates (APR) to its charge customers in five states. The company agreed to calculate and accurately disclose the APRs required in connection with extensions of consumer credit. The order also requires Heilig-Meyers to make adjustments to the accounts of customers to whom it disclosed APRs that were understated more than 1/4 of one percent, except where an adjustment amounts to less than one dollar.

Import Image

Import Image settled allegations that it violated the Textile Fiber Products Identification Act by failing to label its products as to country of origin and mislabeling the fibers of its products. The company agreed not to mislabel its products in the future.

Jeep Eagle Corp.

Jeep Eagle Corp., successor corporation to the American Motors

Corp. (AMC), was charged with allegedly failing to successfully repair certain specified automatic transmission fluid or engine oil leaks and related problems within a reasonable time, on AMC's 1983-1985 Alliance vehicles and 1984-1985 Encore vehicles. Jeep Eagle will pay each eligible consumer \$40 for each repair visit beginning with the fourth visit.

#### Nature's Way Products

Nature's Way allegedly made unsubstantiated claims in advertising that "Cantrol" capsules fight yeast infections. The company was also charged with not having a reasonable basis for its claims concerning Cantrol's ability to control levels of yeast in the intestines and vaginal yeast infections. Nature's Way

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### Vons Company, The

The Vons Company, which operates several hundred grocery stores in Southern California and Nevada, allegedly made false claims that its produce was free of pesticides. The company agreed not to misrepresent the extent to which any food contains pesticides.

## PART III ADMINISTRATIVE COMPLAINTS

### MAINTAINING COMPETITION MISSION

#### Adventist Health System/West

(See page 45.)

#### Capital Area Pharmaceutical Society Empire State Pharmaceutical Society, Inc.

The Commission charged in two separate administrative complaints that two pharmaceutical associations illegally conspired to coerce the state of New York to increase its reimbursement rate to pharmacists under the state's Employees Prescription Plan. According to the complaint, the state of New York proposed to lower the prescription reimbursement level to pharmacies in an effort to reduce costs under the state's Employees Prescription Program, and to increase the number of participating pharmacists to insure customers' adequate access to medication. The complaint charged that Capital Area Pharmaceutical Society, Empire State Pharmaceutical Society, Inc., and Alan Kadish, the former president of another pharmaceutical association, conspired with others to refuse to participate in the prescription plan at the new rates. Both complaints alleged that the illegal boycott caused the state of New York to raise the prices paid to pharmacies under the prescription plan. The complaints were withdrawn from



Imo Industries, Inc.

(See page 43.)

#### CONSUMER PROTECTION MISSION

American Family Publishers, Inc.

The Commission charged American Family Publishers (AFP), a New York magazine subscription marketer, with violating the FTC Act by using deceptive and abusive debt collection practices. The company used independent debt collection agencies to send allegedly deceptive attorney collection letters to consumers. Through these letters, AFP collectors allegedly misrepresented that AFP intended to take legal action against the consumer. This is the first time the Commission has charged a creditor for the illegal collection activities of the debt collectors it approved.

Consumer Direct, Inc.

(See page 42.)

Tower Loan of Mississippi, Inc.

The Commission issued a complaint charging Tower Loan with violating the Truth in Lending Act and the FTC Act, by requiring consumers to purchase credit insurance, and then requiring them to sign statements asserting that they voluntarily purchased the insurance.

Wayne Phillips

The Commission issued a complaint charging Wayne Phillips with making false claims in advertising government grants to consumers to start small businesses. The complaint charged that Phillips made the false and misleading claims through a 30 minute commercial, which is one of a series called "Money, Money, Money."



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

## MAINTAINING COMPETITION MISSION

Illinois Cereal Mills Inc.

(See page 43.)

Imo Industries, Inc.

(See page 43.)

Promodes, S.A.

(See page 44.)

## CONSUMER PROTECTION MISSION

Consumer Direct, Inc.

Consumer Direct agreed to settle allegations that it made false and unsubstantiated performance claims about its "Gut Buster" exercise device, and failed to disclose that the device may break and injure the user. The order requires respondents to warn past purchasers of the Gut Buster's potential for breakage and personal injury, and inform them of the FTC's charges that the product does not tone or strengthen the stomach. The complaint named Consumer Direct, Fitness Quest, which has since changed its name to The Gut Buster Corporation, and two principals in the companies as defendants.

PART III (ADJUDICATIVE STAGE)  
CONSENT ORDERS ISSUED

## MAINTAINING COMPETITION MISSION

Dr Pepper/Seven-Up Companies, Inc.

Dr Pepper/Seven-Up Company, Inc. agreed to settle charges that the 1984 acquisition of certain San Antonio Dr Pepper & Canada Dry franchises by the Coca-Cola Bottling Co. of the Southwest could substantially lessen competition in the production, distribution, and sale of soft drinks in the Texas area. According to the 1988 complaint, which named Dr Pepper and Coca-Cola, the acquisition

eliminated a major competitor and increased the likelihood that Coca-Cola would unilaterally, exercise market power that could lead to increased prices and the restricted production of carbonated soft drinks. Under terms of the order, Dr Pepper is prohibited from taking any action that could interfere with any relief the Commission might order if it finds that Coca-Cola violated the antitrust laws. The case against Coca-Cola remains in litigation.

#### Illinois Cereal Mills, Inc.

The consent order settled charges that Illinois Cereal Mills, Inc.'s 1988 attempted acquisition of Lincoln Grain Co., a subsidiary of Elders Grain, Inc., could lessen competition. Under terms of the order, for a period of ten years, Illinois Cereal is required to obtain prior Commission approval before acquiring any assets in any company in the industrial dry corn milling industry. The 1988 administrative complaint charged that the acquisition could reduce competition in the production and sale of industrial dry corn mill products. A federal district court granted the Commission's request for a preliminary, injunction action to undo the acquisition. Last year the United States Court of Appeals for the Seventh Circuit

Lee M. Mabee, Jr., M.D.

Dr. Lee M. Mabee agreed not to conspire to boycott the obstetrical/gynecological residency program of the University of South Dakota School of Medicine. The consent agreement settled a 1988 administrative complaint that alleged that Dr. Mabee and eleven other obstetricians in the Sioux Falls, South Dakota area conspired to interfere with the recruitment practices of the medical school's residency program. Last year, the Commission accepted a consent agreement with the other doctors in Certain Sioux Falls Obstetricians.

Promodes, S.A.

Red Food Stores, Inc., a subsidiary of Promodes, S.A., a French grocery, company, agreed to divest six grocery stores in the Chattanooga, Tennessee area.

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R.J. Reynolds Tobacco Co.

R.J. Reynolds was charged with making false and misleading advertising claims regarding the health effects of smoking. The company agreed not to misrepresent in future advertisements the purpose or results of a long-term scientific study funded by the National Heart, Lung, and Blood Institute of the National Institutes of Health (MR FIT study).

Inc., which alleged that Illinois Cereal Mills, Inc.'s acquisition of Lincoln Grain Co. from Elders could substantially reduce competition in the production and sale of dry corn mill products in the United States. The transaction was rescinded in 1989 after the United States Court of Appeals for the Seventh Circuit affirmed the district court's rescission order. Elders voluntarily sold its dry corn milling assets to ConAgra, Inc. On March 12, 1990, the Commission accepted a consent order with Illinois Cereal Mills, Inc. (See - Illinois Cereal Mills, Inc., page 43.)

#### Olin Corporation

The Commission upheld a 1985 administrative complaint that alleged that Olin Corporation's acquisition of FMC Corporation's swimming pool chemical business would substantially lessen competition in the manufacture and sale of chlorinated isocyanurate and calcium hypochlorite dry swimming pool sanitizers. The Commission's decision upheld the 1987 Administrative Law Judge decision that ruled that the acquisition increased the already high level of concentration in the industry. The Commission concluded that the evidence indicated that entry by new competitors would be unlikely to defeat anticompetitive behavior in the dry sanitizer industry for years. Under terms of the order, Olin is required to divest the FMC assets within twelve months to a Commission approved acquirer. In addition, Olin must obtain prior Commission approval before acquiring any interest in a company engaged in the manufacture and sale of swimming pool chemicals for a period of ten years. Olin filed an appeal for review of the Commission's order in the United States Court of Appeals for the Ninth Circuit.

#### Robert G. Koski, D.O.

The Commission dismissed a 1989 complaint that charged that Robert G. Koski, a doctor of osteopathy, conspired with the Dickinson County Memorial Hospital Medical staff and others to prevent Marquette General Hospital from opening a clinic in Dickinson County, Michigan. The Commission found that Dr. Koski was not present at the September 1986 Medical Staff meeting when the plan to engage in a boycott of the competing medical facility was adopted by vote. Last year, the Commission accepted a consent agreement that settled similar charges against the medical staff and other doctors in Medical Staff of Dickinson County Memorial Hospital.



## CONSUMER PROTECTION MISSION

Kroger Co., The

The Commission modified a 1977 order with The Kroger Co. that required the company to keep advertised sale items on hand and to sell them at no more than the advertised price. The Commission concluded that its action in amending the Unavailability Rule constituted

Imo Industries Inc.

(See page 43.)

Rhone Poulenc, Inc.

The Commission authorized its staff to seek a preliminary injunction against Rhone-Poulenc, Inc.'s proposed acquisition of the sulfuric acid assets of Olin Corp. on grounds that the acquisition, if consummated, would raise antitrust concerns in the regeneration of weakened and contaminated sulfuric acid. The parties abandoned the transaction before the motion for a preliminary, injunction was filed in court.

R.R. Donnelley & Sons Co.

The Commission sought a preliminary injunction against R.R. Donnelley & Sons Co.'s proposed acquisition of the printing business of Meredith/Burda Companies until the Commission could complete its antitrust investigation. The complaint charged that the acquisition could substantially reduce competition throughout the United States in the market for printing high volume commercial publications, such as magazines and catalogs. The district court denied the Commission's motion for a preliminary injunction.

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or exercise are false and misleading. The court issued a temporary restraining order and froze the defendants' assets.

#### Austin Galleries

The Commission obtained a settlement with Austin Galleries and two of its officers requiring payment of \$635,000 in consumer redress. The agreement settles charges that Austin sold fake Salvador Dali, Marc Chagall, Pablo Picasso, and Joan Miro prints as good investments.

#### Bliss Holidays International, Inc.

The Commission obtained a settlement with Bliss Holidays International settling charges it made false and misleading representations in the marketing of its travel services. The final consent judgment contains a permanent injunct

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Galleries, and its president, to settle allegations that they misrepresented the value and investment potential of its coins. Under the settlement, respondents agreed to a permanent injunction and to pay \$400,000 in consumer redress.

Collectors' Guild Ltd., Inc.

The Commission filed a

## David Mazur

The Commission obtained a settlement with David Mazur, vice president and half owner of American Safe Marketing, prohibiting misrepresentations in the sale of distributorships and future violations of the Franchise Rule. Mazur also agreed to pay \$10,000 in consumer redress. The complaint charged defendants with making false representations in the sale of fire extinguisher franchises.

## David T. Renner

The Commission filed a complaint against David T. Renner d/b/a Collections Unlimited, Inc. The complaint charged that defendants illegally harassed consumers in attempting to collect their debts by using false threats of imminent court

any of the required disclosures to potential franchisees. The court issued a temporary restraining order

#### Group America, Inc.

The Commission filed a complaint against Group America, a California brokerage firm, and three individuals. Defendants were charged with misrepresenting the investment potential of their leveraged investments in precious metals and foreign currencies, and falsely representing that an investment with them was substantially risk-free. The court issued a temporary restraining order prohibiting further misrepresentations and freezing defendants' business and personal assets.

#### GTP Marketing, Inc.

The Commission obtained a preliminary injunction against GTP Marketing and six other defendants, prohibiting them from making multiple misrepresentations in connection with the sale of water processors. The court previously issued a temporary restraining order halting the misrepresentations, froze the defendants' assets, and appointed a temporary receiver for one of the companies.

#### Hannes Tulving Rare Coin Investments

The Commission filed a complaint charging Hannes Tulving, a California retail marketer of numismatic coins, with misrepresenting the degree of risk to customers who purchased its coins, concealing its artificial market by referring customers to fictitious price increases, and failing to maintain sufficient reserve funds to honor its buy-back guarantee. The parties agreed to a stipulated preliminary injunction prohibiting further misrepresentations, freezing their assets, and appointing a temporary receiver for the corporate assets,

#### Honeyacre Corporation

The Commission obtained a stipulated permanent injunction against William and Margaret Skaife, d/b/a Honeyacre Corporation. The injunction prohibits them from violating the Franchise Rule and from misrepresenting that agricultural business ventures will achieve specific gross earnings or that the Skaifes will provide technical assistance.

#### International Marketing Data

The Commission obtained an agreement with International Market-

ing Data to settle charges it falsely represented its \$70 rubber dinghy as a "power motorboat" worth more than \$1,000 to consumers who responded to the company's solicitations. The company and its president agreed to a permanent injunction prohibiting the challenged practices and agreed to pay \$5,000 in refunds to consumers.

#### Investment Developments, Inc.

The Commission obtained a permanent injunction against Investment Developments, and ten other defendants, prohibiting them from misrepresenting material terms and information in the sale of amusement game machine business opportunities.

#### Ion Technology Systems, Inc.

The Commission charged Ion Technology Systems, a telemarketer, with making multiple misrepresentations in connection with the sale of water filters. The court issued a temporary restraining order halting the misrepresentations and freezing the company's assets.

#### James Halperin

James Halperin, former owner of Standard Financial Management Corp., agreed to a settlement providing \$1.4 million in consumer redress. The defendants in this matter were charged with falsely representing the grade of the coins they sold.

#### James West

The Commission obtained a settlement with James West, former owner of American Safe Marketing, prohibiting misrepresentations in the sale of distributorships and future violations of the Franchise Rule. West also agreed to pay \$90,000 in consumer redress. The complaint charged defendants with making false representations in the sale of fire extinguisher franchises.

#### Kevin Lipton

Kevin Lipton, a supplier of Standard Financial Management Corp., agreed to a settlement providing \$1.3 million in consumer redress. The defendants in this matter were charged with falsely representing the grade of the coins they sold.

**Liberty Financial of North America, Inc.**

The Commission filed a complaint charging Liberty Financial with misrepresenting the investment potential of coins it sells. The action was the result of a joint investigation conducted by the Arizona Securities Division and the FTC. The court issued a temporary restraining order against the company, froze its assets, and appointed a temporary receiver.

**Local Finance Co.**

The Commission filed a complaint against Local Finance Co. and six other small loan companies for allegedly violating the Equal Credit Opportunity Act. The complaint charges the defendants with discriminating against credit applicants on the basis of age, sex, or marital status, and receipt of income from retirement benefits, public assistance, part-time employment, or alimony and child support. This was one of the companies owned by Robert E. Blake, also named in the complaint.

**McKleans, Inc.**

The Commission obtained a permanent injunction against McKleans, Inc., and its two owners. The defendants were charged with making misrepresentations in selling dry cleaning franchises in the Northeast. They agreed not to misrepresent any business venture they offer for sale in the future.

**Medico**

The Commission charged three individuals with falsely claiming to prospective distributors and consumers alike that their "Medico" in-home Aids test could diagnose Aids. The Commission obtained three consent judgments against the three individuals who will pay a total of \$62,000 in consumer redress and are enjoined from future misrepresentations.

**Morgan Whitney Trading Group, Inc.**

The Commission filed a complaint charging Morgan Whitney with misrepresenting the profit and risk potential of investments in platinum, silver, and commemorative medallions. The Commission is seeking preliminary, and permanent injunctions to halt the deceptive practices and redress for consumers. The court issued a

temporary restraining order against the company, froze its assets, and appointed a temporary receiver.

National Alliance of Brokers, Inc.

The Commission obtained settlements with three of the six defendants in the court action against the National Alliance of Brokers. The complaint alleged that defendants had deceived consumers in connection with the marketing of rare coins for investment purposes. Under the terms of the settlements, Kenneth Vilken is ordered to pay \$115,000 and Ronald Cunningham is ordered to pay \$15,000 in consumer redress. The three defendants, including Lou Donnelly were permanently enjoined from future violations.

National Business Consultants, Inc.

The Commission obtained a permanent injunction against National Business Consultants enjoining defendants from making false and misleading claims or omitting material facts in the sale of business



ing it violated the Used Car Rule by failing to display Buyers Guides on the used vehicles it offered for sale.

Overseas Unlimited Agency, Inc.

The Commission obtained three consent decrees and permanent injunctions against the Overseas Unlimited Agency; the defendants agreed to pay a total of \$950,000 in refunds to consumers and also agreed not to misrepresent employment services in the future. The complaint charged defendants with running a fraudulent telemarketing scheme that falsely promised to find overseas jobs for consumers for a fee.

Pacific Medical Clinics Management, Inc.

The Commission filed a complaint against Pacific Medical Clinics Management, a chain of weight loss clinics operating in California, Texas, Georgia, and Virginia. The complaint charges defendants with misleading consumers by falsely advertising that, through their "medically-safe" program, consumers can adjust their metabolism and lose up to one and one half pounds a day without exercise or strict dieting. The court issued a temporary restraining order prohibiting these acts, and freezing the defendants' assets.

Pannos Mining Co.

The Commission obtained a judgment requiring Pannos Mining Co. to pay \$2.5 million in consumer redress. The Commission's complaint charged that defendants were involved in a bogus investment scheme in which consumers lost over \$2 million. The defendants agreed to permanent injunctions settling charges that they made misrepresentations about their mining project, and ordering them not to make similar representations in the future.

Professional Coin Grading Service, Inc.

The Commission obtained a permanent injunction against Professional Coin Grading Service. The order prohibits the company from making any representation about the accuracy of its grading services.



case. The complaint charged he used deceptive practices to sell distributorships for energy-saving devices and home burglar alarms. Davis agreed not to misrepresent any business ventures he offers for sale in the future.

#### Robert Reid Turnage

The Commission obtained a settlement with Robert Reid Turnage, president and half owner of American Safe Marketing, prohibiting misrepresentations in the sale of distributorships

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Sharp and Anderson

The Commission obtained a preliminary injunction against the operators of the White





companies in four southern states, the auditing company that advises them, and the owner of the auditing company with violating the Equal Credit Opportunity Act and the Fair Credit Reporting Act. The defendants agreed to consent decrees prohibiting them from future violations and requiring a total of \$90,000 in civil penalties.

#### City Finance Co., Inc.

The Commission charged City Finance Co., four affiliated finance companies and two company owners and officers in Georgia and Texas, with violating the Equal Credit Opportunity Act by denying credit to loan applicants because they lacked full-time employment. The complaint also charged them with discriminating against applicants on the basis of age, sex, and marital status, and violating the Fair Credit Reporting Act. Defendants were ordered to pay a \$50,000 civil penalty and are prohibited from violating the Act in the future.

#### C-M Fiber, Inc.

C-M Fiber agreed to a consent decree requiring a civil penalty of \$15,000 for allegedly violating the Commission's R-Value Rule by overstating the insulating ability of its product. The defendant also agreed to a permanent injunction against future violations of the Rule.

#### Commodore Business Machines

Commodore Business Machines agreed to pay a civil penalty of \$275,000 for allegedly violating a 1985 consent order prohibiting the company from advertising that a computer software program was available for sale when it was not available.

#### Direct Marketing of Virginia, Inc.

Direct Marketing of Virginia, a mail order firm, was charged with violating the Mail Order Rule by failing to ship ordered merchandise to buyers within the time clearly stated in its advertisements or, when no time was clearly stated, within thirty days of receipt of an order form. The company, and its owner, agreed to pay a civil penalty of \$30,000 and are prohibited from violating the Rule in the future.

#### DMM Management Consultants

DMM Management Consultants, a Maryland company which sells debt collection forms, agreed to settle charges it violated the Fair Debt Collection Practices Act. The company was charged with selling forms that it knew would be used to represent falsely that the form was a communication sent by a creditor to a third-party debt collector, or to misrepresent that a debt collection agency intended to take legal action. The agreement required payment of a \$5,500 civil penalty and prohibits the company from violating the Act in the future.

#### Economy Cars, Inc.

Economy Cars, a Dallas used car dealership, and its owner agreed to pay \$22,500 in civil penalties for allegedly violating the Used Car Rule. The defendants were charged with failing to post the required "Buyers Guide" on used vehicles offered for sale. The consent decree prohibits future Rule violations.

#### General Electric Capital Corp.

General Electric Capital agreed to pay a civil penalty of \$275,000 to settle charges it violated the Equal Credit Opportunity Act (ECOA). The company was charged with discriminating against credit applicants on the basis of age, sex, marital status, and receipt of income from public assistance. This is the largest civil penalty that the Commission has ever obtained in an ECOA case. The consent decree prohibits future violation of the Act.

#### J.D. & M. Investment, Inc.

J.D. & M. Investment, a Salt Lake City funeral provider, was charged with violating the Funeral Rule. The company agreed to pay a civil penalty of \$10,000 and is prohibited from violating the Rule in the future.

#### Jerome Stadd & Associates

Jerome Stadd & Associates, a Maryland company which designs, manufactures, and sells debt collection forms, agreed to settle charges it violated the Fair Debt Collection Practices Act. The company was charged with selling forms that it knew would be used to represent falsely that the form was a communication sent by







**Signature Loan Co.**

The owner and auditor of Signature Loan Co. were charged with violating the Equal Credit Opportunity Act and the Fair Credit Reporting Act by denying credit to loan applicants because they lacked full-time employment. The individuals paid \$12,500 in civil penalties and are prohibited from violating the Acts in the future.

**Southwest Sunsites, Inc.**

Southwest Sunsites was charged with multiple violations of a 1985 FTC order concerning land sales in rural western Texas. The defendants agreed to pay \$100,000 in civil penalties to settle the charges.

**Sterling Drug, Inc.**

Sterling Drug was charged with making unsubstantiated therapeutic performance claims in advertising certain "Midol" brand products. The company agreed to pay \$375,000 in civil penalties to settle the charges.

**Supreme Motors**

Supreme Motors, a Tennessee used car dealership was charged with violating the Used Car Rule by failing to display required "Buyers Guides" on the used vehicles offered for sale. The company agreed to pay a civil penalty of \$12,500, and is prohibited from violating the Rule in the future.

**Terralab Engineers, Inc.**

Terralab Engineers, an insulation testing laboratory, and its former president agreed to settle charges that the company violated the R-Value Rule by using improper test methods and failed to keep proper test records. The defendants agreed to pay a \$10,000 civil penalty, and are required to meet specified accreditation and performance standards before conducting R-value tests. They are also prohibited from violating the R-Value Rule in the future.

**Thermex, Inc.**

Thermex and its owner agreed to pay \$20,000 in civil penalties to settle charges it overstated the R-value and coverage of its cellulose

insulation product. The defendants are also permanently enjoined from violating the R-Value Rule in the future, and agreed to conduct a quality control program over the next three years.

#### Vail Holt Funeral Home, Inc.

Vail Holt Funeral Home was charged with violating the Funeral Rule by failing to provide funeral arrangers with a written general price list of funeral goods and services. The company will pay a \$50,000 civil penalty and is prohibited from violating the Rule in the future.

#### Wilbert, Inc.

Wilbert was charged with violating a 1941 Commission order prohibiting the company, from making "waterproof" and certain other durability or performance claims for its Wilbert brand burial vaults. The company agreed to pay a civil penalty of \$100,000 and is prohibited from making any representations about the durability or expected life of any burial vault without having a reasonable basis for such claims.

### APPELLATE COURT DECISIONS

#### MAINTAINING COMPETITION MISSION

##### New England Motor Rate Bureau

On July, 20, 1990, the United States Court of Appeals for the First Circuit reversed in part the Commission's decision that prohibited the bureau from filing collective rates for the transportation of commodities in Massachusetts. The court ruled that the bureau's activities were protected by the "state action" doctrine.

### SUPREME COURT DECISIONS

#### MAINTAINING COMPETITION MISSION

##### Superior Court Trial Lawyers Association

On January, 22, 1990, the Supreme Court reversed.96 0 T Tc (January,) aibiOCourt

1990, the United States Court of Appeals for the District of Columbia issued an order affirming and enforcing the Commission's order in its entirety.

#### ECONOMIC REPORTS COMPLETED

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

1. An Analysis of the Maritime Industry and 1984 Shipping Act, Timothy P. Daniel, Alan D. Mathios, and James Reitzes, November 1989. The analysis provides a brief background of the ocean shipping industry and its regulatory history, and describes and evaluates the rationales for regulating that industry. Section VII analyzes the effects of the 1984 Act, with particular attention to: 1) the roles of service contracts and independent action; 2) the structure of shipping rates; and 3) the levels of shipping rates.
2. The Effects of FTC Antitrust Challenges on Rival Firms 1981-1987: An Analysis of the Use of Stock Returns to Determine the Competitive Effects of Horizontal Mergers, Laurence Schumann, December 1989. The study examines recent FTC merger enforcement and uses stock market evidence to refute prior research which argued that the FTC tended to challenge pro-competitive mergers. The study finds that the evidence is equally consistent with -183 -12at01toillyWj 39.247

of the Bureau of Economics, resulting from original research by Bureau staff, either in connection with ongoing agency activities or independent analyses, often requiring very minor allocations of staff time.

1. Antitrust Policy for Declining Industries, (WP#175), Malcolm Coate and Andrew N. Kleit, October 1989.
2. An Analysis of Vertical Relationships Among Railroads: Why Competitive Access Should Not Be an Antitrust Concern, (WP#176), Andrew -N. Kleit, October 1989.
3. Merger in the Round: Anticompetitive Effects of Mergers in Markets with Localized Competition, (WP#177), David T. Levy and James D. Reitzes, November 1989.
4. Merger and Free Riders in Spatial Markets, (WP#178), James D. Reitzes and David T. Levy, May 1990.

#### MISCELLANEOUS ECONOMIC POLICY PAPERS

Miscellaneous Economic Policy Papers result from basic research and explore well-defined industrial organization and management strategy questions of interest to the broad policy concerns of the Commission. These papers may be prepared by FTC staff economists or by outside individuals who have been granted access to economic data compiled by the FTC.

1. Industry Determinants and "Differences" in U.S. Intrafirm Exports, Anita M. Benvignati, December 1989.
2. Absorptive Capacity: A New Perspective on Learning and Innovation, Wesley M. Cohen and Daniel A. Levinthal, January 1990.
3. The Role of the FTC's Line of Business Data in Testing and Expanding the Theory of the Firm, David J. Ravenscraft and Curtis Wagner, May 1990.
4. Strategy Linked to Competitive Advantage at the Business Level?, Richard A. D'Aveni and David D'Aveni

the marketplace. In some instances, laws, regulations or self-regulatory standards may injure consumers by restricting entry, protecting market power, chilling innovation, limiting competitive responses of firms, or wasting resources. The goal of the advocacy program, therefore, is to reduce such possible harms to consumers by informing appropriate governmental and self-regulatory entities of the potential effects on consumers, both positive and negative, of proposed legislation or rulemaking. Advocacy comments are prepared by the staffs of the Bureaus of Competition, Consumer Protection, and Economics and the 10 Regional Offices under the general supervision of the Office of Consumer and Competition Advocacy. The Office of Consumer and Competition Advocacy is the central source of planning, coordination, review, and information for the staff's work in this area. In fiscal year 1990, the Commission staff submitted 39 comments or amicus briefs to federal, state and self-regulatory entities in such areas as advertising and marketing, antitrust, communications, health care, occupational licensing, financial markets and





industry, including tariff requirements, antitrust immunity for ports and marine terminal operators, and restrictions on the negotiation of service contracts between shippers and individual carriers. The comment questioned whether these characteristics of the industry provide net social benefits, and recommended that Congress consider elimination of these impediments.

#### Federal Reserve System

The Commission staff commented on a Federal Reserve System notice of proposed rulemaking to delete or revise a provision of Regulation Z (Truth in Lending) that permits creditors to freeze a borrower's credit line when the rate cap on a home equity line is reached. The comment supported a FRS proposed alternative that would allow creditors to offer variable-rate open-end home equity credit lines that may be frozen or reduced when the maximum rate cap is reached, as long as this right is disclosed in the contract. The comment stated that this alternative would leave lenders free to compete on terms as well as rates for such lines of credit, and would leave informed consumers free to choose combinations of rates and terms that would best suit their needs.

#### Food and Drug Administration

The Commission staff commented on a Food and Drug Administration advance notice of proposed rulemaking on ~~6-31-73~~ ~~Tc (Administration) TjD 6 0 00 TD-0 Tc -0.47~~ ~~Administrative~~ ~~( ) Tj Tc 6 0 00 TD-0 Tc -0.47~~



produced by the U.S. Postal Service. The comment reviewed the economic literature to help define the conditions under which unbundled pricing would tend to be efficient. The comment also discussed suggested alternatives for implementing an unbundling policy.

## STATES

### Alabama

The Commission staff commented on an Alabama bill that would regulate relations between suppliers of agricultural, utility, industrial and outdoor power equipment and their Alabama dealers. Specifically, the bill would prohibit termination or non-renewal of dealerships without cause; specify permissible causes, notice periods, procedures for termination and rights upon termination; and prohibit particular practices by suppliers. The comment stated that by its tendency to freeze supply relationships, the proposed legislation would tend to deprive equipment suppliers of the flexibility to adapt to changes in market or other conditions, and thereby raise the costs of distributing equipment in Alabama without providing offsetting benefits to consumers. The comment concluded that consumers could be expected ultimately to bear the burden of the resulting increases in equipment prices and in decreases in the quality of dealership services.

### Arizona

The Commission staff commented to the State Bar of Arizona on certain proposed amendments to the Arizona Rules of Professional Conduct concerning client testimonials, electronic media advertising, and written communications with prospective clients. The comment cautioned that these provisions may restrict the flow of truthful information to consumers and therefore, on balance, may have the potential to impede competition and increase costs without providing countervailing benefits to consumers.

### California

The Commission staff commented on a California bill that would change the regulation of sales of automobiles by lessor-retailers, and restrict off-site automobile sales. The comment stated that the proposed regulations would likely raise the prices that California consumers pay for new and used automobiles, reduce competition by limiting innovative marketing methods, and deprive consumers

of the savings that then, could realize through such marketing methods.

#### Florida

The Commission staff filed an amicus curiae brief to the Florida Supreme Court, arguing against a proposed advisory opinion of the Florida Bar's Standing Committee on the Unlicensed Practice of Law. By preventing non-legal professionals from performing certain advisory functions with respect to pension plans, the brief argued that the proposed opinion would be likely to injure those who wish to establish or revise such plans and the employees who participate in them.

#### Georgia

The Commission staff commented on two bills in the Georgia State Senate concerning the sale of so-called collision damage waivers (CDW) by vehicle rental companies. The comment said that one bill, which would prohibit CDW, might result in increased costs to some consumers who rent vehicles without providing significant benefits to the majority of renters or to the public at large. The comment concluded that the other bill, which would require disclosures concerning CDW, more likely would serve the interests of consumers.

#### Indiana

The Commission staff commented on an Indiana bill that would regulate the activities of individuals and persons providing credit repair services. The comment expressed the staff's belief that a substantial segment of the credit repair industry engages in practices that both injure the general public and individual consumers. The comment stated that disclosure requirements could reduce a credit repair company's ability to misrepresent what it is likely to achieve. Many consumers do not understand that accurate, adverse information will almost never be removed by a credit bureau until it becomes obsolete. The comment suggested that simple, non-technical disclosure requirement would assist consumers in this respect.

#### Massachusetts

The Commission staff commented on the anticompetitive effects of

two Massachusetts bills that would prohibit petroleum refiners from owning or operating retail gasoline service stations, and that would mandate "open supply." The comment stated that these restrictions may lessen competition among motor fuel dealers and raise gasoline and diesel prices to Massachusetts consumers and visitors.

#### Michigan

The Commission staff commented on a Michigan House bill that would allow beer manufacturers to sell beer at the retail level in limited instances. The comment stated that the bill would permit more efficient forms of distribution and increase consumer choice. The comment concluded that Michigan brewers would become more able and inclined to offer specialty brands and to streamline their distribution systems. The comment stated that this would enhance competition.

#### Missouri

The Commission staff commented on a Missouri Senate bill that would prohibit a person from selling seven or more cars any place away from that person's established place of business unless a majority of the local dealers participate in the sale. The comment stated that the likely effect of the contemplated restrictions would be to eliminate many car sales events at sites other than car dealerships even though such sales may enhance the efficiency of distribution and result in savings that may be passed along to consumers.

#### New York

The Commission staff commented on proposed regulations governing New York State real estate brokers and salespersons. The comment stated that the proposed rules aim to reduce confusion and misunderstanding among consumers and brokers and salespersons, and may benefit consumers in some circumstances, although some of the proposed limitations on certain real estate practices and contract terms unnecessarily may harm some consumers.

#### Ohio

The Commission staff commented to the Ohio General Assembly on a bill regulating the sale of automotive aftermarket crash parts. The comment stated that consumers are better off when they have

the ability to make choices among different quality crash parts, and urged the Assembly to examine the possibility that the bill's provisions directed at alleged overpricing practices may actually restrict product availability. The comment also said that the existence of quality differences does not, by itself, necessitate the use of mandated information disclosures, since producers may have both the incentive and ability to provide consumers with adequate information.

The Commission staff commented to the Ohio State Bar Association on several proposed amendments to the Ohio Code of Professional Responsibility. The comment noted that the proposed rules would prohibit self-laudatory statements, claims concerning the quality of the lawyer's services, emotional appeals, client testimonials, any claims that are not verifiable, and certain kinds of fee advertisements. The comment concluded that the proposed restrictions may restrict the flow of valuable information to consumers and may have the potential to impede competition or without (restriction) Tj 15.84.062TD 0.01.257TD 0.

of attaining controlling person or group status, and would require the payment of severance compensation to employees terminated within two years of a successful acquisition. The comment expressed the view that takeover activity most often enhances economic efficiency and thus benefits consumers, workers, and shareholders. The comment noted that the bill would likely impede many of the potential beneficial consequences of takeovers without offering countervailing benefits and that some of the provisions may significantly reduce the rights of shareholders (including those not seeking control) to vote their shares and participate in the governance of the corporations that they own. The comment suggested that the legislature might wish to consider whether the bill's proposals would unduly interfere with the market for corporate control to the detriment of the economy and consumer welfare generally.

#### South Carolina

The Commission staff commented to the South Carolina Legislative Audit Council on certain statutes and regulations governing harbor pilots, auctioneers, and foresters. The comment stated that certain statutory limitations on entry into harbor pilotage may have the effect of reducing competition and efficiency, and raising prices. The comment also stated that certain restrictions on advertising by auctioneers may be detrimental to consumers. Finally, the comment noted that the staff did not find any competitive concerns in the code of ethics adopted by the Foresters' Registration Board.

#### Tennessee

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could have anticompetitive effects that may reduce output and increase prices to consumers.

The Commission staff commented on the statutes, rules, and regulations governing trucking in Tennessee. The comment explained how relaxing economic regulation of trucking would benefit consumers and competition by increasing choices, improving service and reducing prices for the transportation of goods.

#### Texas

The Commission staff commented on Texas Railroad Commission proposed regulations to allow a greater range of rates for common motor carriers for intrastate shipments. The comment stated that relaxation of price constraints would benefit consumers by increasing choices, improving services, and reducing prices for the transportation of goods. The comment also noted that deregulation of intrastate trucking has not had the adverse impact on competition and consumers that had been predicted by critics of deregulation.

#### Vermont

The Commission filed two amicus briefs before the Vermont Supreme Court in *Vermont v. International Collection Service, Inc.*, No. 89-300 (Vt.), arguing that the term "unfair or deceptive acts or practices" in the Federal Trade Commission Act is not confined to practices that injure consumers purchasing for their personal use. This case presented factual issues of serious and pervasive misrepresentation by a debt collection firm serving 34,000 customers throughout the country.

#### Virginia

The Commission staff commented to the Virginia Board of Pharmacy concerning its proposed regulations governing the dispensing and sale of prescription drugs by physicians. The comment stated that while the staff does not endorse physician dispensing as preferable to pharmacist dispensing, it does support consumers having a choice among qualified providers of prescription drugs. The comment concluded that physician dispensing maximizes consumers' options in the purchasing of prescription drugs and may increase competition among physicians and between physicians and pharmacists and lead to lower prices and better services.



The Commission staff commented on a Virginia bill that would prohibit petroleum refiners from owning and operating retail motor fuel stations and from expanding hours of operation by their franchised and leased service stations. The bill would also enact "open supply" for lessee-dealers by allowing them to purchase and sell brands of motor fuels other than those of their lessors. The comment stated that these provisions may lessen competition among motor fuel dealers and raise gasoline and diesel prices to 4 Virginia consumers and visitors. consumers

Washington

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The, Commission staff commented on a Washington State House of Representatives bill regulating the sale of automotive aftermarket crash parts. The bill would establish mandatory disclosure and certification requirements in connection with the use of crash parts by automotive repairers. The comment stated that when effective private mechanisms for the transmission of information that consumers value are already in place, the additional benefit of statutorily-imposed disclosures and certification standards may be quite limited. The comment suggested the Legislature might wish to examine whether the producers of crash parts are already adopting measures that give consumers truthful information on quality, warranties, and the effect of crash part use on existing warranties.

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Wisconsin

The Commission staff commented on proposed

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