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*Report  
of the* **Federal  
Trade  
Commission**

For Fiscal Year Ended

September 30, 1992



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## FEDERAL TRADE COMMISSION - 1992

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1992 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 toward stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the Commission undertakes economic





Information and Privacy Acts. In addition, approximately three million seven hundred and eighteen thousand consumer and business pamphlets and brochures were distributed through the Division.

### MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission is devoted to preventing unfair trade practices and promoting competition through enforcement of the Federal Trade Commission Act, the Clayton Act, the Robinson-Patman Act, and the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The mission's purpose is the detection and elimination of antitrust law violations, including collusion, anticompetitive mergers, predatory single firm conduct, and injurious vertical agreements. The Bureau of Competition is primarily responsible for the Maintaining Competition Mission, with support from the Bureau of Economics and the ten regional offices.

The activities of the mission are divided into five major program areas: Premerger Notification, Mergers and Joint Ventures, Horizontal Restraints, Distributional Arrangements, and Single Firm Violations (focusing primarily on monopolization, predation, and practices that may facilitate collusion).

The Bureau of Competition is responsible for administering the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and for taking steps to ensure compliance with the premerger notification program's statutory rules. The other four program areas review violations of the antitrust laws in industries in which the Commission has particular expertise including petroleum, chemicals, natural resources, food, consumer goods, transportation, pharmaceuticals, and health care. In addition, the Commission reviews suspected collusive behavior among licensed professionals and provides antitrust policy, programs, analyses, and studies to increase consumer awareness and to further the understanding of the role of antitrust compliance and enforcement in a competitive economy.

#### **PREMERGER NOTIFICATION**

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act)e.0197 Tc (care.

which will operate in conjunction with the Voluntary Premerger Disclosure Compact of the National Association of Attorneys General, parties submitting additional information and documentation under the second request provision of the premerger rules may voluntarily waive the confidentiality protections under the HSR Act allowing the Commission to disclose certain information and materials concerning the merging parties and the transaction to state antitrust officials. This program will permit the Commission to provide copies of the second requests issued to the parties and redacted copies of third party subpoenas, and disclose the waiting periods relevant to the transaction to interested state antitrust officials. In addition, at the request of the state, the Commission would provide limited assistance in analyzing the merger. In return, the participating states have agreed that they will not demand information from the merging parties during the HSR waiting periods as long as the merging parties provide specific information on the proposed transaction to a designated liaison state.

Nine investigations remained open at the end of the year to review acquisitions that may have violated the reporting and waiting period requirements of the HSR Act. Three of those investigations were opened during fiscal year 1992.

Commission attorneys, acting as Special Attorneys to the United States Attorney General under the Memorandum of Agreement adopted in fiscal year 1991, filed three new complaints under Section 7A(g)(1) of the HSR Act. The complaint in *United States v. Atlantic Richfield Company* alleged that Atlantic Richfield and U.F. Genetics, Inc. (UFG) failed to file notification before UFG acquired beneficial ownership in ARCO Seed Company. Separate consent judgments required ARCO and UFG to pay civil penalties of \$290,000 and \$150,000, respectively. In *United States v. Beazer PLC*, the British general construction company agreed to pay a civil penalty of \$760,000 to settle allegations that it acquired stock in Koppers Company, Inc., valued in excess of \$15 million, without notifying the federal antitrust agencies. In *United States v. William F. Farley*, the complaint alleged that Farley acquired stock in West Point-Pepperell Inc., valued in excess of \$15 million, without reporting and observing the required waiting period under the premerger rules. Court proceedings are pending in the U.S. District Court in Chicago, Illinois.

Under terms of a consent decree, General Cinema Corporation agreed to pay a \$950,000 civil penalty to settle allegations resulting from the acquisition of stock in Cadbury Schweppes plc. The complaint, filed during fiscal year 1991, and the final judgment were filed in U.S. District Court for the District of Columbia.

### **MERGERS AND JOINT VENTURES**

This program identifies and investigates those mergers, acquisitions, and joint ventures that are likely to result in the lessening of actual or potential competition, increase unilateral market power and lead to dominant firm behavior, or increase the likelihood of coordinated interaction or collusion. The program's objective is to protect consumers by preventing mergers and acquisitions that threaten to restrict competition and result in higher prices or other forms of consumer harm in violation of Section 7 of the Clayton Act, or

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Section 5 of the Federal Trade Commission Act, and to prevent interlocking directorates that would violate Section 8 of the Clayton Act.

For the first time ever, the Commission and the Department of Justice jointly issued merger guidelines to provide businesses and consumers with the standards employed by the federal antitrust agencies to evaluate the competitive effects of horizontal mergers and acquisitions. According to the 1992 Horizontal Merger Guidelines, the analytical process used by the agencies to determine whether a merger should be challenged consists of five components: market definition including product and geographic market, and/or concentration; the likelihood of potential anticompetitive effects; market entry; efficiencies; and failing and exiting assets. The Guidelines reflect the current state of legal and economic thinking that sound merger enforcement can prevent anticompetitive mergers that threaten our free enterprise system and the welfare of American consumers. The new horizontal guidelines update the Commission's 1982 Statement Concerning Horizontal Mergers and the 1984 Department of Justice Merger Guidelines.

During fiscal year 1992, the Commission initiated five initial phase investigations and thirty-five full phase investigations, approved compulsory process in twenty matters opened during the fiscal year, and continued to work on sixteen investigations carried over from earlier fiscal years.

During fiscal year 1992, five new enforcement matters were initiated, and consent orders requiring divestitures were accepted for public comment and made final in each matter. The consent order in Hanson PLC/Beazer PLC requires divestiture of Cencal Cement Company; the consent order in Service Corporation International/Pierce Brothers Holding Company requires divestiture of four Pierce Brothers funeral homes in the State of California; the consent order in Mannesmann, A.G. allows Mannesmann to acquire Rapistan Corporation but requires it to divest The Bushman Company; the consent order in Rohm and Haas Company/Union Oil Company of California requires divestiture of Unocal's Union Oil Architectural Acrylic Assets; and the consent order in The Vons Companies, Inc. (Vons) requires divestiture of a San Luis Obispo, California supermarket to settle allegations relating to the acquisition of Williams Bros. supermarkets and Vons' sale of a store in the same market.

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and granted three firms' petitions to acquire assets under the prior approval provisions of orders.

### **HORIZONTAL RESTRAINTS**

During fiscal year 1992, the Commission opened forty-four initial phase investigations to analyze and study business practices that seemed to include horizontal restraints, such as price fixing and other anticompetitive agreements among competitors that may deny consumers access to the optimal variety, quantity, and quality of goods and services at competitive prices, and deny sellers the opportunity to produce, distribute, and sell goods and services at prices they would select under competitive conditions.

A particular focus of the program is the health care sector, which has been marked by rapidly rising costs. The Commission has used the antitrust laws to challenge unlawful conspiracies among health care providers, such as price fixing and coercive boycotts of cost containment programs or alternative providers. More generally, this program investigates other professionals such as lawyers and accountants, as well as service industries. Through investigation, litigation, and negotiation, the Commission seeks to eliminate unlawful horizontal restraints on trade.

In fiscal year 1992, the Commission initiated seven new enforcement matters: six proposed consent agreements and one matter involving both court and administrative complaints. Two proposed consent agreements placed on the public record for comment and made final settled separate Commission allegations of collusive behavior among health care professionals. The complaint in Roberto Fojo, M.D. alleges that he conspired with other physicians to withhold medical call services from the emergency room of a Miami, Florida medical center. The complaint in Debes Corporation alleges that six nursing homes in Rockford, Illinois conspired to boycott nurse registries in the area in an attempt to influence the prices charged for services by those registries. Both consent orders place restrictions on health care professionals entering into conspiracies to boycott others in the medical profession.

Four other proposed consent agreements accepted for comment during fiscal year 1992 were pending final Commission action. The Industrial Multiple, a Los Angeles area multiple listing service, has agreed to settle allegations that it unreasonably restricted access to the multiple listing service, limited the contract options member brokers could offer to their clients, and reduced the likelihood of discount commissions or other price competition among brokers; Quality Trailer Products Corporation agreed not to solicit competitors to fix prices or to enter into any conspiracy with any competitor to fix prices; Realty Computer Associates, Inc. (Computer Listing Service) agreed not to interfere with certain business practices of its member brokers including publishing exclusive agency listings; and the American Psychological Association agreed not to restrict its members from using truthful advertising and participating in certain patient referral services.

The Commission used its authority under Section 13(b) of the Federal Trade Commission Act to seek injunctive relief against Abbott Laboratories (Abbott) for conspiring with others to fix, stabilize, or otherwise manipulate rebate bids,

and to guarantee an open market bidding system for a contract to provide formula to infants in Puerto Rico under the Special Supplemental Food Program for Women, Infants, and Children (WIC). A second count in the same complaint alleged that Abbott unilaterally provided information to competing bidders that it preferred an open market system. Complaints were also filed against American Home Products and Mead Johnson & Company charging that they each unilaterally acted to reduce uncertainty in the Puerto Rican WIC program. In a separate administrative complaint, it was alleged that Abbott conspired with others to refrain from advertising to consumers through the mass media. Settlements with American Home Products and Mead Johnson & Company require the companies to deliver 3.6 million pounds of infant formula to the U.S. Department of Agriculture, the agency which administers the WIC program. Allegations regarding Abbott are pending in federal court and in administrative proceedings at the Commission.

Also during the year, the Commission finalized three proposed consent agreements accepted for comment in an earlier fiscal year: the consent order against Connecticut Chiropractic Association prevents it from restraining advertising of professional services to consumers; the consent order in Southbank IPA, Inc. (Southbank) requires the dissolution of Southbank and prohibits the physician members from engaging in price fixing; and the consent order against the Texas Board of Chiropractic Examiners prohibits it from adopting and enforcing rules that prohibit its members from using truthful advertising.

The allegations in the administrative complaint against Diran M. Seropian, M.D. were settled by a consent order that prohibits agreements to refuse to deal with health care providers. The complaint alleged that Dr. Seropian, formerly Chief of Staff of Broward General Medical Center, conspired with its medical staff to prevent the Cleveland Clinic Foundation from establishing a competing health care facility in the area.

The Commission adopted an Administrative Law Judge's (ALJ) initial decision that upheld the complaint against Peterson Drug Company of North Chili, New York. The ALJ ruled that the company illegally engaged in a boycott of New York State's cost containment program for prescription drugs in an effort to increase the reimbursement rate paid to pharmacists for filing prescriptions. This case was a companion case to the consent orders issued last year in Chain Pharmacy Association of New York State.

The Court of Appeals for the Sixth Circuit affirmed in part and remanded in part the Commission's 1989 decision in Detroit Auto Dealers Association, Inc. which held that a dealer agreement on hours of operation was an illegal horizontal restraint. In August 1992, the automobile dealers filed a petition for certiorari; a Supreme Court decision on whether or not to accept the case is pending.

The Supreme Court issued a decision in Tigor Title Insurance Company reversing and remanding the decision of the Third Circuit. The court of appeals had vacated the Commission's order in its entirety and ruled that the companies' agreement to collectively set rates for title search and examination services was protected from antitrust scrutiny by the state action doctrine. The Supreme



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Court held that two of the states at issue did not actively supervise the activities of the companies.

At the request of the American Medical Association (AMA), the Commission modified a 1982 order to allow the AMA to provide its member organizations the opportunity to select the manner in which they report compliance with the certification provision of the order.

The year ended with eighty five investigations open in the horizontal restraints program examining potential unfair methods of competition including product market restrictions, restraints on pricing, boycotts, and collusion among competitors, individuals, and professional organizations engaged in the production or distribution of chemicals, food, medical services, and other products and services.

### **DISTRIBUTIONAL ARRANGEMENTS**

This program covers restrictions on the distribution of goods from manufacturers to consumers. Such practices can limit sources of supply or restrict channels of distribution in ways that increase prices or reduce quality. Potentially unlawful conduct includes restrictions on resale prices (and other terms of sale), as well as restrictions on the marketing decisions of firms in the distribution chain. These practices may result from agreements (sought or coerced) between suppliers and purchasers. In addition, the Commission investigates discrimination in prices, terms of sale, advertising allowances, and other merchandising services that may deny competitive opportunities to firms in the distribution chain and other practices that may injure consumers.

During the fiscal year, the Commission opened nineteen new matters and examined potential antitrust concerns in more than fifty active matters involving alleged distributional practices in a variety of industries, including motion pictures, clothing, furniture, carbonated soft drinks, machine tools, and children's toys and games.

In a consent order, Kreepy Krauly USA, Inc. settled allegations that the company illegally entered into agreements with its dealers to maintain suggested retail prices of its automatic swimming pool cleaning devices. The consent order prohibits the firm from entering into agreements with dealers to fix retail prices. At the request of Pioneer Electronics (USA) Inc. (Pioneer), the Commission reopened and modified a consent order to allow the company to withhold cooperative advertising allowances from dealers and to unilaterally terminate dealers that advertise Pioneer products at prices other than those suggested by the company. After the Commission issued an order to show cause, the consent order was further modified to permit Pioneer to unilaterally terminate dealers that sell products at prices lower than the Pioneer suggested retail price.

Administrative litigation under the Robinson-Patman Act is continuing against six book publishers, Harper & Row Publishers, Inc.; MacMillan Inc.; The Hearst Corporation; The Putnam Group; Simon & Schuster; and Random House Inc., for alleged unlawful price discrimination against independent bookstores.

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At year's end, twenty investigations remain open examining allegations of exclusive marketing agreements, resale price maintenance, price discrimination, and discriminatory discounts by firms in a variety of industries.

### **SINGLE FIRM VIOLATIONS**

During fiscal year 1992, the Commission opened thirteen new investigations involving potential single firm abuse of market power. In instances where a firm monopolizes a market or uses its market power in one market to affect another (*tying*), output can be reduced and prices can increase above the competitive level, thereby injuring consumers and misallocating society's resources. When there are high entry barriers into the market, these harms can persist for long periods. The program focuses on cases of monopolization or attempts to monopolize, tying arrangements, and processes to create or enhance market power.

During fiscal year 1992, the Commission finalized two proposed consent agreements that were placed on the public record for comment in fiscal year 1991. The consent order in Sandoz Pharmaceuticals Corporation (Sandoz) prohibits the company from engaging in an illegal tying arrangement that required purchasers of clozapine (marketed exclusively by Sandoz) to also purchase patient monitoring services arranged by Sandoz through its Clozaril Patient Management System. The consent order in Nintendo of America Inc. prohibits the company from fixing the retail price at which dealers advertise or sell Nintendo home video game hardware, software, and related products.

At the close of the year, twenty investigations remain open involving monopolization activities in a number of industries, including health care services, industrial supplies and equipment, manufacturing, soft drinks, and physician joint ventures.

The Commission continued its efforts to engage in competition advocacy to promote the reduction of barriers to entry and the elimination of restraints on procompetitive business conduct, and to provide legal and economic policy analysis of issues related to single firm anticompetitive behavior.

### **COMPLIANCE**

The Compliance Division supports the other programs in an effort to assure compliance with Commission orders to cease and desist from certain conduct, orders for divestiture, and other forms of relief.

The Commission modified two of its prior orders. A 1982 order against the American Medical Association and a 1975 order against U.S. Pioneer Electronics Corporation were modified.

The Ninth Circuit Court of Appeals affirmed a 1983 decision by the U.S. District Court in Oregon requiring Louisiana-Pacific Corporation to pay a \$4 million civil penalty for failure to divest a fiberboard plant required by a 1979 Commission order.

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ad agency and advertiser agreed to pay \$150,000 each to the U.S. Treasury. Other advertising cases involved superiority claims for a high-octane gasoline, performance claims for two air-cleaning products, and efficacy claims for ultrasonic pest control devices.

The Commission issued *Guides for the Use of Environmental Marketing Claims* to help reduce consumer confusion and prevent the false or misleading use of environmental terms such as recyclable, degradable, and environmentally friendly in the advertising and labeling of products in the marketplace. The goal of the Commission is to protect consumers and to bolster their confidence in environmental claims, and to reduce manufacturers' uncertainty about which claims might lead to Commission law enforcement actions, thereby encouraging marketers to produce and promote products that are less harmful to the environment.

The Commission approved staff comments provided to the U.S. Department of Agriculture and the Food and Drug Administration concerning implementation of the Nutrition Labeling and Education Act of 1990, which governs the nutritional labeling of food products. In addition, staff coordinated with the Environmental Protection Agency (EPA) the monitoring of the advertising of lawn care pesticides.

### **SERVICE INDUSTRY PRACTICES**

The service industry practices program focuses on misrepresentations in the sale of investment goods and services, deception in the advertising and sale of health care services, and deception and anticompetitive effects from the use of standards and certifications. In the investment fraud area, the Commission filed nine new cases in federal district court against investment scams involving sales of wireless cable franchise lottery entries, rare coin investments, precious gemstones, collectible postage stamps, and leveraged precious metals. These companies had estimated sales of over \$55 million, and an estimated ten thousand customers were victimized by these firms. During fiscal year 1992, approximately \$59 million recovered in investment fraud cases was distributed to fraud victims. The Commission also obtained judgments of more than \$18 million against other sellers of investment frauds.

In the health care services area, a \$21.5 million redress judgment was obtained in a federal district court case against a chain of weight loss clinics that had falsely claimed that consumers could adjust their metabolism and lose up to one and a half pounds a day on its diet program.

Consent orders were issued for three providers of medically-supervised diet programs under which they would be required to qualify safety claims, have a reasonable basis for claims about the efficacy of their programs in helping consumers to lose weight or maintain that weight loss, and make various disclosures in connection with any future maintenance success claims.

Four additional consent orders were issued against providers of other types of health care services prohibiting the following practices: misrepresenting or making unsubstantiated claims about success rates in achieving births or pregnancies; misrepresenting the results, recovery times or the likelihood of serious adverse complications associated with any cosmetic surgery procedure; misrepresenting the safety, efficacy, side effects, and risks

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of a wide variety of cosmetic surgery procedures; and requiring a reasonable basis for claims regarding the efficacy, permanence or likely complications of any surgical procedure for treating bowel-related disease and the representations of the comparative success of this and other cosmetic surgical procedures.

In addition, investigations of major diet programs, hospital providers, and other health care services providers continued. Finally, a major consumer education effort was announced with National Association of Attorneys General (NAAG) and 11 state attorneys general (including Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nevada, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming).

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failing to correctly identify the fiber content of their garments. The decrees require future compliance with the Act, and one required a \$25,000 civil penalty. A civil penalty of \$10,000 was obtained in the first Care Labeling Rule case to be litigated. Fifteen Used Car Rule complaints filed in federal district court resulted in thirteen orders requiring injunctive relief and a total of \$125,500 in civil penalty payments and in two permanent injunctions.

The enforcement program also initiated the first steps in a regulatory reform project whereby the Commission will review all of its rules and guides to determine whether modification or rescission is needed.

### **CONSUMER AND BUSINESS EDUCATION**

The Office of Consumer and Business Education (OCBE) produced more than forty-nine new and revised publications, some in Spanish, and the agency distributed more than three million seven hundred thousand copies of its education materials. OCBE worked with the National Association of Attorneys General (NAAG) and the Food and Drug Administration (FDA) to produce a video released via satellite to seven hundred stations about weight loss products and programs. As part of that weight loss campaign, OCBE, NAAG, and FDA produced radio public service announcements (PSAs) and offered a free brochure on the subject.

OCBE produced eight radio PSAs voiced by the Chairman for National Consumers Week concerning high priority enforcement topics. Further, the OCBE worked with the American Association of Retired Persons (AARP) to produce a video news release about credit repair scams. With NAAG, OCBE published classified ads in a top circulation tabloid to alert consumers about scams in the areas of credit repair and advance fee loans.



### ECONOMIC ACTIVITIES

The Bureau of Economics provides economic support to the Commission's antitrust and consumer protection missions, advises the Commission about the impact of regulation on competition, and analyzes economic phenomena in the American industrial economy as they relate to antitrust and consumer protection.

In the competition area, economists offered advice on the economic merits of potential antitrust actions. The economists attempted to distinguish situations where the marketplace performed reasonably well 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 not only for their immediate impact, but also for their longer run effects on price, product variety, and overall consumer welfare.

The Bureau of Economics also analyzed data and published information about the nation's industries, markets, and business firms. In fiscal year 1992, economists conducted a number of studies on a broad array of topics in antitrust and consumer protection.

#### **ANTITRUST**

In the antitrust area, economists participated in all investigations of alleged antitrust violations and in the presentation of cases in support of complaints by providing economic background information. Economists also advised the Commission on all proposed antitrust actions in terms of conducting economic studies of individual industries and gathered information about sales, assets, profits, and other financial matters from a cross-section of U.S. corporations. The Bureau of Economics focused most of its efforts in this area.

The Bureau also maintained a small research program in support of the Commission's antitrust activities. Economists in this program published a report on the price effects of horizontal mergers on three different industries: titanium dioxide, cement, and corrugated paperboard.

The Bureau also participated in the Commission's competition advocacy program. Economists presented comments to: the Department of Justice concerning television network syndication rules; the Federal Communications Commission about must-carry rules for cable TV, rules for advanced TV, and ownership limits for TV networks; and the Federal Aviation Administration on rules for allocating airport slots.

### **CONSUMER PROTECTION**

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

Bureau economists worked on reports on consumer protection topics of interest to the Commission, such as *Department Store Reference Pricing in Metropolitan Washington*, which was published in 1992. Economists also supported the Commission's consumer protection advocacy program by assisting in drafting comments to the Food and Drug Administration and the U.S. Department of Agriculture concerning nutrition claims and health claims on food labels.

**EXECUTIVE DIRECTION**

The Office of the Executive Director provides administrative and

assurance program was initiated to improve testing and evaluation done prior to turning systems over to production.

Several major, multi-year initiatives were also started. A decision was made and a migration plan put in place to shift the Commission's central computing environment from proprietary operating systems to scalable, Unix-based open systems. This includes evolving to a platform of multiple central processing units and servers based on price/performance, redundancy, availability, and specialization considerations unique to the service being performed. An off-the-shelf, object-oriented package was chosen to begin to enable nontechnical clients to access information from the corporate database stored in Oracle. A procurement action was started for a pilot project to verify the productivity gains and increased service to users that may occur as a result of integrating database, text management, and image processing technologies.

In office services, approximately four hundred additional workstations were connected to the Commission's upgraded local area networking system as part of a goal to have the entire Commission, including its ten regional offices, interconnected through a single, high-performance networking system by the end of calendar

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assistance to Commission staff and the public through a variety of information sources and systems. During fiscal year 1992, the Library staff responded to over twelve thousand reference questions, processed over two thousand six hundred interlibrary loan requests, and circulated over three thousand items. The Library enhanced its CD-ROM collection and conducted demonstrations and provided support to promote effective Commission staff usage.

The Information Center continued to train and assist Commission staff in the use of personal computers, software, and the central computer systems. The Information Center increased its services by providing support in the use of the newly installed local area networks (LAN) and WordPerfect Office.

The Information Center trained four hundred and forty six employees in sixty six classes on thirty eight different topics, ranging from Computer Security to Advanced WordPerfect. Four new courses were developed for newly acquired software, including Zyindex, Paradox, WordPerfect Office, and



**APPENDIX**

**PART II CONSENT AGREEMENTS ACCEPTED AND PUBLISHED FOR PUBLIC COMMENT**

**MAINTAINING COMPETITION MISSION** *American Psychological Association*

The American Psychological Association (APA) agreed not to restrict its members from using truthful advertising and participating in certain patient referral services. The complaint accompanying the proposed consent agreement alleged that the APA adopted provisions in its Ethical Principles that prohibited its members from advertising truthful claims about their professional services and psychological care, from soliciting clients, and from joining any patient referral service that charges or pays a participating psychologist based on the number of patients referred. The complaint further alleged that these restrictions deprived consumers of the benefits of competition in the delivery of convenient psychological services, products, and costs. Although the proposed consent

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Realty Computer Associates, Inc. agreed not to limit certain business practices of its member brokers. Realty Computer Associates, Inc., which does business in Missouri under the name Computer Listing Service, provides computerized multiple listings of available real estate properties in Clay and Platte Counties, Missouri to member real estate brokers. According to the complaint accompanying the proposed consent agreement, Computer Listing







### PART II CONSENT ORDERS ISSUED

#### **MAINTAINING COMPETITION MISSION**

##### *Connecticut Chiropractic Association*

The Connecticut Chiropractic Association (Association) agreed to delete from its Ethical Code certain restrictions on advertising professional services to consumers. The complaint accompanying the consent order alleged that the Association adopted an Ethical Code that prohibited its member chiropractors from offering free services or discounted fees and from advertising these services to consumers and from advertising unusual expertise unless the members met certain requirements. The complaint further alleged that the Association coerced its members to comply with the Ethical Code by threatening: (1) to influence health insurance companies to reduce reimbursements to patients; (2) to report members to malpractice insurance carriers; and (3) to expel members from the Association. According to the complaint, the Association's actions restrained competition in the State of Connecticut by depriving consumers of truthful information about the availability, price, and quality of professional chiropractic services. The consent order requires the Association to amend its Ethical Code to drop these restrictions while allowing the Association to continue to restrict members' claims of specialization if they have not met standards established by a recognized chiropractic accrediting agency.

*Debes Corporation, Alma Nelson Manor, Inc.,  
Beverly Enterprises - Illinois, Inc., Beverly Enterprises, Inc.,  
Park Strathmoor Corporation, Neighbors, Inc., The,  
Fairview Plaza Limited Partnership, Yorkdale Health Center, Inc.*

Six Rockford, Illinois area nursing homes and two corporations settled allegations that they participated in a boycott of local nurse registries. The complaint accompanying the consent order alleged that the eight firms conspired to boycott the Alpha Christian Registry after it announced a substantial increase in its prices to supply registered nurses, practical nurses, and nursing assistants on a temporary basis to nursing homes. According to the complaint, the firms later threatened to also boycott other nurse registries in the Rockford area. The complaint names: Debes Corporation, Alma Nelson Manor, Inc., Park Strathmoor Corporation, Beverly Enterprises, Inc., Beverly Enterprises - Illinois, Inc., Fairview Plaza Limited Partnership, The Neighbors, Inc., and Yorkdale Health Center, Inc. The consent order prohibits each of the eight firms from threatening to refuse to use the services of any temporary nurse registry and from attempting to interfere with the prices charged by those registries.

##### *Hanson PLC*

Hanson PLC agreed to divest Cencal Cement Company (Cencal), a California cement importing company, to a Commission approved acquirer to settle

allegations concerning Hanson PLC's subsidiary's, Kaiser Cement Company (Kaiser), proposed acquisition of Beazer PLC. According to the complaint issued with the consent order, the acquisition would lessen competition in the manufacture and sale of portland cement in a forty eight county northern California area and eliminate competition between Hanson PLC's subsidiary, Kaiser, and Cencal. Cencal, 50% owned by Beazer PLC, owns a deep-sea cement import terminal located at the Port of Stockton, California. The consent order permitted Hanson PLC's acquisition of Beazer PLC, but required that Hanson PLC either sell the 50% share of Cencal it acquired to Ssangyong Cement (Pacific), Inc. (Ssangyong), Cencal's other 50% owner, or acquire Ssangyong's preacquisition interest and then divest the entire Cencal Cement Company to a Commission approved acquirer within twelve months. In addition to the divestiture, for a period of ten years Hanson PLC is prohibited from acquiring any assets or more than 3% of the voting stock of any company that manufactures, sells, or distributes cement in that forty-eight county area of northern California without prior Commission approval.

*Kreepy Krauly, USA, Inc.*

Kreepy Krauly, USA, Inc., a manufacturer of automatic swimming pool cleaning devices, settled allegations that the company illegally entered into written agreements with its dealers concerning the price

## Federal Trade Commission

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manufacturer of unit handling conveyor systems. That application is still pending.

### *Nintendo of America Inc.*

Nintendo of America Inc. (Nintendo) settled allegations that it obtained agreements from some of its dealers to sell its home video game hardware at specified price levels. According to the complaint accompanying the consent order, Nintendo's resale price maintenance activities increased consumer prices and restricted competition among retail dealers. The consent order prohibits Nintendo from fixing or controlling the retail price of any Nintendo product, coercing retailers into committing to sell products at predetermined prices, reducing the supply of products or imposing different credit terms to dealers who sell Nintendo products at prices lower than those suggested by Nintendo or, for five years, terminating dealers for failure to sell at minimum suggested prices. Also, for a period of five years, Nintendo would be required to place a disclaimer on any material in which it suggests resale prices stating that the dealer is free to determine the prices at which it will sell the Nintendo products. The consent order applies to all Nintendo products, including hardware and home video game software. Nintendo of America Inc., a wholly owned subsidiary of Nintendo Company Ltd. of Kyoto, Japan, is based in Redmond, Washington.

### *Nippon Sheet Glass Company, Ltd.*

Nippon Sheet Glass Company, Ltd. (Nippon) and Pilkington PLC agreed to settle allegations that Nippon's 1990 acquisition of a 20% interest in Libbey-Owens-Ford Company (L-O-F), a wholly owned United States subsidiary of Pilkington PLC, was likely to reduce competition in the North American market for wired glass. Wired glass is a specialty flat glass used primarily in shower and bath enclosures and in fire retarding applications for products such as fire doors. According to the complaint issued with the consent order, the terms of the Nippon/Pilkington PLC acquisition agreement gave the jointly owned L-O-F rights to distribute, in North America, the polished wired glass produced by both Pilkington PLC and usd.

order, Twin Ports, a bottler and distributor of Seven-Up and Dr Pepper, sells nonPepsi brands in competition with the Pepsi brands sold by the franchised Pepsi bottler in the Duluth area. The complaint alleges that the acquisition would increase the likelihood of interbrand collusion because PepsiCo, Inc. could raise the price of either of its branded soft drinks or the nonPepsi brand soft drinks that its Twin Ports operation bottles and distributes as a franchise in the area. Under the terms of the consent order, PepsiCo, Inc. is required to divest Twin Ports within nine months to an acquirer approved by the Commission. In addition, for a period of ten years, PepsiCo, Inc. must obtain Commission approval before acquiring the rights to distribute nonPepsi brands, or before acquiring any entity with such rights, in the Duluth area. PepsiCo, Inc. requested Commission approval to sell Twin Ports to All-American Bottling Corporation. That application is pending.

*Roberto Fojo, M.D.*

Dr. Roberto Fojo agreed to settle allegations that he conspired with others to withhold medical services from the North Shore Medical Center, Inc. (North Shore) of Miami, Florida. According to the complaint issued with the consent order, Dr. Roberto Fojo, who at the time of the alleged practices was chairman of North Shore's department of obstetrics and gynecology, and his staff refused to honor and participate in the hospital's policy that provided qualified physicians free privileges in exchange for performing emergency room services. The complaint alleged that the physicians boycotted the emergency room duty in an attempt to coerce the hospital into paying physicians to come to the hospital to take emergency room calls to treat patients needing medical or surgical services. Under terms of the consent order, Dr. Roberto Fojo is prohibited from entering into any agreement with other physicians to withhold emergency room call services at any hospital. The consent order does not prohibit the doctor from entering into agreements with other physicians in his medical partnership to carry on his private medical practice.

*Rohm and Haas Company*

Rohm and Haas Company agreed to settle allegations that its \$175 million proposed acquisition of Union Oil Company of California's (Unocal) six manufacturing facilities, located in California, Illinois, and North Carolina, and other related assets used to produce straight acrylic emulsion polymers, could substantially reduce competition and lead to higher prices and inferior service in the United States for the primary ingredient used in exterior latex house paints. According to the complaint, Rohm and Haas Company, the leading firm in the market with an approximate 82% market share, produces a full line of emulsion polymers, including vinyl acrylics used in the production of interior house paints. The consent order permitted the acquisition but required Rohm and Haas Company to divest Unocal's straight acrylics polymer business technology and licenses to Union Carbide or another Commission approved buyer within one hundred and eighty days. In addition, for ten years, Rohm

## Federal Trade Commission

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and Haas Company must obtain prior Commission approval before acquiring any firm engaged in the production of straight acrylic emulsion polymers.

### *RWE Aktiengesellschaft*

RWE Aktiengesellschaft (RWE) settled allegations stemming from its \$1.3 billion acquisition of Vista Chemical Company (Vista). The complaint issued with the consent order alleged that the acquisition would eliminate competition in the world market for the manufacture and sale of high purity alcohol process alumina. RWE and Vista are the only two companies that obtain alumina as a by-product in the production of high purity alcohol used in making catalysts for the petroleum refining, chemical, and automotive emissions control industries. The consent order requires RWE to license to a Commission approved entity certain technology for the production of its alumina and to assist the licensee in the formation and operation of a company capable of establishing itself as a producer of high purity alcohol process alumina comparable to that of Vista or RWE. In January 1992, the Commission approved RWE's request to license the technology used in the production of high purity alcohol process alumina to Discovery Aluminas, Inc. The consent order also requires RWE to obtain prior Commission approval for a period of ten years before acquiring any entity that manufactures, distributes, or sells high purity alumina if that entity had sales of one hundred and twenty five thousand pounds or more in the United States in any six month period.

### *Sandoz Pharmaceuticals Corporation*

A complaint filed against Sandoz Pharmaceuticals Corporation (Sandoz) alleged that Sandoz engaged in an illegal tying arrangement by requiring patients who purchased clozapine, a drug used in the treatment of schizophrenia, to also purchase distribution and monitoring services marketed and arranged by Sandoz under its Clozaril Patient Management System. Clozapine is sold under the tradename Clozaril and is exclusively marketed in the United States by Sandoz. According to the complaint, the illegal tying arrangement restrained competition and injured consumers by raising the price of treatment, and prevented federal, state, and local institutions and private health care providers from administering their own patient monitoring services. Under terms of the consent order, Sandoz is prohibited from requiring any purchaser of Clozaril to buy other goods or services from Sandoz or from anyone designated by Sandoz. In addition, Sandoz must provide other sellers of clozapine, at reasonable terms, data on patients who have suffered adverse reactions to clozapine. The consent order does allow Sandoz to refuse to sell the drug to anyone who does not provide adequate monitoring services for patients.

### *Sentinel Group, Inc.*

Sentinel Group, Inc. (Sentinel) agreed to settle allegations stemming from its acquisitions of funeral homes in Georgia and Arkansas. The Commission's complaint alleged that the acquisitions, covering funeral homes in five cities in the two states, reduced competition among area funeral homes and increased the likelihood of collusion among the remaining firms in the areas. Under the consent order, Sentinel must divest the Mincy-Fulford Funeral Home in Waycross, Georgia and the Erwin-Pettit Funeral Home in Summerville, Georgia within twelve months to a Commission approved acquirer. In addition, for a period of ten years, Sentinel must obtain prior Commission approval before acquiring any funeral home in an area extending fifteen miles outward in any direction from the city limits of Waycross, Georgia; Summerville, Georgia; Gainesville, Georgia; Rome, Georgia; Savannah, Georgia; and Fort Smith, Arkansas.

*Service Corporation International*

Service Corporation International (SCI) agreed to settle allegations stemming from its acquisition of Pierce Brothers Holding Company. The complaint issued with the consent order alleged that the acquisition, which combined the two largest owners and operators of funeral homes and cemeteries in North America, would substantially lessen competition in the funeral home industry in the San Bernardino/Riverside area of California. Under the consent order, SCI must divest Cortner-Pierce Brothers Chapel of Redland; Pierce Brothers Ingold Chapel of Fontana; Mark B. Shaw Funerals, SCI, which is located at 1128.0801100 T



## **Federal Trade Commission**

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Commission consent order to address the dissolution of a health care organization.

### *Texas Board of Chiropractic Examiners*

The Texas Board of Chiropractic Examiners (Board) agreed not to adopt and enforce rules that prohibit its members from using truthful advertising or soliciting patients. The complaint issued with the consent order alleged that the Board, the sole licensing authority for chiropractors in the State of Texas, restrained competition and injured consumers by restricting truthful advertising about chiropractors' fees, services, and products. The consent order does not restrict the Board from adopting or taking disciplinary action to prohibit false or deceptive advertising. This consent order was modified from the proposed consent agreement originally placed on the public record for comment in 1989 to delete Commission challenges to a number of the Board's Rules of Practice. Among the Board rules deleted from the consent order were prohibitions against publicly displaying food supplements or food supplement brochures in chiropractors' offices, prohibitions against quality advertising not subject to reasonable verification by the public, and prohibitions against offering free x-rays as a means of soliciting patients.

### *Vons Companies, Inc., The*

The Vons Companies, Inc. (Vons) agreed to divest a supermarket in California to settle allegations that Vons attempted to lessen competition in the retail grocery market in the San Luis Obispo area. According to the complaint, Vons sold its grocery store in San Luis Obispo to a drugstore within days of entering into arrangements with Williams Bros. Markets, Inc. (Williams) to purchase eighteen Williams supermarkets in the central coastal area of California. The Vons store was sold to a drugstore operator, who did not intend to operate the store as a retail grocery, at a lower price than was offered by a firm that intended to continue the store's operation as a retail grocery. The sale of the eighteen supermarkets was completed three months later and was inextricably intertwined with the prior Vons' sale, according to the complaint. The complaint further alleged that the two related transactions eliminated competition between Vons and Williams, reduced market capacity, and increased the likelihood of collusion in the market. Under the terms of the consent order, Vons is required to divest its Madison Road supermarket in San Luis Obispo to a Commission approved buyer who will operate the store as a supermarket. Vons must also obtain Commission approval before acquiring a supermarket in San Luis Obispo County for a period of ten years or from acquiring a supermarket anywhere in the United States within nine months after having closed or sold all of its supermarkets within seven miles of the acquired store when such a sale is to a person who will not operate the store as a supermarket.

**CONSUMER PROTECTION  
MISSION**

## **Federal Trade Commission**

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Dive N' Surf, Inc., a manufacturer of formfitting garments, including wetsuits and bathing suits, agreed to settle allegations that it failed to label the garments with the constituent fiber content, as required by the Textile Fiber Products Identification Act. The consent order prohibits future violations of the Textile Fiber Products Identification Act.

### *Elexis Corp., Frank J. Bianco*

Elexis Corp. and its president, Frank J. Bianco, agreed to settle allegations that they falsely claimed their ultrasonic flea collars and in-home pest control devices reduce or eliminate fleas on household pets and in the home. The consent order prohibits the respondents from, among other things, representing that their ultrasonic devices will eliminate fleas on dogs or cats, or that they will reduce or repel fleas and ticks on pets or in indoor environments, without the use of chemicals. The consent order also prohibits the respondents from making any unsubstantiated claims about the performance characteristics of any ultrasonic pest control products Elexis Corp. sells.

### *Excell Mortgage Corporation*

Excell Mortgage Corporation agreed to settle allegations that it provided consumers with inaccurate, incomplete and misleading information about annual percentage rates and the size of monthly payments for adjustable rate mortgages. The consent order prohibits future violations of the Truth in Lending Act and Regulation Z and requires the company to pay consumer redress totalling approximately \$200,000.

### *Exhart Environmental Systems, Inc., Isaac Weiser, Margaret Weiser*

Exhart Environmental Systems, Inc., its owner and president, Isaac Weiser, and one other officer, Margaret Weiser, agreed to settle allegations that they made false and unsubstantiated claims for Go'pher It, an electronic stake that vibrates and buzzes when placed in the ground. The Commission alleged that the respondents made unsubstantiated claims that the device is an effective means of eliminating, reducing, or preventing re-entry of rodents and that they falsely claimed it was waterproof and approved by the Environmental Protection Agency. The consent order prohibits the respondents from, among other things, making the challenged claims in the future.

### *First Brands Corp.*

First Brands Corp., maker of Glad trash bags, agreed to settle allegations that it made unsubstantiated claims that the trash bags, when disposed of as trash, will completely break down, decompose, and return to nature within a reasonably short time period and that they offer a significant environmental benefit compared to ordinary, untreated plastic bags. The consent order prohibits First Brands Corp. from making unsubstantiated degradability claims

in the future. In addition, First Brands Corp. must be able to substantiate claims that its bags are environmentally friendly or safe for the environment and must disclose with reasonable specificity what it means by such terms. Attorneys General in ten states assisted the Commission in its investigation.

*Good Guys, Inc., The*

The Good Guys, Inc., a chain of consumer electronics stores, agreed to settle allegations that it failed to make the text of manufacturers' consumer product warranties available to consumers prior to a purchase, in violation of the Pre-Sale Availability Rule. The consent order prohibits future violations of the Pre-Sale Availability Rule.

*Jason Pharmaceuticals, Inc., Nutrition Institute of Maryland*

Jason Pharmaceuticals, Inc. and Nutrition Institute of Maryland, marketers of the Medifast liquid diet program, agreed to settle allegations that they made deceptive and unsubstantiated claims regarding the safety and long-term efficacy of the program. The consent order prohibits the respondents from, among other things, misrepresenting the likelihood of regaining lost weight and making unsubstantiated claims about former patients' success in achieving or maintaining weight loss. The consent order also requires any claim concerning the safety of the diet program to be accompanied by a clear disclosure about the need for physician monitoring to minimize potential health risks.

*Keystone Carbon Company*

Keystone Carbon Company, a manufacturer of metal parts and bearings, agreed to settle allegations that it failed to tell job applicants who were denied employment based on information in their credit reports that the report was at least part of the reason for the denial and failed to tell applicants the name and address of the firm that provided the credit history information, in violation of the Fair Credit Reporting Act. The consent order prohibits, among other things, future violations of the Fair Credit Reporting Act.

*Kobacker Company, The*

The Kobacker Company, which retails footwear and accessories, agreed to settle allegations that it failed to tell job applicants who were denied employment based on information in their credit reports that the report was at least part of the reason for the denial and failed to tell applicants the name and address of the firm that provided the credit history information, in violation of

## Federal Trade Commission

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Macy's Northeast, Inc. and its retail store subsidiaries agreed to settle allegations that they failed to tell job applicants who were denied employment based on information in their credit reports that the report was at least part of the reason for the denial and failed to tell applicants the name and address of the firm that provided the credit history information, in violation of the Fair Credit Reporting Act. The consent order prohibits, among other things, future violations of the Fair Credit Reporting Act.

### *McDonnell Douglas Corp.*

McDonnell Douglas Corp. agreed to settle allegations that it failed to tell job applicants who were denied employment based on information in their credit reports that the report was at least part of the reason for the denial and failed to tell applicants the name and address of the firm that provided the credit history information, in violation of the Fair Credit Reporting Act. The consent order prohibits, among other things, future violations of the Fair Credit Reporting Act.

### *Money Store, Inc., The*

The Money Store, Inc. and its subsidiaries in fifteen states agreed to settle allegations that they represented to consumers who obtained a second mortgage from the company that they were being charged a lower interest rate than the one on which their actual payments were based. The consent order prohibits the respondents from violating certain provisions of the Truth-in-Lending Act and its implementing regulation, Regulation Z, in the future. In addition, the consent order requires The Money Store, Inc. to make a total of \$1,112,000 in adjustments to the accounts of consumers whose loans were amortized using the undisclosed method of calculation which resulted in the higher payments.

### *National Center for Nutrition*

The National Center for Nutrition, a marketer of the Ultrafast liquid diet program, agreed to settle allegations that it made deceptive and unsubstantiated claims regarding the safety and long-term efficacy of its diet program. The consent order prohibits the respondent from, among other things, misrepresenting the likelihood of regaining lost weight, and making unsubstantiated claims about former patients' success in achieving or maintaining weight loss. The consent order also requires any claim concerning the safety of the diet program to be accompanied by a clear disclosure about the need for physician monitoring to minimize potential health risks.

### *Nestle Food Company*

Nestle Food Company, formerly Carnation Company, and Nestle Beverage Company agreed to settle allegations that certain advertisements for Carnation Coffee-Mate Liquid falsely represented it to be a low-fat product when

consumed in amounts normally used on cereal, over fruit or in cooking, and lower in fat than other foods such as whole milk or 2% milk. The consent order prohibits the respondents from, among other things, misrepresenting the amount of total fat, saturated fat, or cholesterol in any milk product or nondairy substitute. In addition, the respondents are prohibited from misrepresenting the amount of total fat, saturated fat, or cholesterol relative to the serving size or amount customarily consumed for any particular use depicted in ads or promotional materials.

*Newtron Products Company, Inc., Michael S. Duty, Donald G. Attermeyer*

Newtron Products Company, Inc. and its principals agreed to settle allegations that they deceptively advertised the performance capabilities of the Newtron Electrostatic Air Cleaner. The consent order prohibits the respondents from making unsubstantiated representations regarding the performance of any air cleaning product unless it possesses competent and reliable scientific evidence to substantiate those claims.

*NME Hospitals, Inc., Continent Ostomy Center*

NME Hospitals, Inc. (NME) and the Continent Ostomy Center agreed to settle allegations that they made false claims in ads and promotional materials concerning the success rate and comparative superiority of a surgical procedure they recommend for treating ulcerative colitis and other bowel-related diseases. The Commission alleged, among other things, that NME misrepresented the incidence of slippage and leakage following the procedure and the need for follow-up corrective surgery. The consent order prohibits the allegedly false claims and misrepresentation of the comparative success rate of any reconstructive surgical procedure in the future.

*Nu-Day Enterprises, Inc., Jeffrey S. Bland, Healthcomm, Inc.*

Nu-Day Enterprises, Inc. (Nu-Day), its owner, Jeffrey S. Bland, and its parent company, Healthcomm, Inc., agreed to settle allegations that they falsely claimed the Nu-Day Diet program could change consumers' metabolisms and enable them to lose weight without exercising. The Commission also alleged that the program-length television format Nu-Day used for making the claims was deceptive. The consent order prohibits the respondents from making similar false and unsubstantiated claims in the future, and requires Nu-Day to disclose during any program-length television commercial that the infomercial is a paid advertisement. In addition, the consent order requires the respondents to pay \$30,000 for consumer redress.

# **Federal Trade Commission**

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Reproductive Genetics In Vitro, P.C. and its president, Dr. George P. Henry, agreed to settle allegations that they made false and unsubstantiated claims about the success rate of their in vitro fertilization program. The consent order prohibits the respondents from making unsubstantiated success rate claims in the future. This was the Commission's fourth case challenging success rates claimed by infertility services.

*RMED International, Inc., Edward Reiss*

RMED International, Inc. and its president, Edward Reiss, agreed to settle allegations that they made unsubstantiated claims that TenderCare disposable plastic diapers will completely break down, decompose, and return to nature within a reasonably short time when disposed of as trash and that they offer a significant environmental benefit compared to other disposable diapers. The consent order prohibits the respondents from making unsubstantiated degradability claims in the future and from representing that any plastic product is degradable or biodegradable or offers a significant environmental benefit compared to other such products, when consumers dispose of them as trash ordinarily disposed of in landfills. The consent order allows the company to make truthful claims that its plastic products will degrade into usable compost when disposed of in municipal solid waste composting facilities, if related disclosures are made.

*Sandoz Nutrition Corp.*

Sandoz Nutrition Corp., marketer of the Optifast liquid diet program, agreed to settle allegations that it made deceptive and unsubstantiated claims regarding the safety and long-term efficacy of its diet program. The consent order prohibits the respondent from, among other things, misrepresenting the likelihood of regaining lost weight and making unsubstantiated claims about former patients' successes in achieving or maintaining weight loss. The consent order also requires any claim concerning the safety of the diet program to be accompanied by a clear disclosure about the need for physician monitoring to minimize potential health risks.

*Scott M. Ross, M.D. d/b/a Mpls. Center for Cosmetic and Laser Surgery*

Dr. Scott M. Ross agreed to settle allegations that he falsely implied in advertisements that liposuction is a low-risk procedure without significant discomfort or the need for a lengthy recovery period and that he included before and after photographs in advertisements that misrepresented the results that typically can be achieved through a twenty-five minute liposuction procedure. The consent order prohibits Dr. Scott M. Ross from, among other things, misrepresenting the results, recovery times, or the likelihood of serious adverse complications associated with liposuction or any other cosmetic surgery procedure.



## Federal Trade Commission

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### *Slender You, Inc.*

Slender You, Inc. agreed to settle allegations that it made false and unsubstantiated weight loss claims for the continuous passive motion (CPM) exercise tables it manufactures and sells to health and fitness centers. The consent order prohibits Slender You, Inc. from making misrepresentations in the advertising, labeling, packaging, sale, or distribution of its CPM exercise tables and from misrepresenting the benefits ~~and~~ 0.0its

cleaning products bearing labels containing claims such as ozone friendly or CFC free. The Commission alleged, however, that some of their products contained Class I and Class II ozone depleting substances. The consent order prohibits the respondents from, among other things, representing that any product containing such substances is ozone safe or ozone friendly or that any such product will not damage or deplete ozone in the upper atmosphere.

*Volvo North America Corp., Scali, McCabe, Sloves, Inc.*

Volvo North America Corp. (Volvo) and Scali, McCabe, Sloves, Inc., its New York advertising agency, agreed to settle allegations that they falsely portrayed the comparative performance of Volvo automobiles in an ad campaign, which demonstrated a monster truck running over a row of cars, crushing

## PART III ADMINISTRATIVE COMPLAINTS

### **MAINTAINING COMPETITION MISSION** *Abbott Laboratories*

The Commission alleged that Abbott Laboratories conspired with others to refrain from advertising infant formula directly to consumers. According to the administrative complaint, Abbott held discussions at meetings of the Infant Formula Council to draft guidelines to prohibit mass media advertising directly to consumers and agreed to exchange information with its competitors concerning their plans for other types of advertising and product promotionals. The administrative complaint further alleged that Abbott Laboratories requested health care professionals to ask other manufacturers of infant formula to stop consumer advertising. Abbott Laboratories, based in Illinois, is the nation's leading manufacturer of infant formula, and produces the Similac and Isomil brands of formula through its Ross Laboratories division.

### **CONSUMER PROTECTION MISSION** *Griffin Systems, Inc., Gennaro J. Orrico, Alfonso S. Giordano, Robert W. Boughton*

The Commission alleged that Griffin Systems, Inc., its president, Gennaro J. Orrico, its vice president, Alfonso S. Giordano, and its former president, Robert W. Boughton, made several false, unsubstantiated, and misleading claims in order to sell Vehicle Protection Plan service contracts for consumers' automobiles. The Commission alleged, among other things, that the respondents falsely represented that service contracts would fully cover repair costs for an unlimited number of claims, failed to disclose significant limitations on rental allowances, unfairly hindered consumers' ability to contact the company, and then refused to pay claims on the grounds that consumers had not received authorization for repairs.

### *Sonic Technology Products, Inc., W. Lowell Robertson, Brian Phillip Jobe*

The Commission alleged that Sonic Technology Products, Inc. and two of its officers, W. Lowell Robertson and Brian Phillip Jobe, made false and unsubstantiated claims about their ultrasonic pest control devices. The Commission alleged, among other things, that the respondents falsely claimed the PestChaser and PestRepeller devices eliminate flea and rodent infestations in the home.

### *Stouffer Food Corp.*

The Commission alleged that Stouffer Food Corp. made deceptive claims in print advertisements for Lean Cuisine frozen entrees. The Commission alleged, among other things, that the company falsely claimed the entrees are low in sodium.

*Synchronal Corp., Synchronal Group, Inc., Smoothline Corporation, Omexin Corporation, Ira Smolev, Richard E. Kaylor, Thomas L. Fenton, Steven Victor M.D., Ana Blau a/k/a/ Anushka*

The Commission alleged that Synchronal Corp., one of the nation's largest producers of program length television commercials, made false and unsubstantiated efficacy claims for the Omexin System for Hair, a purported baldness cure, and for the Anushka Program, a purported cellulite treatment. The administrative complaint also named three related companies; Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; the principals of the companies, Ira Smolev, Richard E. Kaylor, and Thomas L. Fenton; and Dr. Steven Victor and Ana Blau a/k/a Anushka, who appeared in infomercials as expert endorsers.

**PART III CONSENT AGREEMENTS ACCEPTED AND  
PUBLISHED FOR PUBLIC COMMENT**

**CONSUMER PROTECTION** *American Family Publishers*  
**MISSION**

American Family Publishers agreed to settle allegations that it violated the FTC Act when it hired collection firms and knowingly approved or assisted their use of deceptive debt collection practices. According to the complaint issued in 1990, American Family Publishers used debt collection agencies to send consumers deceptive attorney collection letters that were on the letterhead of attorneys. In fact, the Commission alleged, no attorneys were actively or substantially involved in the collection of the debts at issue, and no legal action was about to be initiated if the debts were not paid. The proposed consent agreement requires American Family Publishers, among other things, to instruct its debt collectors to comply with the Fair Debt Collection Practices Act in the future.

*Phone Programs, Inc.*

Phone Programs, Inc. agreed to settle allegations that it deceptively and unfairly advertised and marketed 900 number information services to children. The proposed consent agreement prohibits the company from making misrepresentations regarding free gifts or the content of its programs. It also requires the company to include a clear statement giving children a chance to hang up without charge and provide a means for parents to prevent unauthorized calls by their children.

**PART III CONSENT ORDERS ISSUED**

**MAINTAINING** *Diran M. SeromeRS ISSUED*  
**COMPETITION MISSION**

## **Federal Trade Commission**

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a federal court to block a nonprofit hospital merger. The consent order prohibits University Health, Inc. anj 4.92 0 T8 0 Tn 246 ( ) Tj 1.8 0 TD 0.0061 Tc (an4

*Money, Money, Money.* The consent order prohibits Wayne Phillips from distributing the commercial and requires him to pay \$50,000 for consumer redress.



### INITIAL DECISIONS

**MAINTAINING** *Textron, Inc.*  
**COMPETITION MISSION**

An Administrative Law Judge ruled Textron, Inc.'s acquisition of Avdel PLC did not pose a competitive threat to any product or geographic market in the United States. The Commission issued an administrative complaint in 1989 after a negotiated federal court consent order prohibited Textron, Inc. from taking control of the Avdel PLC assets. The administrative complaint alleged that the acquisition could substantially lessen competition by increasing the likelihood of collusion in the design, manufacture, and sale of blind rivets and fasteners necessary to join two or more sheets of material for use in airplanes, trucks, buses, and other vehicles. Complaint counsel appealed the Administrative Law Judge's decision, and the Commission heard an oral argument during the fiscal year.

**FINAL COMMISSION ORDERS****MAINTAINING  
COMPETITION MISSION** *Owens-Illinois, Inc.*

The Commission reversed an Administrative Law Judge's (ALJ) decision and dismissed the complaint that challenged the acquisition of Brockway, Inc. by Owens-Illinois, Inc. According to the 1988 administrative complaint, the acquisition could substantially reduce competition in the manufacture and sale of glass containers in the United States. The ALJ ruled that the acquisition combined two of the three largest domestic glass container producers and made Owens-Illinois, Inc., the largest producer in a highly concentrated market. The ALJ ordered the divestiture of the Brockway, Inc. assets. According to the Commission final order, the evidence on balance did not support the allegations that the acquisition was anticompetitive, would tend to create a monopoly, or increase the probability of collusion among the remaining manufacturers in the production of glass containers in the United States.

*Peterson Drug Company of North Chili, New York, Inc.*

The Commission adopted an Administrative Law Judge's (ALJ) decision that upheld the complaint against the Peterson Drug Company of North Chili, New York, Inc. The ALJ held that the company engaged in an illegal boycott of the state's cost containment program for prescription drugs in an attempt to increase the reimbursement rate paid to pharmacies. The 1989 complaint alleged that the respondent refused to participate in New York State's proposed Employee Prescription Program designed to reduce the price the state paid to pharmacies when filling prescriptions for public employees. According to the Commission final order, the respondent is prohibited from, among other things, entering into any agreement to boycott or withdraw from third party prescription reimbursement agreements.



The Commission modified a 1988 order requiring Removatron International Corp. to cease making certain claims about its electronic, radiofrequency, hair removal device. The Commission determined that new evidence was sufficient to eliminate a provision requiring the company to affirmatively disclose that there is no evidence that its device provides anything more than temporary hair removal. The Commission declined to find that evidence sufficient to support a claim that the device provides permanent hair removal. The company is still prohibited from making unsubstantiated hair removal claims.

## PRELIMINARY AND PERMANENT INJUNCTIONS

**MAINTAINING COMPETITION MISSION** *Abbott Laboratories, American Home Products, Mead Johnson & Company*

The Commission filed complaints in U.S. District Court for the District of Columbia against the three leading manufacturers of infant formula, Abbott Laboratories (Abbott), American Home Products, and Mead Johnson & Company. The complaints alleged that the companies conspired with others to fix prices and guarantee an open market bidding system for a program to provide formula to infants in Puerto Rico under the Special Supplemental Food Program for Women, Infants, and Children (WIC) and that all three companies unilaterally provided information to their competitors that reduced uncertainty in the bidding process for that program. The Commission also filed an administrative complaint against Abbott for conspiring with others not to advertise to consumers through the mass media. Abbott, of Illinois, manufactures and sells Similac and Isomil brands of infant formula; American Home Products, headquartered in New York City, manufactures and sells SMA and Nursoy brands of formula through its Wyeth-Ayerst Laboratories division; and Mead Johnson & Company, a wholly owned subsidiary of Bristol-Myers Squibb Company, manufactures and sells Enfamil and Prosobee. Settlements with American Home Products and Mead Johnson & Company require the companies to deliver a total of three million six hundred pounds of powdered infant formula to the U.S. Department of Agriculture, the agency which administers the WIC Program. Allegations against Abbott are pending in the court.

**CONSUMER PROTECTION MISSION** *Academic Guidance Services, Inc.*

Academic Guidance Services, Inc., a firm that licenses the right to sell college financial aid information to students through its Undergraduate Scholarship Matching Service, allegedly overstated licensees' earnings potential, consumer response to solicitations, and the service it offers licensees. In the complaint, the Commission alleged that the defendants misrepresented the earning potential a licensee can reasonably expect to make, misrepresented that a licensee can expect that 25% or more of the students will respond to a direct mail solicitation for the financial aid information service or that 3 to 4% of those solicited will purchase the service (in fact, the Commission alleged, substantially fewer students respond to the solicitations or purchase the information), and misrepresented that they will provide any licensee, as needed, assistance by knowledgeable representatives. The court issued an order temporarily barring the alleged misrepresentations and freezing the defendant's assets.

*Advanced Automotive Technologies, Inc., Robert H. Morrison, Jr.,*



## Federal Trade Commission

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*Norbert Hancock*

The Commission alleged that American Processing Systems, Inc. and two of its officers, Ronald Gray and Philip Malina, assisted telemarketers who use deceptive means to sell water filters and other products by, among other things, arranging for bank processing of the telemarketers' credit card transactions. The complaint also names Norbert Hancock, who was allegedly affiliated with entities that provided the credit card processing. The Commission is seeking a permanent injunction and consumer redress.

*Buyers Club International d/b/a Diversified Fulfillment Services,  
Edward Gagle, Lynda Field*

Buyers Club International d/b/a Diversified Fulfillment Services (Buyers Club) and its president, Edward Gagle, agreed to pay \$50,000 in redress to settle the allegations against them, are prohibited from factoring credit card slips through a merchant account not their own, and are required to disclose material information necessary to prevent consumers from being misled. Lynda Field agreed to pay \$9,685 for consumer redress and be bound by the same restrictions as Buyers Club International and Edward Gagle.

*Carl Grodin, Gayle Gunn, George Anderson,  
Golden Sands Development, Inc., Houston R&R, Inc.,  
Jack Edwards a/k/a Gale Jackson, Lloyds International, Inc.,  
Lloyd Sharp, Marcel, Edwards, Hall & Associates, Merlyn Berg,  
Reese T. Houston, Roger Swayze, Roy Bonn, Sharp & Anderson,  
Steven Borque a/k/a J.W. Hall, Vern Jensen, White Rock Mining, Inc.*

In the case against eleven individuals and six companies to settle allegations that they misrepresented the success, value, and investment risk of three Nevada ore mining projects, the Commission obtained three settlements and a redress judgment.

- The consent order with Carl Grodin, a bookkeeper for one of the mining projects, prohibits him from misrepresenting the value or quantity of gold or silver ore in mining claims, the degree of risk or potential investment profit in ore purchase contracts, plans to construct processing or pilot test plants, or the past or likely future earnings of any customer. The order also requires him to pay \$26,000 for consumer redress. Carl Grodin also agreed to pay \$24,000 to settle an allegation of civil contempt for opening and depositing receipts in a corporate bank account, in violation of the court's temporary restraining order and asset freeze.
- Merlyn Berg agreed to pay \$34,000 in satisfaction of a judgment against him alleging he misrepresented the progress that was occurring in the mining project through newsletters that he wrote to consumers.
- The consent order with Vern Jensen, a salesperson for one of the mining projects, prohibits him from misrepresenting the value or quantity of gold or silver ore in mining claims, the degree of risk or potential investment

profit in ore purchase contracts, plans to construct processing or pilot test plants, or the past or likely future earnings of any customer. The order also requires him to pay \$50,000 for consumer redress.

- The Commission also obtained a judgment holding the remaining defendants liable for \$6,975,420 for consumer redress. (The court previously granted the Commission's motion for partial summary judgment against these defendants and entered permanent injunctions against them). The court-appointed receiver determined that the defendants presently have no assets to satisfy the judgment.

*C & L Industries, Inc., Ramon Haas, Thomas W. Bodiford*

C & L Industries, Inc. and its



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future delivery or about any other investment opportunity. The defendants also agreed to have a judgment entered against them for \$500,000.

*Credit One Services, John P. Ruggeri, Nancy G. Ruggeri*

The Commission alleged that Credit One Services and its principals, John P. Ruggeri and Nancy G. Ruggeri, made false claims that consumers who have filed for bankruptcy can legally establish clean credit records by purchasing the defendants' file segregation program and that the program is connected with the federal government and is legal. The court issued a temporary restraining order prohibiting the challenged practices and froze the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

*David L. du Pont*

The Commission obtained two judgments against David L. du Pont for civil contempt. In each instance, the court found that David L. du Pont had operated new businesses in violation of court orders. The second contempt order against David L. du Pont permanently bans him from participating in any modeling business and requires him to pay into a consumer redress fund.

*Dean S. Vlahos*

The Commission alleged that Dean S. Vlahos, a defendant in the US Sales Corp. telemarketing fraud case, was in criminal contempt for advertising automobile auction information without posting a performance bond. A 1991 district court order requires Dean S. Vlahos to post a \$75,000 performance bond prior to advertising car auction or credit card information services.

*Delta American Financial Services Corporation,  
Delta Financial Services, Inc., Lee Larson Elmore*

The Commission alleged that Delta Financial Services, Inc., Delta American Financial Services Corporation, and Lee Larson Elmore misrepresented, among other things, that they routinely obtained unsecured loans for people with poor credit histories. The Commission is seeking preliminary and permanent injunctions and consumer redress.

*Don David Wilson, LCI, Inc. d/b/a Franchise Contract Managers*

The settlement with Don David Wilson and LCI, Inc. d/b/a Franchise Contract Managers prohibits them from marketing or selling franchises for ten years, from making specified misrepresentations in the sale of franchises, business opportunities, or investment opportunities, and from violating the Franchise Rule. In addition, the consent order restricts their performance of franchise consulting services and requires them to pay \$17,000 for consumer redress.

*Donald C. Bullock*

Donald C. Bullock, president of Solomon Trading Company, agreed to settle allegations in connection with his role in the allegedly deceptive promotion of art works by Solomon Trading Company. The settlement with Donald C. Bullock prohibits him from falsely representing that art works or any investment offerings are good, low-risk investments that are likely to appreciate significantly within several years. It also prohibits him from falsely representing that such investments are highly liquid or that buyers can be found within a reasonably short time.

*DuPont Model Management, Inc., David L. du Pont*

The Commission obtained a judgment against DuPont Model Management, Inc. and its president, David L. du Pont, for falsely claiming, among other things, that Dupont Model Management, Inc. is a modeling agency and can place consumers in jobs as professional models. The order, among other things, requires the defendants to pay \$2,343,506 for consumer redress.

*Earl Serap*

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practices against both corporations and the individual who controls them and froze all of the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

*Federal Coin Repository, Ichak Listenger*

The Commission alleged that Federal Coin Repository and its president, Ichak Listenger, misrepresented, among other things, that their coins are excellent, low-risk investments and that they have consistently appreciated in value. The Commission is seeking a permanent injunction and consumer redress.

*Feelin' Great International, Inc., James R. Quincy*

The Commission alleged that James R. Quincy violated a 1988 federal district court order that required him to post a bond and to make certain required disclosures to consumers in his operation of a telemarketing firm that sells Caribbean and Florida vacation travel packages. The court issued a temporary restraining order prohibiting the challenged practices and froze the assets of James R. Quincy and his firm, Feelin' Great International, Inc.

*First American Trading House, Inc., James F. Settembrino,  
Linda H. Settembrino*

Linda H. Settembrino and James F. Settembrino agreed to settle allegations that they misrepresented, among other things, that leveraged investments in precious metals acquired through their program are low-risk and can be expected to generate high rates of return within a short period of time. The court issued a default judgment against First American Trading House, Inc. and awarded a monetary judgment "in the amount of total consumer losses...to be determined at a later date." James F. Settembrino agreed to be banned from the telemarketing of investments altogether. Linda H. Settembrino agreed to be prohibited from engaging in unlawful practices in connection with the sale of precious metals or other investment programs she offers for sale.

*Golden Oak Numismatics, Ronald H. Michel*

The Commission alleged that Golden Oak Numismatics and its president, Ronald H. Michel, made false and misleading representations to induce consumers to invest in coins with as much as a 100% mark up. The court issued a temporary restraining order prohibiting the challenged practices and froze the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

*GTP Marketing, Inc., Telstar Marketing Network, Inc.,  
H S Marketing, Inc., Unitel Marketing Consultants, Inc.,  
MBC Group, Inc., Todd Alan Arnold, Stephen Gregg Echols, Pat Arnold*

GTP

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potential and costs of the pay telephone franchises, services, and training available to prospective franchisees. It was also alleged that the defendants failed to provide potential franchisees with various disclosure documents required by the Commission's Franchise Rule. The federal district court issued a temporary restraining order halting the alleged misrepresentations and rule violations and freezing the assets of the defendants and their officers to preserve funds for consumer redress.

*Interactive Communications Technology, Inc.,  
Goodale Communications, Inc. d/b/a Audio Arts 900 Services, Inc.,  
David Goodale*

Interactive Communications Technology, Inc., Goodale Communications, Inc. d/b/a Audio Arts 900 Services, Inc., and their principal, David Goodale, agreed to settle allegations that they misrepresented the nature of their credit services and failed to disclose to consumers essential cost information about their 900 telephone numbers. The consent order prohibits future misrepresentations of the type alleged in the complaint and requires the defendants to pay \$800,000 for consumer redress.

*International Assets Trading Co., Inc., Garry Schaeffer, Thomas V. Lopes,  
GEM Sciences International, Sarabeth Koethe*

The Commission alleged that International Assets Trading Co., Inc., its principal officers, Garry Schaeffer and Thomas V. Lopes, GEM Sciences International, and its CEO, Sarabeth Koethe, misrepresented, among other things, the market value of gemstones they offered as investments to consumers. The court issued a temporary restraining order prohibiting the challenged practices, appointed a receiver for the corporation, and froze its assets and those of its named officers. A preliminary injunction was issued prohibiting GEM Sciences International and Sarabeth Koethe from misrepresenting through their appraisal services either the value of gemstones or other investment offerings and requiring them to affirmatively disclose that purchasing gemstones is a high-risk investment. The Commission is seeking a permanent injunction and consumer redress.

*International White Cross, Inc.*

The Commission obtained a settlement with International White Cross, Inc. regarding their involvement in the manufacturing and marketing of a purported AIDS cure called Immune Plus. The Commission alleged that the defendants falsely claimed, among other things, that the product could cure AIDS or AIDS-relat

was able to limit consumer injury by filing suit before the product was marketed nationwide.

*Ion Technology Systems, Inc., Pamela J. Besh, Kenneth Baer, John Ross*

Ion Technology Systems, Inc. and its principal officers, Pamela J. Besh, Kenneth Baer, and John Ross, agreed to settle allegations that they falsely represented, among other things, that the water filters they sold removed at least 98% of a wide range of contaminants, would kill or eliminate bacteria in 10,000 or more gallons of water for at least four years, and were approved or recommended by the Environmental Protection Agency. The consent order prohibits the defendants from making the misrepresentations alleged in the complaint and requires them to disclose the terms and conditions of purchasing

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functionally similar to Visa or Mastercard credit cards, when, in fact, consumers could only use the cards to buy items from certain catalogs. The defendants agreed to pay \$300,000 for consumer redress and to be bound by prohibitions against assisting others in making the same representations.

*Mandy Enterprises, Inc., Frances Witz, Gustavo Garces, James Witz*

Mandy Enterprises, Inc. and its owners and operators agreed to settle Commission allegations that they misrepresented to consumers their credit card program and misrepresented an information call as being toll free when in fact it was not free for consumers outside of Hilton Head Island, South Carolina. The agreement prohibits the defendants from misrepresenting the availability, quality, nature, or total cost of their credit-related services and requires them to disclose the conditions a consumer would need to agree to in order to use the cards.

Commission availability,  
Inc. Is Services and the quality of

*Mark M. Sabraw*

MDMS Technologies d/b/a Metro Communications Group, its principals, Gerald L. Foreman and James L. Smith, one of its dealers, MCG-San Bernardino, and its president, Mark M. Sabraw, agreed to settle allegations that they misrepresented their application preparation and filing service for lotteries to operate wireless cable television systems. The settlement includes prohibitions as well as broad limitations on future participation in any government sponsored license lottery. The settlement also requires the defendants to provide an extensive disclosure document to customers before closing any sale and to forfeit to the Commission all previously frozen assets which may be used to fund a consumer redress program.

*Michael Jay & Company, Inc., Michael Jay, Andra Jay*

Michael Jay & Company, Inc. and two of its officers, Michael Jay and Andra Jay, agreed to settle allegations that they falsely claimed that their credit repair services would remove negative but accurate information from consumers' credit reports. The consent decree, among other things, prohibits the defendants from misrepresenting that they can or will improve the credit report of any person and requires them to pay \$10,000 for consumer redress.

*Michael L. Zabrin Fine Arts Ltd., Michael L. Zabrin*

The Commission alleged that Michael L. Zabrin Fine Arts Ltd. and its owner, Michael L. Zabrin, sold fake art works as creations of Marc Chagall, Pablo Picasso, and Salvador Dali to art dealers who then sold them to consumers. The court issued a temporary restraining order, and later a preliminary injunction, against the company and Michael L. Zabrin halting the alleged practices. The complaint was filed under seal in October 1990 and remained under seal pending related legal proceedings until March 1992.

*National Business Consultants, Inc., Robert Namer*

The Commission obtained a judgment against National Business Consultants, Inc. and its president, Robert Namer, for making false and misleading claims in the sale of consulting service franchises and failing to provide required disclosures to potential franchisees, in violation of the F



## **Federal Trade Commission**

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entered a temporary restraining order enjoining the challenged practices and froze the defendant's assets. The Commission is seeking a permanent injunction and consumer redress.

*National Energy Specialist Association, Frank Newbraugh*

National Energy Specialist Association (NESA), a self-described trade association of marketers who sell energy saving products to consumers, and its executive director, Frank Newbraugh, allegedly made false statements that they carefully investigate applicants for membership and then offer memberships only to those with a high degree of skill and proven energy savings expertise. The complaint alleges that, in fact, all any marketer had to be to become a member was to submit an application and pay a fee. The complaint also alleges that although NESA claims to be a nonprofit coalition dedicated to cost efficient solutions to the nation's energy problems, its programs are intended to boost sales of its for profit business members. The Commission is seeking a permanent injunction and consumer redress.

*NATTC, Inc., Douglas P. McGee*

NATTC, Inc. and its owner, Douglas P. McGee, agreed to settle allegations that they misrepresented vacation travel packages to the Bahamas and Hawaii. The consent judgment, among other things, prohibits the defendants from misrepresenting any material fact in connection with any telemarketing activity in the

of any weight loss or health care program in the future and requires them to pay \$21,551,669 for consumer redress.

*Passport Internationale, Inc., Incentive Internationale Travel, Inc., Direct Mail Express, Inc., U.S. Trade Distributors, Inc., David Saltrelli, Michael Panaggio*

The Commission alleged that Passport Internationale, Inc., its owners, and several other firms deceptively marketed travel packages to consumers through a network of telephone salesrooms and allegedly aided and abetted the telemarketers in deceiving consumers. The court issued a temporary restraining order prohibiting the challenged practices and froze the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

*Pioneer Enterprises, Inc., Great Western Printing, Premier Marketing of America, Inc., Pro Life Marketing, Regency Marketing Enterprises, Inc., 21st Century II, 21st Century Marketing, Inc., Sunshine Promotions, VitaSystems Enterprises, Inc., Vita Tek Marketing, Richard J. Secchiaroli, Christopher A. Easley*

The Commission obtained a temporary order halting a prize promotion telemarketing firm scheme business under a variety of names. The Commission's complaint alleged that the firm made unsolicited telephone calls and mailed notifications to consumers stating they had won a valuable award such as a vacation trip, a car, cash, or jewelry. The defendants then allegedly made numerous false and misleading statements in order to induce the recipients to purchase vitamins, water purifiers, or other merchandise at prices ranging from several hundred to several thousand dollars -- prices that exceeded the value of the prize awards, according to Commission documents. The Commission also alleged that the defendants aided and abetted other telemarketers in running similar schemes to market their products.

*PM Marketing Masters, Inc., Precious Metals & Gems, Inc., Donald E. Gaines, Phillip C. Ruttan*

The Commission obtained a judgment against Donald E. Gaines and PM Marketing Masters, Inc. The court found that the defendants made numerous false claims in promoting a timeshare resale operation. The order prohibits the defendants from making the kinds of misrepresentations alleged in the complaint and from billing consumers' credit card accounts on behalf of third parties. The order also requires them to obtain a \$1,500,000 performance bond before resuming any telemarketing activity and to pay \$1,500,000 for consumer redress.

- Precious Metals & Gems, Inc. and its owner, Phillip C. Ruttan, agreed to settle allegations stemming from their participation in the operation. The Commission alleged that these defendants aided and abetted Donald



requires him to disclose to future consumers the risks of investing in gemstones, and requires him to pay \$1,500,000 for consumer redress.

*Scherling Photography, Inc., Patrick T. Scherling, Orlando K. Scherling*

Scherling Photography, Inc. and its presidents, Patrick T. Scherling and Orlando K. Scherling, agreed to settle allegations that they made false claims about the value and quality of film and enlargement processing services provided to consumers who purchased them in partially prepaid packages. The consent order prohibits the defendants from making the types of misrepresentations alleged in the complaint in the future.

*Seymour Butan*

The Commission obtained an order holding Seymour Butan, a defendant in its case against Fax Corporation of America, Inc., in civil contempt for violating an asset freeze the court issued at the Commission's request. The Commission alleged that Seymour Butan was in contempt following thirty-four trips he made to Atlantic City, where he gambled at least \$152,750 in violation of the freeze. The order requires the defendant to pay back the funds he spent, plus interest, and pay reasonable attorney's fees incurred by the Commission.

*Sporicidin Company, Robert I. Schattner, T.J. Schattner*

The Commission alleged that Sporicidin Company and its two principal officers, Robert I. Schattner and T.J. Schattner, falsely advertised the effectiveness of Sporicidin Cold Sterilizing Solution. The Commission requested that the court issue a preliminary injunction pending the outcome of a proceeding before a Commission Administrative Law Judge.

*Starlink, Inc., Frank J. Fioravanti*

Starlink, Inc. and its president, Frank J. Fioravanti, agreed to settle allegations that they misrepresented 900 number telephone services for employment opportunities. The consent order prohibits the defendants from advertising, marketing, or selling any information concerning employment opportunities in the future and requires them to pay \$70,000 for consumer redress.

*T.G. Morgan, Inc., Michael W. Blodgett*

T.G. Morgan, Inc. and its president, Michael W. Blodgett, agreed to settle allegations that they made false claims regarding the investment and market value of rare coins they sold to consumers nationwide. The consent order prohibits the defendants from misrepresenting any material fact about coins or any other investments they sell and requires them to make certain disclosures to future investors. The order also requires the defendants to turn over several

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million dollars worth of assets to provide funds for consumer redress. The case was a joint effort with the Minnesota Attorney General's Office.

### *Unimet Credit Corporation, Unimet Trading Corporation*

The Commission filed a complaint against Unimet Credit Corporation and Unimet Trading Corporation, companies that serve as suppliers and consumer financing providers for telemarketers of leveraged investments of precious metals throughout the United States. The defendants allegedly made numerous and substantial misrepresentations about the risk, profit potential, commissions, and fees associated with the investments. The Commission is seeking a permanent injunction and consumer redress.

### *Uni-Vest Financial Services, Inc., Michael Zambouros, Roger Zilbert*

The Commission obtained a settlement with Michael Zambouros and Roger Zilbert in connection with its case against Uni-Vest Financial Services, Inc. (Uni-Vest) and several other individuals. The Commission alleged that the defendants falsely claimed their precious metals were a low-risk investment and charged fees to consumers higher than, or in addition to, those they claimed to charge for investments in precious metals. The Commission also alleged that the defendants promised to get consumers' permission before executing buy and sell orders, but failed to do so, and failed to execute clients' sell orders quickly.

- The consent order with Michael Zambouros, a former vice-president and co-owner of Uni-Vest, prohibits him from making misrepresentations of the type alleged in the complaint. In addition, the order bans Michael Zambouros from telemarketing any investment products for five years and requires him to pay \$45,000 for consumer redress.

- The consent order with Roger Zilbert, a sales manager for Uni-Vest, prohibits him from making misrepresentations of the type alleged in the complaint. In addition, the order bans Roger Zilbert from telemarketing any investment products for seven years and requires him to pay \$2,500 for consumer redress.

### *U.S. Rarities, Inc., James A. Fullwood, Robert C. Ramos*

U.S. Rarities, Inc. and its co-owners, James A. Fullwood and Robert C. Ramos, agreed to settle allegations that they falsely represented the coins they marketed as excellent investments likely to generate substantial profits in a short period of time. The consent order prohibits the defendants from, among other things, misrepresenting any fact material to a consumer's decision to purchase any coin, investment, or telemarketed product and requires them to obtain a \$25,000 performance bond before they engage in any coin, investment, or telemarketing sales. The individual defendants, who filed for bankruptcy, also agreed to have a judgment entered against them in the amount of \$1,750,000.

*US Sales Corp., Dean S. Vlahos*

The Commission obtained a judgment against US Sales Corp. and its owner, Dean S. Vlahos, for deceptively using 900 numbers to market information on how to buy repossessed, confiscated, or used cars and other late model automobiles for as little as \$100 and how to obtain secured credit cards from major banks regardless of consumers' credit histories. The order prohibits the defendants from making the challenged misrepresentations in the future and requires them to obtain a \$75,000 performance bond before engaging in media advertising of any automobile or credit card information service. In addition, the defendants are required to pay over \$9,000,000 for consumer redress.

*Voices for Freedom, Phone Base Systems, Inc., Barbara Wyatt, William von Meister, Todd Wyatt*

The Commission alleged that Voices for Freedom (VFF), Barbara Wyatt, and Todd Wyatt misrepresented that VFF was a nonprofit, charitable organization and that substantial proceeds from the sale of Desert Shield/Desert Storm bracelets would be used to operate a message center for U.S. troops in the Persian Gulf. The court issued a preliminary injunction prohibiting the challenged practices and froze the defendants' assets. Subsequently, VFF, Barbara Wyatt, and Todd Wyatt agreed to a settlement that prohibits them from making misrepresentations of the type alleged in the complaint and to pay \$120,000 to the U.S. Treasury. In addition, Todd Wyatt agreed to be barred from the financial management or disbursement of funds for any charitable or nonprofit organization.

- Phone Base Systems, Inc., a telecommunications service bureau, agreed to settle similar allegations stemming from its role in the operation. The consent order prohibits the defendant from making the types of misrepresentations alleged in the complaint.

- William von Meister, former president of Phone Base Systems, Inc., also agreed to settle similar allegations. The consent decree prohibits him from making misrepresentations as to the nonprofit or charitable nature of any organization for which money is sought and requires him to meet certain requirements before representing that he is doing fundraising on behalf of a nonprofit or charitable organization in the future.

*Western Trading Group, Ltd., Jon A. Gentile, Sam Kingsfield*

The Commission alleged that Western Trading Group, Ltd. and its officers misrepresented that investments in precious metals yield high profits in a short period of time with little risk of loss. The Commission is seeking to permanently prohibit the challenged practices and to order the defendants to pay consumer redress.

*World Wide Classics, Inc., World Wide Classics of Indiana, Ronald T. Schaefer, Janet Alexander, Christopher de Jesus*

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The Commission alleged that World Wide Classics, Inc., World Wide Classics of Indiana, and officers of the companies, Ronald T. Schaefer, Janet Alexander, and Christopher de Jesus, misrepresented the investment potential of stamps they sold to consumers. The court issued a temporary restraining order

**CIVIL PENALTY ACTIONS**

***MAINTAINING***



## **Federal Trade Commission**

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Commission attorneys acting under a special authorization from the United States Attorney General filed a complaint for civil penalties alleging that William F. Farley violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Act. According to the complaint, filed in the U.S. District Court for the Northern District of Illinois, William F. Farley acquired stock in West Point-Pepperell, Inc. of West Point, Georgia, in excess of \$15 million without notifying the federal antitrust agencies. William F. Farley, through Farley Inc., and West Point-Pepperell, Inc. are both engaged in the manufacture and sale of hosiery and other textile products. The

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violations of the Fair Debt Collection Practices Act and require the defendants to inform consumers in writing that they have a right to have the company stop communicating with them. In addition, the order against David Cohen requires him to pay a \$100,000 civil penalty, and the order against D. C. Credit Services, Inc. requires it to pay a \$30,000 civil penalty.

*Douglass-Marsh, Inc. d/b/a Douglass Funeral Service*

Douglass-Marsh, Inc. d/b/a Douglass Funeral Service agreed to settle allegations that it failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendant to pay a \$20,000 civil penalty.

*Elliston Funeral Home, Edward Olenec*

Elliston Funeral Home and its owner, Edward Olenec, agreed to settle allegations that they failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendants to pay a \$50,000 civil penalty and \$13,000 for consumer redress.

*Figgie International, Inc.*

Figgie International, Inc. agreed to settle allegations that it violated a 1987 Commission order prohibiting it from making certain misrepresentations about the performance of heat and smoke detectors. The Commission alleged that Figgie International, Inc. represented that tests conducted by the U.S. Fire Administration showed heat detectors would sound an alarm soon enough to provide the necessary warning for safe escape when, in fact, the heat detectors did not provide the necessary warning in at least two of the tests. The consent decree prohibits future violations of the order and requires Figgie International, Inc. to pay a \$200,000 civil penalty.

*F.J. Higgins Funeral Home, Inc.*

F.J. Higgins Funeral Home, Inc. agreed to settle allegations that it failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendant to pay a \$22,500 civil penalty.

*Frederick A. Stein d/b/a F.A. Stein Oil Company*

Frederick A. Stein d/b/a F.A. Stein Oil Company agreed to settle allegations that he violated the Commission's Octane Rule by, among other things, failing to

## Federal Trade Commission

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### *Goble's Fortuna Mortuary, James G. Widdoes*

Goble's Fortuna Mortuary and its principal operator, James G. Widdoes, agreed to settle allegations that they failed to provide pricing and other information to consumers, in violation of the Funeral Rule. The consent order prohibits future violations of the Funeral Rule and requires the defendants to pay a \$28,000 civil penalty.

### *Hern Oldsmobile-GMC Truck, Inc., Thomas J. Hern*

Hern Oldsmobile-GMC Truck, Inc. and its principal shareholder, Thomas J. Hern, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale and failed to disclose on the Buyers Guide all of the information required by the Rule. The consent decree prohibits future violations of the Used Car Rule and requires the defendants to pay a \$15,000 civil penalty.

### *Independent Auto Brokers, Inc., Rex Goins*

Independent Auto Brokers, Inc. and its president, Rex Goins, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale. The consent decree prohibits future violations of the Used Car Rule and requires the defendants to pay a \$5,000 civil penalty.

### *JAK Auto Sales, Inc., Mike Jabra*

JAK Auto Sales, Inc. and its owner, Mike Jabra, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale. The consent decree prohibits future violations of the Used Car Rule and requires the defendants to pay a \$5,000 civil penalty.

### *J.J.'s Mae, Inc. d/b/a Rainbeau, Marc Bussin, Kieran Maybury*

J.J.'s Mae, Inc. d/b/a Rainbeau, a manufacturer of exercise wear, its president, Marc Bussin, and its vice-president Kieran Maybury, agreed to settle allegations that they mislabeled garments sold to retailers, in violation of the Textile Fiber Products Identification Act. The consent order prohibits future violations of the Textile Fiber Products Identification Act and requires the defendants to pay a \$25,000 civil penalty.

### *J.M. Posey and Sons, Inc.*

J.M. Posey and Sons, Inc. agreed to settle allegations that it failed to provide consumers with a general price list and a list of casket prices, in violation of the

Funeral Rule. The consent decree requires the defendant to pay a \$20,000 civil penalty and prohibits future violations of the Funeral Rule.

*John Michael Auto Sales, Inc., John Michael*

John Michael Auto Sales, Inc. and its owner, John Michael, agreed to settle allegations that they violated the Used Car Rule by failing to post the required Buyers Guide on the windows of used vehicles offered for sale and that they failed to disclose the terms and conditions of warranty and other information, in violation of the Warranty Disclosure Rule. The consent decree prohibits future violations of the Used Car and Warranty Disclosure Rules and requires the defendants to pay a \$3,000 civil penalty.

*LeClair Industries, Inc., Armond F. LeClair,  
Perma R Products of Mississippi, Inc.,  
Perma R Products of Tennessee, Inc.*

LeClair Industries, Inc., the manufacturer and marketer of Perma R Plus home insulation, agreed to settle allegations that it overstated the R-value of the product, in

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*M.A.S.H. Motors, Inc., Mohammad Al Shoeibi*

M.A.S.H. Motors, Inc. and its owner, Mohammad Al Shoeibi, agreed to settle allegations

Nationwide Credit, Inc. d/b/a Credit Claims & Collections agreed to settle allegations that it violated the Fair Debt Collection Practices Act by threatening and harassing consumers from whom it attempted to collect debts. The Commission alleged, among other things, that the defendant's employees used obscene language, threatened to use violence, contacted consumers at their jobs, and falsely represented that they were affiliated with the government. The consent decree prohibits future violations of the Fair Debt Collection Practices Act and requires the defendant to inform consumers in writing that federal law prohibits a debt collector from harassing them. In addition, the order requires the defendant to pay a \$100,000 civil penalty.

*Outdoor World Corp.*

Outdoor World Corp., a membership campgrounds operator, agreed to settle allegations that it violated a 1990 Commission order by representing that consumers would receive prizes or awards without fully disclosing the costs consumers must pay to receive the prize, award, or service. The decree prohibits future violations of the order and requires the defendant to pay a \$200,000 civil penalty.

*Perkits Yogurt, Inc., P.Y. Restaurants, Inc., Perkits, Inc.,  
Samuel C. Evans, Patricia L. Evans, Samuel C. Evans, III,  
Katherine Evans*

The Commission alleged that Perkits Yogurt, Inc., and others, failed to provide potential buyers of its frozen yogurt franchises with information required by the Commission's Franchise Rule. The Commission complaint alleges that the defendants did not provide the appropriate disclosure documents to potential buyers within the time period required under the rule, and in numerous instances, the documents the defendants did provide were incomplete. The Commission is seeking a permanent injunction and civil penalties.

*Quality Motor Co., Tommy Overturff*

Quality Motor Co. and its owner, Tommy Overturff, agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on the windows of used cars offered for sale. They agreed to pay a civil penalty of \$5,000 and are prohibited from violating the Used Car Rule in the future.

*Ralston Purina Company*

Ralston Purina Company agreed to settle allegations that it violated the Mail Order Rule by failing to ship promotional merchandise in a timely manner, to advise consumers of their cancellation rights and to issue prompt refunds. The consent decree prohibits future violations of the Mail Order Rule and requires the defendant to pay a \$90,000 civil penalty. This was the Commission's



## **Federal Trade Commission**

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second Mail Order Rule case involving promotional items that were purchased with proof-of-purchase coupons or labels, or a combination of coupons or labels and cash.





*William P. Wright*

The Commission alleged that William P. Wright failed to certify and correctly post on gasoline pumps the correct octane ratings for gasoline, in violation of the Octane Rule. The Commission is seeking a permanent injunction and civil penalties.

*Wright Companies*

Wright Companies agreed to settle allegations that it failed to certify and correctly post on gasoline pumps, including gasoline blended with fuel oxygenates such as alcohol, the correct octane ratings for gasoline, in violation of the Octane Rule. The consent order prohibits future violations of the Octane Rule.

### APPELLATE COURT DECISIONS

**MAINTAINING  
COMPETITION MISSION**

*Detroit Auto Dealers Association, Inc.*

On January 31, 1992, the Court of Appeals for the Sixth Circuit affirmed in part and remanded in part the Commission's 1989 decision in Detroit Auto Dealers Association, Inc. that a dealer agreement on hours of operation was an illegal horizontal restraint. A petition for certiorari was filed and a Supreme Court decision is pending.

*Louisiana-Pacific Corporation*

On June 24, 1992, the Court of Appeals for the Ninth Circuit affirmed the 1983 ruling by the district court in Oregon that ordered Louisiana-Pacific Corporation to pay a \$4,000,000 civil penalty for failure to divest a Rocklin, California fiberboard plant as required by a 1979 Commission order. The civil penalty is the largest antitrust penalty awarded to the Commission. The Circuit Court's opinion came after protracted litigation stemming from two motions by Louisiana-Pacific Corporation to modify the Commission order and an appeal of the federal district court order that imposed the civil penalty.

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**SUPREME COURT DECISIONS**

***MAINTAINING  
COMPETITION MISSION*** *Ticor Title Insurance Company*

On June 12, 1992, the Supreme Court reversed and remanded the decision of the Third Circuit that held that an agreement among insurance companies to collectively set rates for title search and examination services was protected

## **Federal Trade Commission**

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### **ECONOMIC REPORTS, WORKING PAPERS AND POLICY PAPERS**

***ECONOMIC REPORTS*** Economic Reports usually entail a significant commitment of resources and





## **Federal Trade Commission**

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### **CONSUMER AND COMPETITION ADVOCACY**

**OFFICE OF CONSUMER  
AND COMPETITION  
ADVOCACY**

The responsibilities and activities of the Office of Consumer and Competition Advocacy involve a wide range of regulations. Sometimes laws or regulations make it difficult for consumers to make choices, or they may be unfair. The Office of Consumer and Competition Advocacy works to make sure that consumers are not misled, that they have the information they need to make choices, and that they are not treated unfairly. The Office also works to make sure that businesses are not using unfair practices to gain an unfair advantage over their competitors. This includes making sure that businesses are not using unfair practices to gain an unfair advantage over their competitors. This includes making sure that businesses are not using unfair practices to gain an unfair advantage over their competitors.



## Federal Trade Commission

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for home equity lines of credit. According to the comment, it is in the lender's interest to tell consumers what its actual promotional rates are. To avoid frequent updating of pre-printed forms and other materials due to rate fluctuation, staff recommended allowing lenders to disclose the rate orally or otherwise. Staff opposed expanding a provision that now permits using three representative payment scenarios to one requiring similar treatment for every option offered.

### *Food and Drug Administration: Food Labeling.*

Bureau of Consumer Protection and Bureau of Economic staff submitted comments on the Food and Drug Administration's (FDA) proposed rules that would implement the Nutrition Labeling and Education Act of 1990 (NLEA). The comments focused on how the regulations could both help consumers looking to improve their diets and affect innovation in food markets. Staff concluded that while most of the proposed rules would provide valuable nutrition information to consumers, they may have some unintended effects.

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## **Consumer and Competition Advocacy**

## Federal Trade Commission

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proposal to limit the ability of health insurance companies to arrange for pharmacy services through contracts with nonresident pharmacy firms by prohibiting exclusive contracts with them and by requiring that resident firms be allowed to contract to provide services on the same terms. According to the comment, without volume through out-of-state sources, a would-be contracting provider may be unable to offer lower price terms or additional services. And by letting any other provider match the terms of a contract with a nonresident pharmacy, the bill would dampen the incentives for pharmacies to compete with each other. Because all other pharmacies could free ride on its contract, a nonresident provider may be unwilling to bear the costs of developing a proposal. Therefore, staff concluded that the prohibitions of S.B. 1986 may discourage competition among pharmacies, in turn raising prices to consumers and unnecessarily restricting consumer choice in prepaid health care programs, without providing any substantial public benefit.

### *Colorado: Motor Fuel Pricing Amendment.*

The Director of the Denver Regional Office testified before the State, Veterans, and Military Affairs Committee of the Colorado State Senate, finding that S.B.92-203, a bill to broaden prohibitions against below cost retail pricing of gasoline, could raise gas prices for consumers in Colorado. In his testimony, the Director explained that the bill may inhibit vigorous competition and add costs to the distribution of gasoline in Colorado that do not exist in other states.

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Senate,



## **Federal Trade Commission**

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statutes and regulations of the South Carolina Boards of Pharmacy, Medical Examiners, Veterinary Medical Examiners,

Legal Affairs Office, requesting comments on the Utah Motor Fuel Marketing Act and proposed amendments to it. The comments cited state and Department of Energy studies that strongly questioned the premise of both the Act and the proposed amendments that refiners who own retail outlets sell gasoline to those outlets at below cost prices in an attempt to drive franchised and independent retailers out of business. If the bill passes, staff stated, short term price discounts designed to attract new customers may be deterred and refiners may be prevented from realizing all the economies of vertical integration which can often reduce transaction and search costs and lower prices to consumers. The comments concluded that the legislation would be anticompetitive and likely to cause Utah consumers and visitors to pay higher prices for gasoline.



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