

FEDERAL TRADE COMMISSION - 1993

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FEDERAL TRADE COMMISSION
1993 ANNUAL REPORT

Appendix

PART II CONSENTS PUBLISHED FOR COMMENT	30
COMPETITION MISSION	30
CONSUMER PROTECTION MISSION	33
PART II CONSENT ORDERS ISSUED	37
COMPETITION MISSION	37

SUPREME COURT DECISIONS	88
COMPETITION MISSION	88
ECONOMIC WORKING PAPERS AND POLICY PAPERS	89
ECONOMIC WORKING PAPERS	89
MISCELLANEOUS ECONOMIC POLICY PAPERS	89
CONSUMER AND COMPETITION ADVOCACY	90
OFFICE OF CONSUMER AND COMPETITION ADVOCACY	90
FEDERAL AGENCIES	90
STATES	91
AMICUS CURIAE	96
TABLE OF CASES LISTED IN THE APPENDIX	98

Federal Trade Commission

safety, and environmental claims. More than \$42 million in consumer redress was ordered by the federal district courts, along with civil penalties to be paid to the United States Treasury for alleged violations of Commission orders and rules.

In fiscal year 1993, the Office of Consumer and Business Education produced 60 new and revised consumer and business publications, some of which were also available in Spanish.

CONSUMER AND COMPETITION ADVOCACY

A number of federal and state legislatures and the Federal Communications Commission sought the Commission's advice on proposed legislation or regulatory matters. Topics addressed included advertising, antitrust, communications, health care, occupational licensing, and transportation.

ECONOMIC ANALYSIS

In fiscal year 1993, Commission economists made policy recommendations and produced reports on topics of interest to the public. While direct support of enforcement, particularly antitrust, activities absorbed the bulk of the resources of the Bureau of Economics, the Bureau was also responsible for analyzing data and publishing information about the nation's industries, markets, and business firms.

ADMINISTRATION AND MANAGEMENT

In fiscal year 1993, support services to Commission staff focused on ways to improve staff productivity through the increased use of modern information systems technology. This included the redesign, development, and implementation of several information systems and the upgrade of personal computers and laser printers. In addition, over 400 workstations were connected to the Commission's local area network.

Although the Commission's budget decreased by 11 work-years in fiscal year 1993, the Commission's recruitment program continued with selections of new attorneys, le byprinters.pr57

COMPETITION MISSION

The Competition Mission is devoted to preventing unfair methods of competition 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 (HSR Act). The mission's purpose is the detection and elimination of antitrust law violations, including collusion, anticompetitive mergers, predatory single firm conduct, and anticompetitive 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 premerger notification program administers the HSR Act and ensures compliance with 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, all program areas review suspected collusive behavior among licensed professionals and provide antitrust policy 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 HSR Act requires persons meeting certain size requirements who are planning significant acquisitions to file notifications with the Commission and the Department of Justice and to delay consummation for a prescribed period of time. The premerger notification program was enacted to provide the two federal antitrust agencies with the opportunity to review proposed transactions and to take enforcement action, if appropriate, to prevent consummation of transactions that violate the antitrust laws. The Commission, along with the Department of Justice, is responsible for administering the program and taking steps to ensure compliance with the program's requirements.

selection of available goods and services. In addition, certain mergers may increase barriers to entry or expansion, foster interdependent conduct among firms, and suppress competitive vitality at various levels of production and marketing. Interlocking directorates among competing firms also may result in effects similar to those of anticompetitive mergers and can violate Section 8 of the Clayton Act.

The program protects the public by seeking to prevent or undo mergers 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 Section 5 of the Federal Trade Commission Act, and by seeking to prevent or terminate interlocking directorates that would violate Section 8 of the Clayton Act. The program accomplished this by: (1) detecting potentially harmful mergers before they occur through the monitoring and screening of merger activity; (2) investigating those mergers that the screening process has targeted for further inquiry; and (3) taking action to prevent or undo those mergers that, after investigation and analysis, appear likely to lessen competition. The litigating offices under the mergers and joint ventures program are responsible for investigation and enforcement. To prevent anticompetitive mergers, the Commission relies on its authority to seek injunctive relief in federal district court under Section 13(b) of the Federal Trade Commission Act. As a corollary to such efforts -- and in addition when injunctive relief is inappropriate or unavailable -- the Commission relies on its administrative remedial powers to seek to restore competition lost as the result of allegedly illegal mergers. The available tools to restore competition include administrative litigation and the settlement process, and available remedies include divestiture.

To ensure effective remedial relief, the Commission will monitor compliance with orders, initiate enforcement action as appropriate, and modify orders that harm rather than benefit consumers.

The Bureau of Competition initiated 17 initial phase investigations and 45 full phase investigations under the mergers and joint ventures program. Staff continued to work on 41 initial and full phase investigations, 14 of which were opened in earlier fiscal years.

Administrative complaints were issued in two of the three transactions in which the Commission voted to seek a federal court injunction. In two instances, the district court granted the Commission's motion for a preliminary injunction. The administrative complaint challenging Alliant Techsystems Inc.'s acquisition of the Ordnance Division of Olin Corporation was settled by a consent order that contains a requirement that the acquisition be terminated, and two 10-year prior approval requirements: (1) Alliant must obtain prior Commission approval before acquiring any firm engaged in the production of certain types of ammunition used by the United States Army in the Abrams tank or Apache helicopter; and (2) Alliant must obtain prior Commission approval before selling its stock or assets to any company engaged in systems contracting for tank ammunition. In the Columbia Hospital Corporation matter, the preliminary injunction remains in effect until the Commission completes its administrative proceedings addressing charges that the proposed acquisition of

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In addition, the proposed consent agreement in Service Corporation International (SCI) was made final. SCI agreed to divest five specific funeral homes in Georgia and Tennessee to remove the antitrust concerns stemming from its acquisition of the Sentinel Group, Inc. The proposed consent agreement was initially accepted for public comment in 1991 and was modified and placed on the public record in April 1992.

An Administrative Law Judge (ALJ) dismissed the complaint alleging that Adventist Health System/West's 1988 acquisition of Ukiah General Hospital would restrict competition for general acute hospital care and deny patients and physicians the benefits of competition for price, quality, and services in parts of Mendocino and Lake Counties in California. The ALJ ruled that the acquisition had no adverse competitive effects and would provide better health care services to the residents of Ukiah, California. The staff filed an appeal of the initial decision with the Commission.

The Commission upheld an ALJ's decision and ordered Occidental Petroleum Corporation (Occidental) to divest Tenneco Polymers, Inc.'s polyvinyl chloride plants in Pasadena, Texas and Burlington, New Jersey within one year to an acquirer preapproved by the Commission. The Commission ruled that the acquisition of the Tenneco assets would lessen competition in the U.S. for the production of thermoplastic resin (PVC) used in a variety of plastic products. Occidental's June 1993 petition for review of the Commission final order in the Second Circuit Court of Appeals was withdrawn, and a settlement agreement negotiated by Commission staff and Occidental was awaiting Commission action at the end of the fiscal year.

Three matters were decided by federal appeals courts during fiscal year 1993. In February, the Ninth Circuit Court of Appeals affirmed the 1990 Commission decision that required Olin Corporation to divest FMC Corporation's swimming pool chemical business acquired in 1985. Olin's March 1993 petition for rehearing was awaiting a decision at the close of the fiscal year. In December 1992, the United States Court of Appeals for the District of Columbia affirmed the district court's 1991 decision transferring the Adventist Health System/West challenge to Commission jurisdiction to the Ninth Circuit Court of Appeals. In *Harold A. Honickman*, the United States Court of Appeals for the District of Columbia affirmed in part the district court's decision dismissing a complaint that challenged the Commission's denial of Honickman's application for prior approval to acquire assets of the Seven-Up Brooklyn Bottling Company. The matter was remanded to the Commission for further proceedings concerning Honickman's "failing company" justification for the acquisition. Thereafter, the Commission and Honickman settled the litigation.

In other merger actions, the Commission modified two consent orders and terminated a proceeding that could have resulted in a modification of a third order. The 1991 order with *Harold A. Honickman* and the Brooklyn Beverage Acquisition Corporation was modified to ~~alter~~

Federal Trade Commission

KKR's petition to delete entirely the provision that requires prior approval for ten years for acquisitions of firms engaged in the production of certain relevant products

theCompetition Mission

Federal Trade Commission

zippers, agreed not to solicit its competitors to eliminate services and fix or stabilize prices; the National Society of Professional Engineers agreed not to interfere with its members' use of truthful advertising concerning the quality and benefits of professional engineering services; and finally, United Real Estate Brokers of Rockland, Ltd. agreed not to interfere with the publication of exclusive agency listings, and not to require that its members maintain full time offices in Rockland County, New York.

The administrative complaint in Abbott Laboratories was withdrawn from adjudication late in the fiscal year for consideration of a proposed consent agreement. The 1992 complaint charged that Abbott, the leading U.S. manufacturer of infant formula, conspired with others to refrain from advertising to the public through the mass media.

College Football Association (CFA) remained on appeal before the Commission, with a decision pending. Staff appealed the 1991 Administrative Law Judge's (ALJ) initial decision, in which the ALJ dismissed the administrative complaint alleging that competition was suppressed in the marketing of college football telecasts due to restrictive agreements between colleges in the CFA and the American Broadcasting Company.

Federal court litigation in three horizontal restraint matters continued during fiscal year 1993. First, the Commission's complaint to secure a permanent injunction and monetary relief for alleged price fixing activities in Abbott Laboratories remained pending in the United States District Court for the District of Columbia, with the trial scheduled for February 1994. Second, in November 1992, the Supreme Court denied a petition for *certiorari* in Detroit Auto Dealers, Inc. The case thereafter was remanded to the Commission by the Sixth Circuit, to determine the applicability of the nonstatutory labor exemptions with respect to some respondents. Third, on July 15, 1993, the Third Circuit Court of Appeals affirmed the Commission's final order in Tigor Title Insurance Company and ruled that Tigor's rate making activities are not immune from the federal antitrust laws under either the business of insurance exception of the McCarran-Ferguson Act or the Noerr-Pennington doctrine. The Court further ruled that Tigor could not claim immunity for its collective rates in Arizona and Connecticut under the state action doctrine after evidence failed to show that the collective establishment of rates was properly evaluated and supervised by the two states. Tigor's petition for rehearing *en banc* was denied on August 30, 1993.

Finally, during fiscal year 1993, four proposed consent agreements that were placed on the public record for comment in fiscal year 1992 were made final. The consent order in Quality Trailer Products Corporation prohibits the firm from soliciting its competitors to fix prices or to eliminate discounts; the order in Realty Computer Associates, Inc. prohibits anticompetitive practices relating to exclusive agency listings; the order in American Psychological Association prohibits the professional organization from interfering with its members' use of truthful advertising and patient referral services; and the order covering The Industrial Multiple and its parent, American Industrial Real Estate Association, prohibits restrictions on real estate multiple listing services.

At the end of the fiscal year, the Commission carried a workload of over one hundred investigations in this program area -- including cases in litigation,

projects, and compliance matters -- involving alleged anticompetitive conduct among private professional and trade associations, individuals, private entities, and state licensing boards. 56 of those matters were initiated during the fiscal year.

DISTRIBUTIONAL ARRANGEMENTS

This program generally 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 other restrictions on the marketing decisions of firms in the distribution chain, such as exclusive dealing requirements and territorial or customer restraints. 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.

The Commission's principal strategies include investigation, negotiation, and litigation. Through these strategies, the Commission seeks to: prevent unlawful agreements between suppliers and distributors or retailers on resale prices; eliminate harmful discrimination in prices and promotional opportunities; and prevent the anticompetitive foreclosure of distributors or dealers from sources of supply or access to customers. As appropriate, the Commission also issues guidelines or policy statements and advisory opinions and engages in competition advocacy.

Under the distributional restraints program, the Commission initiated 12 new investigations in fiscal year 1993 and is currently engaged in pursuing over 30 matters opened in earlier years. These investigations and projects involved allegedly unlawful distributional practices in such industries as chemicals, sporting and athletic goods, motor vehicle parts and accessories, medical supplies, foods, publishing, and electronics.

The Commission accepted a proposed consent agreement with The Keds Corporation, a subsidiary of The Stride Rite Corporation. According to the complaint, Keds entered into an understanding with some of its dealers to control the prices at which Keds athletic and casual footwear could be advertised and sold. isclly adver341ces at 746d order final, wsettl TD 0s TI

Federal Trade Commission

the dealers in writing that they are free to set their own prices. The 1980 order settled charges that Clinique engaged in illegal resale price fixing.

SINGLE FIRM VIOLATIONS

The Commission opened 15 new investigations in this program involving potential single firm abuse of market power. In instances where a firm monopolizes or attempts to monopolize a market or uses its market power in one market to affect another, output can be reduced and prices can increase above the competitive level, thereby injuring consumers and misallocating society's resources. When there are high barriers to entry into the market, the harmful effects can persist for long periods. The program focuses on cases of alleged monopolization activities, tying arrangements, and processes to create or enhance market power in such areas as health care (particularly physician joint ventures in medical related product markets), manufacturing, licensed occupations, and other services. Staff continued its efforts in nine investigations opened prior to fiscal year 1993.

The Commission also continued its efforts to engage in competition advocacy to promote the reduction of barriers to entry and the elimination of

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CONSUMER PROTECTION MISSION

Under the Consumer Protection Mission, the Commission strives to protect consumers from unfair or deceptive

Consumer Protection Mission

collected \$175,000 in civil penalties from Hasbro for violating a previous Commission order against the company. The Commission also approved consent orders

Federal Trade Commission

about the efficacy of their programs in helping consumers to lose weight or maintain weight loss, and to make various disclosures in connection with any future maintenance success claims.

Consumer Protection Mission

Federal Trade Commission

In the warranty area, the Commission persuaded a bankruptcy court to provide protection to consumers who

ENFORCEMENT

The mission of this program is the enforcement of Commission cease and desist orders, the majority of Commission trade regulation rules, and special statutes governing practices such as the labeling of textile, wool, and fur products. The program's efforts encompass investigations, periodic compliance reviews, and, when warranted, rulemaking proceedings. Consumer education and guidance to affected industries are also important to the success of this program.

The program spent considerable time investigating compliance with consent orders involving health, safety, and environmental claims. Eight consent order violation investigations and 39 compliance reports addressed these issues. The program also processed 14 compliance reports dealing with credit issues and investigated one company for alleged violations of a consent order concerning credit issues. The Commission also granted one petition to modify an order (Tarra Hall Clothes, Inc.).

Enforcement investigations encompassed allegedly deceptive claims for a variety of products, including two chain health stores making efficacy claims for their nutrient products, a company making health claims for its food supplements, two companies making performance claims about their hearing aids, a company making efficacy claims for its air cleaning equipment, a name brand athletic shoe manufacturer making injury protection claims for its shoes, two franchisors making inflated earnings claims for their franchises, a company making efficacy claims for its motor oil additives, a land seller failing to adequately maintain a contingent utility liability account, and a company making efficacy claims for its hair straightening product.

The Commission

Federal Trade Commission

requirements for alternative liquid fuels, including, among others, methanol and ethanol.

The Commission also conducted other proceedings to comply with EPA 92's directives, including publishing a Notice of Proposed Rulemaking in the Federal Register soliciting comments on amendments to the Appliance Labeling Rule to include disclosure requirements for plumbing products. EPA 92 establishes maximum water use rates for toilets, urinals, showerheads, and faucets, and the Commission was required to issue rules requiring the disclosure of these water use rates on the products and their packaging and labeling. The Commission issued a final rule in October 1993. The Commission also initiated a proceeding to add products to the Appliance Labeling Rule, which requires energy guides providing efficiency information, and solicited comments on ways to improve the Rule. The Commission also reviewed a preliminary study about whether there is a need for a uniform, national fuel pump label consolidating all federally required information and disclosures; sought public comment on this study; and then submitted a report to Congress.

The Commission continued other work involving energy issues. For example, the Commission obtained consent agreements that require payment of civil penalties against two major home improvement chains (The Hechinger Company and Channel Home Centers, Inc.), resolving allegations that they failed to adhere to advertising requirements of the Home Insulation (R-value) Rule. The R-value Rule allows buyers to make informed comparisons among competing insulation products.

In the mail order area, the Commission amended the Mail Order Rule to include telephone sales and approved several related amendments. A major cataloger (Lillian Vernon Corporation) agreed to pay \$310,000 to resolve allegations that it violated the Mail Order Rule.

The Commission also initiated a proceeding to amend its regulations under the Fair Packaging and Labeling Act to comply with the Omnibus Trade Act of 1988, which requires that packages for consumer commodities display metric measurements by February 1994. Problems involving textiles have come under greater scrutiny in the past several years. At the end of fiscal year 1992, the Commission received a favorable decision in the first litigated case under the Care Labeling Rule. The court held that the company labeled sweaters as dry cleanable when, in fact, they could not be safely dry cleaned in all instances. In fiscal year 1993, the Commission also obtained two administrative orders under the Textile Act.

CONSUMER AND BUSINESS EDUCATION

The Office of Consumer and Business Education produced 60 new or revised mission-related publications, including some in Spanish, and the Commission distributed 2.5 million copies of its education materials. In addition, the office continued to expand its distribution effort, ~~is~~ ^{and}

Consumer Protection Mission

20 million. The Office also produced radio spots with the National Institute for Dispute Resolution. The spots promote both dispute resolution programs and the FTC's free publications, which explain the programs and provide a national resource directory.

In an effort to encourage the inclusion of consumer articles in high school and college newspapers, the office developed a sample student consumer publication that was mailed to 21,000 student editors. In addition, to encourage major newspapers, magazines, and radio and television stations to run consumer consumer high

ECONOMIC ACTIVITIES

The Bureau of Economics provides economic support to the Commission's antitrust and consumer protection activities, advises the Commission about the impact of regulation on competition, and analyzes economic phenomena in the

Economic Activities

Economists also supported the Commission's advocacy program by providing comments regarding (1) motor carrier regulation to the Michigan Public Service Commission; (2) advanced TV receiver manufacturing to the Federal Communications Commission (FCC); and (3) expanded telecommunications interconnection, also to the FCC.

EXECUTIVE DIRECTION

The Office of the Executive Director provides general administrative and information management support for the Commission, as well as management direction to the Commission's ten regional offices. That support includes Personnel, Budget and Finance, Procurement and General Services, Information Services, Automated Systems, and Information Support Services.

REGIONAL OFFICES

The ten regional offices are located in Atlanta, Boston, Chicago, Dallas, Denver, Detroit, Kansas City, Los Angeles, New York, and San Francisco.

performance management system, and prepared its employees to deal with the possibility of the Federal Workforce Restructuring Act, which may include buyouts and early retirements.

Federal Trade Commission

based software, as well as central information systems. A major effort this year was support for organizations added to the LAN. A greater number of computer courses were available both at headquarters and the regions, including 12 new short courses, where 560 employees in 73 classes were trained on 40 different topics, ranging from computer security to advanced WordPerfect. In addition, eight new courses of various lengths were offered, including LAN Overview, LAN Goes Down, WP Presentations, WP Office 3.1, and various levels of Paradox 4.0. The Information Center also published a number of instruction sheets. Graphics services were expanded to support videotaping of important events and Commission training sessions, along with computer graphic representations for publications and presentations.

Litigation and Economic Support

The Litigation and Economic Consulting (LEC) Branch provided information acquisition, processing, and analytic support for 14 antitrust/merger analyses and support for numerous franchise investigations. In other areas, LEC provided critical document management and data analysis support for investment coin sales investigations, Bureau of Consumer Protection Director and Commissioner assignment tracking systems, several credit industry investigations, telemarketing industry investigations, and several Bureau of Economics competition studies. LEC supported data acquisition and analysis for eight investigations in six regional offices. A pilot project to use portable high-speed tape backup units for data acquisition was very successful, and research into other new litigation support technologies was initiated. LEC continued to act as a liaison with foreign government representatives from Canada, Poland, and Taiwan, and also initiated a project to provide limited computer support for a newly formed Jamaica Fair Trade Commission.

Technical Services

The technical services provided by the Planning and Information Office include developing and maintaining individual automated information systems, continuing to update computer hardware, and expanding both data and voice communication services to the Commission.

Automated Information Systems

In fiscal year 1993, the Commission completed a major redesign of the Telemarketing Complaint System (TCS), a system that was developed in collaboration with the National Association of Attorneys General (NAAG) to track information about companies and company systems. (Track) 92-1289-01-10-10-028

Executive Direction

implementation of the Management Reporting System (MRS), a system which allows users to more easily access and control financial, management, budget,

Federal Trade Commission

system but will also pay for itself through reduced maintenance and operating costs.

Program Management

The Planning and Information Office has responsibility for many varied program areas, all of which are related to information management, including records and data management

Commission completed a thorough review of its Privacy Act Systems of Records and published in the Federal Register a complete, updated listing of previously existing and newly created systems. That publication, which was the first complete review since 1982, reorganized the systems to improve the accessibility of the information.

Computer Security

Substantial improvements were made in the Commission's computer security program. Appropriate personnel security reviews were completed in accordance with the Computer Security Act, and Release 1 of the Disaster Recovery Plan was also completed. In addition, ongoing reminders were provided to Commission staff on copyright restrictions applicable to computer software and individual responsibilities for adhering to these laws.

APPENDIX

PART II CONSENTS PUBLISHED FOR COMMENT

COMPETITION MISSION *AE Clevite, Inc.*

(See page 37.)

ASFEE, The Association of Engineering Firms Practicing in the Geosciences

(See page 38.)

B & J School Bus Service, Inc.

(See page 39.)

Columbia Hospital Corporation

Columbia Hospital agreed to divest Kissimmee Memorial Hospital to settle
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Keds Corporation, The

The Commission accepted a proposed consent agreement with Keds, a subsidiary of The Stride Rite Corporation. According to the complaint accompanying the proposed consent agreement, Keds entered into an understanding with some of its dealers to control the resale prices at which Keds athletic and casual footwear could be advertised and sold. The complaint further alleged that these practices increased the prices of Keds products and restricted price competition among retail dealers in the United States. Under terms of the proposed consent agreement, Keds has agreed not to fix or interfere in the resale pricing practices of its dealers or to coerce or pressure any dealer to adopt or adhere to any resale price, or to attempt to secure commitments from any dealer about the prices at which they advertise or sell any athletic or casual footwear product manufactured by Keds.

McCormick & Company, Inc.

McCormick agreed to divest certain onion seed assets to assist in establishing a viable new firm to replace the competitor eliminated through the 1993 acquisition of Haas Foods, Inc., a subsidiary of John I. Haas, Inc. According to the complaint issued with the proposed consent agreement, the acquisition enhances the likelihood that the remaining competitors in the dehydrated onion market could engage in anticompetitive coordinated interaction to increase prices and restrict output. McCormick, the largest spice and seasonings company in the U.S., grows and sells dehydrated onion products through its wholly-owned subsidiary, Gilroy Foods, Inc. In an effort to restore competition in a market that is allegedly difficult to enter, McCormick agreed to divest, within four months, several varieties of onion seeds necessary to produce at least 50 million pounds of onions suitable for dehydration for two consecutive crop years, 1994 and 1995, to an acquirer preapproved by the Commission. The proposed consent agreement also requires McCormick to provide technical assistance and advice to the acquirer for one year. Finally, for a period of ten years, McCormick must obtain prior Commission approval before acquiring any interest in

National Society of Professional Engineers

(See page 41.)

S.C. Johnson & Sons, Inc.

(See page 42.)

Southeast Colorado Pharmacal Association

(See page 43.)

United Real Estate Brokers of Rockland, Ltd.

(See page 44.)

YKK (U.S.A.), Inc.

(See page 45.)

**CONSUMER PROTECTION
MISSION**

Archer Daniels Midland Company

Archer Daniels Midland Company (ADM) agreed to settle allegations that it failed to have substantiation for representations it made in network television commercials and promotional materials about the biodegrad-ability of plastic products containing its corn starch additive. The proposed consent agreement prohibits any claims that any ADM product or plastic product additive is degradable when disposed of in landfills or that such product or additive offers any environmental benefit, unless there is competent and reliable evidence to back up the claims.

BPI Environmental, Inc.

BPI agreed to settle allegations that it made unsubstantiated environmental claims for its BIO-SAC and PHOTO-SAC plastic grocery store bags, including representations that, when disposed of as trash, the bags break down into 100% compostable material.

Federal Trade Commission

and misleading environmental claims in the marketing of their aerosol cleaning products. The companies claimed that their products were ozone safe or ozone friendly, when the products contain a known ozone depleting chemical. The proposed consent agreement prohibits the companies

Numex Corporation, Gisela E. Flick, James L. McElhaney, M.D.

Numex and two of its officers, Gisela E. Flick and James

Federal Trade Commission

that the bulbs produce less light, Sylvania must clearly and prominently disclose this fact to consumers.

Revlon, Inc., Charles Revson, Inc.

Revlon and its subsidiary, Charles Revson, agreed to settle allegations of unsubstantiated advertising claims for their “Ultima II ProCollagen Anticellulite” body complex and “PhotoAging Shield” products. The proposed consent agreement requires competent and reliable scientific evidence to substantiate any future claims regarding the effectiveness of cellulite treatments or sunscreen products.

Federal Trade Commission

American Psychological Association

The American Psychological Association (APA) agreed not to restrict its members from using truthful advertising and from participating in certain patient referral services. The complaint issued with the consent order alleged that 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 consent order requires APA to eliminate any rules or guidelines that restrict the dissemination of truthful advertising and ban payments by its members to patient referral services, it allows APA to establish policies to detect deceptive representations; to monitor the solicitation of testimonial endorsements from certain patients who, because of their particular circumstances, may be susceptible to undue influence; and to require consumer disclosure whenever a psychologist has paid a fee for the referral of business.

ASFE, the Association of Engineering Firms Practicing in the Geosciences

ASFE agreed not to encourage its members to engage in a variety of unlawful business practices that deprive consumers of the benefits of price competition in the provision of geotechnical engineering services in the United States. Geotechnical engineers develop foundation design recommendations for dams, buildings and other structures and provide engineering services that deal with soils, rocks, and other earth materials to clients. The complaint issued with the consent order alleged that the ASFE, headquartered in Silver Spring, Maryland, established a peer

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a peer review program to evaluate members' bidding or business pricing practices, entering into agreements to refuse to bid on projects, and interfering with its members' attempts to engage in discounting, advertising, or offering favorable credit terms.

*B & J School Bus Service, Inc., Mayflower Contract Services, Inc.,
Ryder Student Transportation Services, Inc.*

B & J School Bus Service settled allegations that it entered into an agreement with others for the sole purpose of eliminating competition among providers of school bus transportation services in the Kansas City, Missouri School District. According to the complaint accompanying the consent order, the school district of Clay, Platte, and Jackson Counties, Missouri, expected to receive lower rates for school bus transportation services by eliminating its practice of using negotiated contractual agreements and creating a competitive process between B & J School Bus Service, R. W. Harmon & Sons, Pace School Bus Service, and KAL Leasing, area transportation companies that had provided the majority of the services in previous years. The school district sought bids for six different areas and three special services. The complaint alleged that the four companies conspired to form a joint venture to provide school bus transportation services in the Kansas City, Missouri School District in previous years. The

Federal Trade Commission

services, including receiving and unloading coal from rail cars, blending coal, and transferring coal into deep draft vessels for transoceanic shipment. According to the

manufacture or formulation of nonselective herbicides for residential use for sale in the U.S. without the prior approval of the Commission.

National Association of Social Workers

The National Association of Social Workers (NASW) agreed not to restrict its members from advertising or publishing truthful information about social work services and from engaging in nondeceptive solicitation of clients. According to the complaint accompanying the consent order, NASW adopted and enforced two guidelines that restrained competition among social workers in the U.S.: the *Code of Ethics* prohibited its members from soliciting the clients of colleagues and from participating in patient referral services; and the *Standards for the Practice of Clinical Social Work* restricted members from using testimonials in advertising and other types of truthful advertising. NASW is composed of approximately 114,000 social workers who provide therapeutic and counseling services in the treatment and prevention of psychosocial disorders. The consent order allows NASW to adopt and enforce reasonable ethical guidelines that ban in-person solicitations of persons who, because of their particular circumstances, are vulnerable to undue influence and to require disclosure to consumers of fees paid by social workers for patient referral services. Prior to the Commission's final approval of the order, NASW amended the two guidelines and deleted the challenged practices listed in the complaint.

National Society of Professional Engineers

The National Society of Professional Engineers (NSPE) agreed not to interfere with

and Behold assets to the Sara Lee Corporation and the U.S. assets of Renuzit to the Dial Corporation. Johnson filed a petition to end its obligations to divest its foreign Renuzit assets and requested that the Commission modify the order to allow it to retain the international assets not sold to the Dial Corporation.

Service Corporation International

Service Corporation International (SCI) entered into a consent order to settle allegations that its acquisition of Sentinel Group, Inc. would substantially reduce competition for funeral services in certain areas of Georgia and Tennessee. Under terms of the consent order, SCI may acquire Sentinel but is required to divest five specific funeral homes to reduce its market power and promote healthy competition among other providers of funeral services in the two states. The consent order requires divestiture of: Wallis & Sons Funeral Home in LaFayette, Georgia; Williamson & Sons Funeral Home in Soddy Daisy, Tennessee; R.J. Coulter Chapel in Chattanooga, Tennessee; South Crest Chapel in Rossville, Georgia; and Sipple's Mortuary in Savannah, Georgia. In addition, for a period of ten years, SCI must obtain prior Commission approval before acquiring any additional funeral homes within specified areas of the city limits of Chattanooga or Soddy Daisy, Tennessee; LaFayette, Savannah, Gainesville, Rome, Summerville, or Waycross, Georgia; and Ft. Smith, Arkansas.

Southeast Colorado Pharmacal Association

Under terms of a consent order, Southeast Colorado Pharmacal Association (SCPhA) agreed not to enter into any agreements among pharmacies to boycott a prescription drug plan in an effort to increase or control the reimbursement rate paid to its members for filling drug prescriptions. According to the complaint accompanying the consent order, Pharmaceutical Card Services, Inc. (PCS) secures participation agreements from pharmacy firms to fill prescriptions for retired state employees under the health care program provided through the Public Employees' Retirement Association of Colorado. In 1988, PCS instituted a cost containment program and reduced the reimbursement rate paid to pharmacies for dispensing drugs to the state retirees under the health care plan. SCPhA notified PCS that its members would not accept a lower reimbursement rate and placed notices in two area newspapers alerting the public that it would not participate in the prescription drug plan unless the reimbursement rates were increased. The complaint further alleged that SCPhA's actions reduced the benefits of active competition among pharmacies in southeastern Colorado and caused individual consumers to pay higher fees for prescription drugs filled under third-party benefit plans. SCPhA is based in La Junta, Colorado and consists of approximately 19 of the 22 pharmacies located in seven counties in the southeastern portion of the state.

United Real Estate Brokers of Rockland, Ltd.

Federal Trade Commission

United Real Estate agreed not to limit the ability of homeowners to compete with member real estate brokers in the sale of residential real estate property in Rockland County, New York. According to the complaint issued with the consent order, United Real Estate imposed restrictions on exclusive agency listings by refusing to: list available properties advertised for sale by the homeowners, allow homeowners to specify that all appointments to show the property must be made at the discretion of the broker's office, pay full commission to any broker who sold the property, and include a photograph or a description of properties to be sold under an exclusive right-to-sell listing in its weekly publication of available residential real estate properties. The complaint further alleged that United Real Estate required its members to operate a full time real estate brokerage.

competitor stop providing free equipment or other discounts on any products listed in the complaint.

CONSUMER PROTECTION MISSION *Abbott Laboratories, Health Management Resources Corporation, United Weight Control Corporation*

Abbott Laboratories, Health Management Resources, and United Weight Control, marketers of very low calorie diet programs, agreed to settle allegations that they deceptively advertised the safety and long term efficacy of their programs. The consent orders prohibit the companies from misrepresenting the likelihood of regaining lost weight and from making any claims about the success of patients on any diet program in achieving or maintaining weight loss, unless at the time of making such a representation, the companies possess and rely upon competent and reliable scientific evidence to substantiate it.

Alan V. Phan a/k/a Alan V. Pasqualle d/b/a Harcourt Companies

Alan V. Phan, the marketer of Jazz cigarettes, a nontobacco product, agreed to settle allegations that he made false and deceptive claims about the health risks of smoking the product and made deceptive claims about its ability to help people quit smoking.

Federal Trade Commission

infomercial that products containing bee pollen could cause consumers to lose weight, alleviate their allergy symptoms permanently, and reverse the aging process, among other claims. Under the consent order, CC Pollen agreed to pay \$200,000 as disgorgement of profits. The consent order prohibits the respondents from making the specific, allegedly false claims and from producing or distributing any advertisement that is represented to be something other than a paid advertisement. The consent order requires the respondents to possess scientific evidence to support any other health benefits claims they make about any food or other product for human consumption in the future and to prominently disclose in all future infomercials that the programs are paid advertisements.

Citicorp Credit Services, Inc.

Citicorp Credit Services, a subsidiary of Citicorp, agreed to settle allegations that it aided and abetted a deceptive national travel club by continuing to process the club's credit card sales after it knew, or should have known, about the club's deceptive sales practices. Among other requirements, the consent order imposes a duty on Citicorp Credit Services to investigate merchants with high chargeback rates and to terminate them if they are found to be engaging in fraudulent, deceptive, or unfair practices. A chargeback is the reversal of the credit card charge process, whereby the amount of a credit card sale is removed from a consumer's account and charged back to the merchant. A high chargeback rate can be an indicator of fraud.

Clorox Company, The

Clorox agreed to settle allegations that it deceptively advertised its Take Heart fat-free salad dressing

firms facial muscles, and that a soundwave device included with the system boosts the effect of special lotions. The consent order prohibits Conair from making the challenged claims for this and similar systems in the future.

DeMert & Dougherty, Inc.

DeMert & Dougherty, a manufacturer and seller of consumer hair care products, agreed to settle allegations that it labeled its All Set hair spray “environmentally safe” when the spray contained chemicals that can contribute to the formation of smog. The consent order prohibits unsubstantiated representations, using terms such as “environmentally safe,” and representations that any product the company sells that contains any volatile organic compound will not harm the atmosphere or environment.

Dollar Rent-A-Car Systems, Inc.

Dollar agreed to settle allegations that it failed to disclose certain significant charges and limitations in advertisements or when providing price quotations over the phone for its car rentals. The consent order settling the charges requires, among other things, that Dollar disclose to consumers in its advertisements the existence of any mandatory fuel charges, airport surcharges, or other charges not reasonably avoidable by charges associated with such charges and limitations in advertisements Tw ()

General Electric Company

General Electric (GE) agreed to settle allegations that it falsely represented that its Energy Choice incandescent light bulbs provide the same amount of light as the ordinary bulbs they are designed to replace. The consent order prohibits GE from misrepresenting the relative light output or wattage of any light bulb they sell in the future, except for certain specialty light bulbs. In addition, whenever GE claims electricity cost savings or any environmental benefit for its bulbs that is attributable to the fact that the bulbs produce less light, GE must clearly and prominently disclose this fact to consumers.

Hasbro, Inc., Griffin Bacal, Inc.

Hasbro and its bulbs

that they are engaged in the business they purport to be and that they have permissible purposes for accessing the reports.

Isaly Klondike Company, The

Isaly Klondike agreed to settle allegations that it made false claims about the fat and calorie content of its Klondike Lite frozen dessert bars and their effect on consumers' serum cholesterol levels. The consent order prohibits the company from misrepresenting the amount of fat or any other nutrient or ingredient in any of its frozen food products in the future.

Marshall Field & Company

Marshall Field agreed to settle allegations that it violated the Fair Credit Reporting Act (FCRA) by failing to tell job applicants who were denied employment, or offered alternative positions, that the information in their credit report was at least part of the reason. In addition, the company allegedly did not provide the applicants with the name and address of the credit reporting agency that provided the information. The consent order requires Marshall Field to comply with the disclosure provisions of the FCRA for future applicants denied employment based, wholly or in part, on information obtained from a consumer reporting agency, regardless of whether alternative employment is offered. The consent order also requires the company to provide this information to past job applicants denied employment since August 1990.

Media Arts International, Inc., National Media Corporation

Media Art International, a wholly-owned subsidiary of National Media, agreed to settle allegations that they made false and unsubstantiated claims in infomercials for several products, including a purported cure for breast cancer and cellulite. The consent order requires National Media and Media Arts to pay \$275,000 into a consumer redress fund and prohibits them from using similar deceptive claims or practices in marketing products in the future.

Medical Marketing Services, Inc., Michael Walerstein

Medical Marketing Services and its president, Michael Walerstein, agreed to settle allegations that they falsely represented the risks, pain, recovery period, and results of a chemical face peel procedure they marketed nationwide. The consent order prohibits Medical Marketing Services and Walerstein from making any false or misleading claims about any peel procedure or other health care service they offer in the future. The consent order also requires consumer disclosures when certain representations about the safety, risks, or benefits of any peel procedure are made.

*Michael S. Levey, Positive Response Marketing, Inc.
d/b/a Positive Response Television & Positive Response Advertising*

Federal Trade Commission

Michael S. Levey, an officer of Positive Response Marketing, who produces and hosts infomercials, agreed to pay \$275,000 in consumer redress and to abide by broad restrictions on his future marketing projects as part of a consent order. Levey allegedly made a variety of false and misleading representations in four separate infomercials that he produced to market a diet product, a baldness product, an impotence cure, and a kitchen mixer. The consent order prohibits the officer and the corporation from misrepresenting infomercials as independent programming rather than paid advertising and requires them to possess competent and reliable scientific evidence to support efficacy or safety claims for any food, drug, or device they sell.

Mobil Oil Corporation

Mobil Oil agreed to settle a complaint alleging that it made unsubstantiated claims that Hefty Degradable Trash Bags, when disposed of as trash, decompose and return to nature in a reasonably short period of time and that they offer a significant environmental benefit compared to other plastic trash bags. The consent order prohibits unsubstantiated degradability claims in the future.

Nationwide Industries, Inc.

Nationwide, a manufacturer of automotive maintenance and cleaning products, agreed to settle allegations that it made false and misleading environmental claims in the marketing of its Snap Fix-a-Flat aerosol tire inflators. The consent order prohibits Nationwide from making any environmental benefit claim for any of its products unless the company has competent and reliable scientific evidence to substantiate the claim.

Nature's Cleanser, Inc., Donald Douglas-Torry

Nature's Cleanser and an officer of the corporation, Donald Douglas-Torry, agreed to settle allegations that they made numerous false and misleading statements about Nature's Cleanser, an herbal product they marketed to promote weight loss and weight control, and Lady's Comfort, an herbal product purported to relieve menstrual pain and discomfort associated with menopause and other conditions. The consent order prohibits the company and its officer from making the allegedly false claims, requires them to offer full refunds to all consumers that purchased the products, and requires them to possess reliable scientific evidence to substantiate any future claims regarding the performance, benefits, or effectiveness of any food, drug, or device they sell.

Nikki Fashions Ltd., Nicolina P. Varrichione

Nikki Fashions and its owner, Nicolina P. Varrichione, agreed to settle allegations that , agreed to settle

sold. The consent order prohibits the company from future violations and requires it to keep records for five years.

PerfectData Corporation

PerfectData, a marketer of electronic office equipment and maintenance products, agreed to settle allegations that it

Federal Trade Commission

U.S. Golf Association

The U.S. Golf Association (USGA) agreed to settle allegations that it failed to properly identify the country of origin and generic fiber names for clothing and other textile products sold through its mail order catalogs. The consent order requires the USGA to clearly state in all future advertisements and product descriptions whether its clothing and other textile fiber merchandise are manufactured or processed in the U.S., imported, or both. In addition, the USGA is required to use proper generic fiber names consistent with the Textile Act and is prohibited from using product names or

PART III ADMINISTRATIVE COMPLAINTS

COMPETITION MISSION *Baltimore Metropolitan Pharmaceutical Association,
Maryland Pharmacists Association*

The Commission issued an administrative complaint alleging that Baltimore Metropolitan and Maryland Pharmacists conspired with their members to boycott Baltimore, Maryland's prescription drug benefit plan in an attempt to control the reimbursement fees paid to participating pharmacies. The complaint alleged that the two associations entered into agreements with member pharmacists to refuse to participate in the prescription drug plan that compensated participating pharmacies when they filled prescriptions for city employees and retirees who participated in the plan. The complaint further alleged that P h a r m a c i s t s

s thedrugbenefitpl,nr

consumer credit and other information at discounted rates from the major credit bureaus and then resell the data to lower volume buyers,

PART III CONSENTS PUBLISHED FOR COMMENT

COMPETITION MISSION *Alliant Techsystems Inc.*

(See page 58.)

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

The proposed consent agreement settles allegations that the corporations and their officers made false and unsubstantiated claims in infomercials for a purported baldness cure called the Omex

PART III CONSENT ORDERS ISSUED**COMPETITION MISSION** *Alliant Techsystems Inc.*

Alliant settled allegations that its \$127 million proposed acquisition of the Ordnance Division and Physics International subsidiary of Olin Corporation would reduce competition in the production of various types of ammunition used by the United States Defense Department in the Abrams tank and the Apache helicopter. According to the administrative complaint, Alliant and Olin are the only two systems contractors supplying 120mm training ammunition for practice, 120mm tactical and advanced tactical ammunition for actual combat, 30mm lightweight ammunition for training, and all types of 120mm ammunition for tanks. The consent order requires Alliant, for a 10-year period, to obtain prior Commission approval before acquiring any defense systems contractor engaged in providing certain types of training and tactical tank ammunition and selling its stock or assets to a company engaged in systems contracting for tank ammunition. Alliant abandoned the proposed acquisition after the United States District Court for the District of Columbia granted the Commission's request for a preliminary injunction.

**CONSUMER PROTECTION
MISSION**

INITIAL DECISIONS

COMPETITION MISSION *Adventist Health System/Wes*

An Administrative Law
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Trans Union Corporation, Inc.

An Administrative Law Judge's initial decision upheld the complaint allegations that Trans Union violated the Fair Credit Reporting Act, a federal law governing the privacy of consumer credit information a company collects and sells. The Administrative Law Judge's initial decision prohibited Trans Union from compiling and selling target marketing lists based on federally protected information on the credit habits of consumers, unless the company has a reason to believe the buyer intends to make a firm offer of credit to each consumer on the lists.

consider a possible settlement that would allow Occidental to substitute the divestiture of the PVC plant in Addis, Louisiana for the facility in Pasadena, Texas.

ORDER MODIFICATIONS

COMPETITION MISSION *Clinique Laboratories, Inc.*

The Commission modified a 1980 consent order that settled allegations that Clinique conspired with some of its dealers to fix and maintain specified prices

MISSION The Commission modified a 1976 consent order requiring Abraham Cohen, former president of Tarra Hall Clothes, to post a bond with the United States Treasury for double the value of any wool products he imported. Cohen requested that the Commission narrow the conditions under which he must post the bond. The Commission concluded that Cohen's petition to modify the consent order should be granted to require bonding only for importation of recycled wool products.

PRELIMINARY AND PERMANENT INJUNCTIONS

COMPETITION MISSION *Columbia Hospital Corporation*

Prior to the Commission's acceptance of the proposed consent agreement, Columbia Hospital Corporation sold Kissimmee Memorial Hospital to Adventist Health System/Sunbelt Health Care Corporation in exchange for the Medical Center Hospital located in Charlotte County, Florida. A federal district court in Florida granted the Commission's motion for a preliminary injunction prohibiting the Columbia Hospital Corporation/Medical Center Hospital merger on grounds that the acquisition could substantially lessen competition for acute care inpatient hospital services in the Charlotte County, Florida area (which includes parts of Charlotte, Sarasota, and DeSoto counties). The preliminary injunction remains in effect until the Commission completes its administrative challenge of the proposed merger. (*See - Columbia Hospital Corporation*, pages 30, 54.)

General Electric Company

The Commission authorized its staff to seek a preliminary injunction in federal district court to block General Electric's proposed acquisition of Chrysler Rail Transportation Corporation, the second largest lessor of boxcars in the U.S. According to the Commission, the proposed acquisition will combine the nation's first and second largest lessors of boxcars and increase the likelihood that General Electric will exercise market power by raising lease prices. General Electric leases boxcars through its Railcar Leasing Services Corporation, headquartered in Chicago, Illinois; Chrysler Rail is located in nnnnnnib/(in)

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Federal Trade Commission

David J. Masuck, Tal Shamgar a/k/a Bob McGuire and Bob Jones

B.C.S. Group and its principal officers agreed to settle allegations that they either missed promised shipping dates for customers' orders or failed to ship any ordered merchandise at all and that they failed to

The Commission alleged that Car Checkers, a franchisor of mobile auto inspection services, fabricated the experience of two purportedly successful franchisees and falsely represented other aspects of operating a Car Checkers franchise in the course of promoting their franchises to potential buyers. The Commission also made similar allegations against Auto Checkers International, an entity recently set up by an officer of Car Checkers. The court issued a temporary restraining order and froze the defendants' assets. The Commission is seeking a permanent injunction and consumer redress.

Carmella Jean Andrisani a/k/a Carm Andrisani, Jean Andrisani, Christopher William Andrisani a/k/a Christopher William, David Lawrence Andrisani a/k/a David Lawrence, William Robert O'Rourke a/k/a William Rourke, Billy Ray Roark, Terrence Michael Rourke, Andrew Joseph Rourke, Daniel Joseph Rourke, Bill Roberts, and Sonny Genova, Laura O'Rourke a/k/a Laura Rourke, Laurann, Laura Hilty, Bill Church, American Beverage Corporation d/b/a ABC, A & Q Enterprises, Inc., Broscorp, Inc. d/b/a Broscop, Inc., C & A Industries, Inc. d/b/a Textures Natural Cosmetics, C & B Products, Inc. d/b/a Scrumps, Gourmet Mini Cookies, CryNDye, and C & B, Inc., C & C Advertising, Inc., Career Dynamics, Inc. d/b/a Karma's Skin Care Systems, DWCAC, Inc., Grocery Shopping Association of America, Inc. d/b/a GSAA, Gourmet Mini Cookies, Inc. d/b/a Mini Gourmet Cookies, Carmella's Mini Gourmet Cookies, and GMC, Interstate Locators, Inc., Intimate Apparel by Laurann, Inc. d/b/a Intimate Apparel by Laura'nn, J.C.P., Inc., Karma's Skin Systems, Inc., Lipo Reduction Systems, Inc. d/b/a LRS, Lockheart Advertising Agency, Inc., Rainbow Polishing & Appearance Systems, Inc., Rainbow Polishing & Appearance Systems Int'l, Inc., Rain Forest Natural Products, Inc. d/b/a Tropical Treasures, Security Products International, Inc. d/b/a Cry & Dye, Cry'NDye, and CryNDye, Yardpro, Inc.,

A court froze the assets and issued a temporary restraining order against six individuals and twenty corporations based on a Commission complaint alleging that they engaged in a variety of deceptive practices, including using phony references, as part of a nationwide scheme to sell display rack distributorships as business opportunities. The racks displayed products ranging from cookies

Federal Trade Commission

The Commission asked a federal court to hold Case Equipment and its president, Anthony J. Casella, in civil contempt for failing to pay \$250,000 in redress to the Commission on behalf of purchasers of the Subli-Color printing system they sold.

Christopher de Jesus a/k/a Chris Davis, Janet Alexander

Christopher de Jesus and Janet Alexander, officers of World Wide Classics, agreed to settle allegations that they allegedly misrepresented the investment potential of stamps they sold to consumers. The court issued orders prohibiting the challenged practices and requiring Christopher de Jesus to pay \$39,000 in consumer redress and Janet Alexander to pay \$5,000 in consumer redress. This is the Commission's first case alleging fraud in the sale of stamps and related collectibles.

Credi-Care, Inc., Mervin C. Ellis, Program Care, Inc., Stella Ellis

Credi-Care and Program Care, two bill payment companies, and their owners, Mervin and Stella Ellis, agreed to pay \$100,000 in disgorgement to the United States Treasury to settle allegations that their alleged misrepresentations, omissions, and unfair conduct left many of their customers with bad credit ratings, canceled credit cards, and bills for late fees or additional finance charges. The judgment prohibits similar misrepresentations or any false or misleading statements in the future and requires the defendants to make various disclosures and take other measures designed to prevent the challenged conduct from recurring.

David L. DuPont a/k/a George Tonks

A court sentenced David L. DuPont to 37 months in federal prison in connection with a deceptive modeling agency scheme. A \$2.3 million judgment was entered against DuPont and his company, DuPont Model Management, in January 1992, and DuPont was held in civil contempt in July 1992 after it was found that he had violated the court's order by opening a new modeling agency in Chicago. The criminal contempt allegations stem from the Chicago modeling agency.

David Jordan, Legacy Unlimited, Inc., Sierra Pacific Marketing, Inc., Gary D. Hosman, Steven Morris Rowe, Robert Morris Rowe

The Commission alleged that Denny Mason and Sierra Pacific Marketing, two major clusters of Las Vegas, Nevada-based telemarketing companies, and their principal officers engaged in deceptive prize promotion schemes. The court granted temporary restraining orders halting the challenged practices and freezing all defendants' assets. The Commission is seeking permanent injunctions and redress for injured consumers. The defendants falsely represented to consumers across the nation that they had won valuable prizes and then used a variety of misrepresentations to get the consumers to purchase cosmetics, vitamins, environmentally safe cleaning products, water purifiers, or other products. The defendants also aided and abetted other telemarketers engaging in similar deceptive sales practices.

Family Shoppers Union, Inc., Charlene Kay Tucker, Mattox E. Harper, Jr.

A settlement was obtained with Family Shoppers Union as a result of a Commission complaint alleging that the company deceptively promoted its Gold Card as a credit card functionally similar to other general purpose credit cards that consumers could get for a total cost of \$49.95. The complaint alleged that the Gold Card could only be used to purchase items out of catalogs distributed by the defendants and that consumers had to pay an additional \$30 to begin using their cards. The company also allegedly provided other distributors with the means to engage in similar deceptive sales practices.

Federal Trade Commission

freezing the defendants' assets to preserve funds for consumer redress. The Commission alleged that Fitness Express engaged in a deceptive prize promotion scheme to telemarket vitamins, diet products, and other products to consumers. The Commission also alleged that the firm and its supplier, Fitness Express Enterprises, aided and abetted other telemarketers engaged in similar schemes by, among other things, supplying marketing scripts and products for resale.

*Goddard Rarities, Inc., Dennis S. Goddard, Iraj Sayah-Karaji,
Goddard Rarities of Los Angeles, Inc.*

A court issued a temporary restraining order and asset freeze against Goddard Rarities, a rare coin marketer, and its principals, alleging that they deceptively telemarketed rare coins as investments to consumers by misrepresenting the value and risk of such investments, as well as the markups on the coins they sell. The Commission is seeking a permanent injunction to bar the defendants from engaging in the allegedly deceptive practices and to obtain redress for injured consumers.

Golden Oak Numismatics, Inc., Ronald H. Michel

Golden Oak and its president, Ronald H. Michel, agreed to settle allegations that they made numerous false and misleading representations to consumers to induce them to invest in rare coins. The settlement contains several prohibitions against, among other things, false claims regarding the coin's price, markup, or likely earnings associated with investing in the defendants' rare coins. It also enables the Commission to monitor any future investment or telemarketing promotion Ronald H. Michel undertakes and requires written disclosures to consumers in connection with

H.K.S. Purchasing, a mail order firm, and Peter Jamisen, an owner and officer of the company, agreed to give full refunds to consumers who paid for but never received the company's products. The settlement prohibits future violations of the Mail Order Rule and requires a payment of a minimum of \$250,000 in consumer redress.

*Intellipay, Inc., Intellisystems Communications, Inc.,
Alfa International, Inc., Hi-Tech Phones, Inc., Victor F. Valentino,
Franco Valentino, Beverly McCall Valentino,
Ronald J. Roscioli, Terry Swofford*

The Commission obtained two settlements in a case involving four corporations and five individuals, alleging that they misrepresented the profit potential and costs of pay phone franchises and the services and training available to prospective franchisees. The settlements, one with Terry Swofford and one with the remaining defendants, prohibit the type of misrepresentations alleged in the complaint as well as future violations of the Franchise Rule.

*Invention Submission Corporation, Intromark, Inc.,
Western Invention Submission Corporation, Martin S. Berger,
Technosystems Consolidated Corporation*

The Commission alleged that Invention Submission misrepresented the nature, quality, and success rate of the invention promotion services it sells to consumers for prices ranging from hundreds of dollars to a total package price of approximately \$5,000. The Commission is seeking a permanent injunction to prohibit the defendants from engaging in the deceptive practices in the future and to secure redress for injured consumers.

Investment Update, Inc., Murray L. Stein

The Commission obtained a settlement with Investment Update and its principal officer, Murray L. Stein, a producer of radio and television infomercials designed to generate customer leads that were then sold to investment selling clients. The defendants agreed to an order that would permanently ban them from the business of selling leads for any type of investment or investment service in the future.

John T. English

The Commission obtained a settlement with John T. English, sales manager of Solomon Trading Company, alleging that he misrepresented the investment value of art prints telemarketed to consumers across the country. The

Commission. The Commission is seeking to void all illegal transfers of money made to the defendants, pursuant to federal and state law; to obtain compensatory damages from the defendants for aiding and abetting, conspiracy, and as to National City Bank, breach of fiduciary duty; and to obtain an award for punitive damages not to exceed \$11.2 million.

Memphis Lamp, Inc., Damar Worldwide, Inc., David Marrs

Memphis Lamp and Damar Worldwide, two electrical supply companies owned by David Marrs, agreed to pay \$60,000 to the United States Treasury to settle allegations that they used deceptive practices in connection with the sale and labeling of their fluorescent lighting tubes. The settlement prohibits the companies from misrepresenting the wattage or energy saving qualities of lamps in the future.

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

Michael L. Zabrin Fine Arts, an art works wholesaler, and its owner, Michael L. Zabrin, agreed to settle allegations of selling art works misrepresented to be creations of Marc Chagall, Joan Miro() Tj 3 Tc 0.0208 Tw6a3 0 TD0585 Tc 0 Tw (to) Tj 8

Federal Trade Commission

by Ulrich, a former client, and to pay the Commission \$35,000 in cash in order to avoid a federal lawsuit. Three nationwide coin dealers, Richard Melamed, Fred Lucas, and Wilbur Montgomery Sims, also agreed to settlements requiring them to turn over certain assets or to make certain payments to the Commission to avoid federal lawsuits. Melamed and his company, Melamed Rare Coins, paid the Commission \$10,000. Lucas assigned to the Commission his \$94,380 security interest in Ulrich's house. Sims paid the Commission \$8,000 in cash and assigned the Commission his \$62,764 security interest in Ulrich's house.

Pacific Inspection and Research Laboratory, Inc., Ronald J. Weisel

The Commission alleged that Pacific Inspection and Research Laboratory and its co-owner and Vice President, Ronald J. Weisel, misrepresented the results of thermal performance tests they conducted on windows and misrepresented that the tests were performed according to applicable industry standards and accepted engineering practices. The Commission also alleged that, by providing deceptive test reports, the company provided others with the means to deceive consumers. The Commission is seeking a permanent injunction and redress for injured consumers.

Payco American Corporation

The Commission alleged that Payco, one of the country's largest debt collection agencies, illegally revealed consumer debts to third parties, used obscene or abusive language, and falsely threatened arrest, garnishment of wages, or other legal action against consumers from whom they were attempting to collect debts for clients, in violation of the Fair Debt Collection Practices Act. The Commission is seeking to enjoin Payco from violating the Fair Debt Collection Practices Act in the future and to secure civil penalties.

Payless Auto Sales, Inc., James D. Harrington

The Commission obtained a settlement with Payless, a used car dealer, to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on the side window of used cars offered for sale and by failing to disclose all of the terms of the warranty in a single document for each car, as required by the Warranty Disclosure Rule. The settlement prohibits future violations of the Used Car and Warranty Disclosure Rules.

*Pioneer Enterprises, Inc.,
Great Western Printing, Inc. d/b/a Pro Life Marketing,
Premier Marketing of America, Inc., 21st Century II,
Vitality, Inc., West Printing, Inc., and W.5651 0 TD 0 TD 0 Tc 0.0208 u 4Tw () Tj 0.00irec*

Federal Trade Commission

The Commission obtained a judgment against Pioneer Enterprises, a prize promotion telemarketing firm scheme doing business under a variety of names, five other companies, and two individuals. The defendants agreed to pay \$1.5 million to settle allegations that they 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. The judgment contains strict prohibitions on and requirements for the defendants' future telemarketing and direct mail activities. The judgment also requires the defendants to take steps to assure that other telemarketers or direct mailers they deal with comply with the order.

Precision Mailers, Inc.

*a/k/a Target Response and National Sweepstakes, Inc.,
Gregory L. Anthone, Georgia Anthone, Gregory A. Smith*

Precision Mailers and its principals agreed to pay \$75,000 to the United States Treasury to settle allegations in connection with prize promotion mailings they developed to help more than 200 businesses nationwide sell resort memberships and vacation timeshares. The settlement prohibits the defendants from making similar misrepresentations in the future, requires them to disclose the nature and value of any future prizes they offer, and requires them to drop clients engaging in similar misrepresentations or omissions.

Safe-Stride International, Inc., Richard Colfels, William Riley

The Commission alleged that Safe-Stride, a firm that sells franchises to market a non-slip residential and commercial floor and bathtub treatment, failed to provide potential franchisees with basic disclosure and earnings documents, as required by the Franchise Rule. The Commission is seeking to permanently enjoin future violations of the Franchise Rule and to secure civil penalties.

S&L Professional Credit Clinic, Inc., Shelby L. Daniels, Lynda Jo Stock

The court issued a permanent injunction barring S&L Professional Credit Clinic and its principals, Shelby L. Daniels and Lynda Jo Stock, from

Snelling and Snelling, a franchisor of temporary employment services, agreed to settle a complaint alleging that it misrepresented the earnings potential of its franchisees and failed to provide potential buyers with the earnings claim document required by the Franchise Rule. The settlement requires the company to pay \$100,000 for consumer redress and to comply with the Franchise Rule in the future.

Solar Sales, Inc.

The Commission obtained a settlement with Solar Sales alleging that it falsely represented that its transient sales are not subject to the Franchise Rule. The settlement requires the company to pay \$100,000 for consumer redress and to comply with the Franchise Rule in the future.

Federal Trade Commission

U.S. Hotline, Inc. d/b/a U.S. Car Buyers Alliance d/b/a U.S. Job Finders, Ads Across America, Inc., Jay H. Peterson

The Commission alleged that U.S. Hotline, Ads Across America, and Jay H. Peterson, who allegedly controls the firms, deceptively promoted a series of guides that purportedly told consumers how to buy government seized cars at giveaway prices or that offered various work-at-home opportunities. The court temporarily barred the defendants from engaging in the alleged deceptive practices, issued an order freezing their assets, and appointed a receiver to temporarily take control of the business. The Commission is seeking to enjoin the defendants from engaging in similar deceptive practices in the future and to obtain redress for injured consumers.

William P. Wright

The Commission obtained a settlement with William P. Wright, a distributor and retailer of gasoline and gasohol, who allegedly overstated the octane ratings displayed on gasoline pumps and failed to properly certify the octane ratings of gas he sold, among other violations of the Octane Labeling Rule. The settlement prohibits future violations of the Octane Labeling Rule and misrepresentations concerning the octane level of gasoline or gasohol sold by Wright.

Worldwide Credit, Inc., Carey E. Benzenberg

The Commission alleged that Worldwide Credit and its president, Carey E. Benzenberg, falsely represented to consumers that they would receive loans upon payment of a \$250 advance fee and misrepresented the company's refund policy. The Commission is seeking a permanent injunction to prevent the individual defendants from engaging in future deceptive practices, consumer redress, and other equitable relief.

Federal Trade Commission

Bachman agreed to settle allegations that it violated the Franchise Rule by failing to give franchisees required disclosure documents. The settlement prohibits future violations of the Franchise Rule and requires payment of a \$30,000 civil penalty.

*C. A. Anderson Funeral Parlors, Inc.,
Reno C. T. Anderson d/b/a Anderson's Funeral Parlors*

C. A. Anderson Funeral Parlors and its owner, Reno C. T. Anderson, agreed F

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disclosure

Davis Funeral Home, John Harold Davis

Davis Funeral Home and its owner, John Harold Davis, agreed to settle allegations that they violated the Funeral Rule by failing to provide prospective customers with various required price lists and by failing to provide actual customers with properly itemized written statements of the goods and services they selected, among other violations. The settlement prohibits future violations of the Funeral Rule and requires payment of a \$5,000 civil penalty.

Direct Distributors, Inc.

Direct Distributors, a marketer and seller of franchises for frozen fruit bars, agreed to settle allegations that it violated the Franchise Rule by making unsubstantiated earnings claims to potential purchasers of its franchises and by failing to provide prospective purchasers with the basic disclosure documents required by the Rule. The settlement prohibits future violations of the Franchise Rule and requires payment of a \$25,000 civil penalty.

Gingiss International, Inc.

Gingiss International, owner of men's formal wear rental shops and seller of formal wear franchises, agreed to settle allegations that it violated the Franchise Rule by misrepresenting to potential buyers the earnings capacity of franchised stores. The settlement prohibits future violations of the Franchise Rule and requires payment of a \$25,000 civil penalty.

Hasbro, Inc.

Hasbro agreed to settle allegations that it misrepresented the performance of certain toys in Hasbro's "G.I. Joe" line of toys. The settlement prohibits future violations of the Franchise Rule and requires payment of a \$25,000 civil penalty.

Federal Trade Commission

car, as required by the Warranty Disclosure Rule. The settlement prohibits future violations of the Used Car and Warranty Disclosure Rules and requires payment of a \$10,000 civil penalty.

Liberty Motors, Inc., Joel Kossman

Libe

Federal Trade Commission

for sale. The settlement prohibits future violations of the Used Car Rule and requires payment of a \$40,000 civil penalty.

T. J. Motors, Inc.

T. J. Motors, a used car dealership, agreed to settle allegations that it violated the Used Car Rule by failing to display the required Buyers Guide on the side window of used cars offered for sale. The settlement prohibits future violations of the Used Car Rule and requires payment of a \$1,200 civil penalty.

Ultimate Motors, Inc., Ali Vaez

Ultimate Motors, a used car dealership, and a company officer, Ali Vaez, allegedly violated the Used Car Rule by failing to display the required Buyers Guide on the side window of used cars offered for sale. A court order prohibits future violations of the Used Car Rule and requires payment of a \$20,000 civil penalty.

Valley of the Temples Mortuaries, Ltd., 50th State Funeral Plan, Ltd.

Valley of the Temples Mortuaries, a funeral home chain, and its wholly-owned subsidiary, 50th State Funeral Plan, Ltd., agreed to settle allegations that they violated the Funeral Rule by failing to provide consumers with pricing information and other disclosures required under the Rule. The settlement prohibits future violations of the Funeral Rule and requires payment of a \$90,000 civil penalty.

WhiteHead, Ltd., Richard J. Wall, Walter J. Wright

WhiteHead, a franchiser of stores selling used and antique furniture, agreed to settle allegations that it violated the Franchise Rule by failing to give prospective franchisees the proper disclosure documents. The settlement prohibits future violations of the Franchise Rule and requires payment of \$290,000 in civil penalties and \$725,000 in consumer redress.

APPELLATE COURT DECISIONS

COMPETITION MISSION *Adventist Health System/West*

In September 1991, Adventist filed a complaint in the United States District Court for the District of Columbia seeking to enjoin the Commission's administrative proceedings -- which challenged Adventist's 1988 acquisition of Ukiah General Hospital -- on grounds that the Clayton Act does not apply to asset acquisitions by nonprofit entities. On December 29, 1992, the United States Court of Appeals for the District of Columbia Circuit affirmed the October 7, 1991, order of the district court transferring the case to the United States Court of Appeals for the Ninth Circuit. The district court ordered the case transferred on grounds that only a federal appellate court authorized to review a final Commission order may review an interlocutory challenge to an ongoing Commission administrative proceeding. Adventist's motion to stay the proceedings pending a Supreme Court review was denied on June 21, 1993.

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Federal Trade Commission

On July 15, 1993, the United States Court of Appeals for the Third Circuit affirmed the Commission's final order in Ticor and ruled that Ticor's collective rate-making activities are not immune under either the business of insurance exception to the McCarran-Ferguson Act or the Noerr-Pennington doctrine. The court further ruled that Ticor could not claim immunity for its collective rates in Arizona and Connecticut under the state action doctrine after evidence failed to show that officials in either state properly supervised or evaluated the collective establishment of rates. Ticor's petition for a rehearing of those issues *en banc* was denied August 30, 1993.

ECONOMIC WORKING PAPERS AND POLICY PAPERS

ECONOMIC WORKING PAPERS Economic Working Papers are preliminary, unpublished work products of the Bureau of Economics resulting from original research by Bureau staff, either in connection with ongoing Commission activities or independent analyses, often requiring very minor allocations of staff time.

Telecommunications Bypass and the “Brandon Effect”, (WP#199), Steven G. Parsons and Michael R. Ward, February 1993.

Fight, Fold or Settle?: Modeling the Reaction to FTC Merger Challenges, (WP#200), Malcolm Coate, Andrew Kleit, and Rene Bustamante, February 1993.

Product Variety and Consumer Search, (WP#201), Jeffrey H. Fischer, February 1993.

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

Economies of Scale, Scope of Integration, Richard A. D’Aveni and David J. Ravenscraft, December 1992.

Core Competencies and Cost Structure: A Study of Line of Business-Level Competitive Advantage Associated with Diversification Strategies, Richard A. D’Aveni and David J. Ravenscraft, December 1992.

CONSUMER AND COMPETITION ADVOCACY

**OFFICE OF CONSUMER
AND
COMPETITION ADVOCACY**

The interests of consumers are not always well-represented in some legislative and regulatory forums. Consequently, laws or regulations are sometimes promulgated that may harm consumers by restricting entry, limiting competition, chillin

constraints remain in place. Staff advised that the separate facilities requirements may continue to impose some costs, and the ban on employment of nonprofessionals could prevent some potentially efficient forms of collaboration.

The Bureau of Competition submitted comments to the Massachusetts House Health Committee on a bill to impose any-willing-provider requirements on pharmacy services. This bill would require that any pharmacy be permitted to participate in the preferred or contract provider program of a health insurance or employee benefit plan if the pharmacy is willing to accept the program's terms. Staff suggested that the bill would prevent limiting the panel of providers and, thus, would discourage contracts with providers in which lower prices are offered in exchange for the assurance of higher volume. Staff concluded that although the bill may be intended to assure consumers of

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The Office of Consumer and Competition Advocacy submitted comments on legislation to impose broad any-willing-provider requirements on pharmacy services. Staff suggested that the bill could limit the ability of several kinds of health benefit plans to arrange for prescription drug services through contracts with providers, by requiring that services be available through any provider willing to meet the plan's terms. The bill would prevent limiting the panel of providers and, thus, would discourage contracts with providers in which lower prices are offered in exchange for the assurance of higher volume. The bill also could inhibit the realization of cost savings, such as reduced transaction and auditing costs, made possible by the ability to contract selectively. Staff concluded that, although the bill may be intended to assure consumers greater freedom to choose where they obtain pharmacy services, it appears likely to have the unintended effect of denying consumers the advantage of cost reducing arrangements and limiting their choices in the provision of health care services.

North Dakota: Hospital Agreements, Antitrust Immunity.

The Office of Consumer and Competition Advocacy submitted comments in response to a request from the Office of the Attorney General of the State of North Dakota on Senate Bills 2295 and 2426, which would authorize certain cooperative agreements among hospitals or other health care providers and immunize those agreements from antitrust liability. Staff recommended caution in proceeding with the legislation, questioning whether granting antitrust immunity is necessary to achieve the goals sought. According to the comment, statutory antitrust exemptions could permit behavior that injures consumers and the economy, because it may eliminate competition and harm consumers' interests without producing clear countervailing benefits. Rather, staff supported competition as being an important factor in bringing about beneficial change in how health care services are delivered to consumers. However, to ensure that the agreements, once authorized, continue to operate as intended, staff recommended that measures be taken to make it easier to terminate agreements that fail to achieve specified goals.

Federal Trade Commission

consumers the advantages of cost reducing arrangements and limiting their choices in the provision of health care services.

South Carolina: Legislative Audit Council; Pharmacy, Any-Willing-Provider Bill.

The Office of Consumer and Competition Advocacy submitted comments in response to a request from the South Carolina Legislative Audit Council on the statutes and regulations of the Boards of Optometry and Opticianry, Dentistry, Psychology, Speech and Audiology, Physical Therapy, Podiatry, and Occupational Therapy. For optometry and opticianry, the staff recommended removing prohibitions against offering eye examinations as premiums, discounts, or bonuses; using positions with professional organizations for advertising purposes; locating optometric offices in commercial locations; displaying licenses, diplomas, or certificates where they are visible outside optometric offices; and claims of superiority. Staff also suggested that mandatory price advertising disclosures be removed. For dentists, the staff recommended that referral fee controls not impair legitimate provider arrangements and called for lifting certain restraints on how dentists may represent

The Dallas Regional Office submitted comments to the chairman of the Texas House Insurance Committee on two any-willing-provider proposals, one covering pharmacy services and the other covering virtually all other health care professionals. The proposals bill would limit the ability of several kinds of health benefit plans to arrange for services through contracts with providers, by requiring that services be available through any provider willing to meet the plan's terms. Staff concluded that, although the proposals may be intended to assure consumers greater freedom to choose where they obtain services, they appear likely to have the unintended effect of denying consumers the advantages of cost reducing arrangements and limiting their choices in the provision of health care services.

Washington: Optician Regulation.

The Seattle Regional Office testified before the Joint Administrative Rules Review Committee of the Washington State Legislature on newly adopted rules to the Washington State Board of Optometry, which affect how optometrists deal with opticians concerning contact lens prescriptions. Under the new rules, opticians may fit contact lenses, but only under tightly controlled direction by optometrists. The testimony presented the findings of the Commission's Contact Lens Study that there was no significant difference in the quality of cosmetic contact lens fitting services provided by opticians, optometrists, or ophthalmologists. Thus, staff concluded, allowing optometrists to control how much opticians can compete to provide these services could increase prices without improving quality of service.

Wisconsin: Funeral Home-Cemetery Combinations.

The Chicago Regional Office submitted comments to the Wisconsin State Assembly on two proposals to amend the Wisconsin statutes regulating the licensing and operation of funeral establishments and cemeteries in Wisconsin. One proposal would ban joint operation and bar anyone from operating a funeral establishment that is located in or next to a cemetery. Staff supported an alternate proposal that would eliminate such restrictions. Staff concluded that permitting joint ownership or operation could make possible new business formats and improvements in efficiency, which might in turn lead to lower prices and better service to consumers.

AMICUS CURIAE *Receiver Standing.*

The Commission staff filed an amicus brief with the United States District Court for the Central District of California in *Rayle, as Receiver for Hannes Tulving Rare Coin Investments, Inc. v. First National Bank of Cut Bank*. The brief defended the court's power to authorize an equity receiver to sue on behalf of the customers of the receivership entity. Staff suggested that, although courts have differed on the scope of an equity receiver's powers absent specific authorization, they have repeatedly stated that an equity court

Federal Trade Commission

may authorize a receiver to sue on behalf of victims of the receivership entity's misconduct and that the Court's specific grant of authority to the receiver, to liquidate claims of customers of the receivership entity by suing jointly liable third parties, is consistent with numerous court decisions. The suit is a private action related to the Commission's complaint -- settled earlier in the year -- against Hannes Tulving Rare Coin Investments, in which the Commission alleged that Hannes operated a rare coin investment scheme that bilked investors out of millions of dollars.

TABLE OF CASES LISTED IN THE APPENDIX

Federal Trade Commission

Audio Rx Hearing Aids	46
Auto Checkers International, Inc.	68
B.C.S. Group, Inc.	67
B & J School Bus Service, Inc.	39
Bachman Company, The	81
Bailey, Clayton R., Jr.	79
Baltimore Metropolitan Pharmaceutical Association	54
Bankcard Service Center, The	65
Barer, Arnold Joseph	84
Basil, Sherwin	46
Bay Colony Audiology Center	46
Benzenberg, Carey E.	79
Berger, Martin S.	72
Blau, Ana	57
BMV Motors Corporation	66
Boughton, Robert W.	59
BPI Environmental, Inc.	33
Brett, Patrick	70
Brooklyn Audiology Assocs.	46
Brosco, Inc.	68
Broscorp, Inc.	68
Brown, Bruce R.	46
Brown, Carol M.	46
Brown, Jack	46
Brown-Potter Hearing Aid Center	46
Brown, Ronald W.	81
Brown, Royden	46
Building Inspector of America, Inc., The	67
Burt, Devon	75
Business Computer Systems	67
C.A. Anderson Funeral Parlors, Inc.	81
C & A Industries, Inc.	68
C & B, Inc.	68
C & B Products, Inc.	68
C & C Advertising, Inc.	68
CC Pollen Company	46
CDB Infotek	49
California Dental Association	54
California Funeral Service	83
Cambridge Exchange, Ltd., The	67
Campanello, Janice L.	56
Can-Do Worldwide Marketing, Inc.	67
Car Checkers of America, Inc.	68
Car City, Inc.	81
Career Dynamics, Inc.	68
Carmella's Mini Gourmet Cookies	68
Carpentier, Sallye B.	46

Table of Cases

Case, A. J.	69
Case Equipment Company	69
Casella, A. J.	69
Casella, Anthony J.	69
Center for Improved Communications	46
Channel Home Centers, Inc.	81
Chapels of Suhr and Weiboldt	83
Charles Revson, Inc.	36
Church, Bill	68
Citicorp Credit Services, Inc.	46
Citron, David III	46
Clean Cars of Tampa, Inc.	80
Clinique Laboratories, Inc.	63
Clorox Company, The	47
Cohen, Abraham	64
Cohen, Mark N.	65
Colfels, Richard	77
Collins Buick, Inc.	47
Collins, William Kevin	47
Columbia Hospital Corporation	30, 54, 65
Comisky-Roche Funeral Home	81
Computer Listing Service	42
Conair Corporation	47
Consol, Inc.	40
Continental Sales, Inc.	73
Cooper Industries, Inc.	30
Credi-Care, Inc.	69
Crossroads Auto Mart	

Federal Trade Commission

Detroit Auto Dealers Association	88
Dhanji, Shakir A.	75
Diet Center, Inc.	35
Direct Distributors, Inc.	82
Dollar Rent-A-Car Systems, Inc.	47
Dominican Santa Cruz Hospital	31
Douglas Company, The	71
Douglas, Hazel A.	71
Douglas-Torry, Donald	51
DuPont, David L.	69
DWCAC, Inc.	68
Easley, Christopher A.	77
Ellis, Mervin C.	69
Ellis, Stella	69
Emmons, Jeffrey	67
Emmons Nationwide Appraisals	67
Engh, Harold V. Jr.	34
English, John T.	73
Family Shoppers Union, Inc.	70
Federal Coin Repository	70
Fenton, Thomas L.	57
Finklestone, Lawrence H.	67
First National Bankcard Center	65
Fitness Express, Inc.	71
Fitness Express Enterprises, Inc.	71
Fleetwood Manufacturing, Inc.	48
Fleetwood, Thomas A.	48
Flick, Gisela E.	35
Fone Telecommunications, Inc.	48
Frazer, Gregory	46
Fridstein, Stanley M.	52
Frugone, Susan	46
Future World, Inc.	70
G.C. Electronics, Inc.	34
G.C. Thorsen, Inc.	34
General Electric Company	48, 65
Genova, Sonny	68
Gentile, Jon A.	73
Gingiss International, Inc.	82
Ginsberg, David	65
Giordano, Alfonso S.	59
Goddard, Dennis S.	71
Goddard Rarities, Inc.	71
Goddard Rarities of Los Angeles, Inc.	71
Golden Oak Numismatics, Inc.	71
Gourmet Mini Cookies	68
Gracewood Fruit Company	34

Table of Cases

Great Western Printing, Inc.	77
Greenbaum, James D.	78
Griffin Bacal, Inc.	48
Griffin Systems, Inc.	59
Grocery Shopping Association of America, Inc.	68
H.K.S. Purchasing Corporation	72
Hanna, Mark W.	56
Harcourt Companies	45
Harper, Mattox E., Jr.	70
Harrington, James D.	76
Hasbro, Inc.	48, 82
Health Management Resources Corporation	45
Healthway Products, Inc.	73
Healthway Products of Texas	73
Hearing Care Associates	46
Hechinger Company, The	82
Hi-Tech Phones, Inc.	72
Hilty, Laura	68
Honickman, Harold A.	61, 80, 86
Hosman, Gary D.	70
Imperial Chemical Industries PLC	31
Imperial Motors, Ltd.	83
Industrial Multiple, The	37
Information Resource Service Company	49
Integrated Wireless, Inc.	78
Intellisystems Communications, Inc.	72
Intellipay, Inc.	72
Inter-Fact, Inc.	49
Interstate Locators, Inc.	68
Intimate Apparel by Laura'nn	68
Intimate Apparel by Laurann, Inc.	68
Intromark, Inc.	72
Invention Submission Corporation	72
Investment Update, Inc.	72
Ion Systems, Inc.	49
I.R.S.C. Inc.	49
Isaly Klondike Company, The	49
J.C.P., Inc.	68
Jamisen, Peter	72
Jenny Craig, Inc.	55
Jenny Craig International, Inc.	55
Jolcover, Jeff	78
Jones, Bob	67
Jordan, David	70
K & M Marketing	73
K & M Marketing II, Inc.	73
Kaner, P.C. & Richard	46

Federal Trade Commission

Karma's Skin Care Systems	68
Karma's Skin Systems, Inc.	68
Kaylor, Richard E.	57

Table of Cases

Memorial Guardian Plans, Inc.	83
Memphis Lamp, Inc.	74
Meyer Funeral Home, Inc.	84
Meyers, Mel	67
Michael L. Zabrin Fine Arts, Ltd.	74
Michel, Ronald H.	71
Midas Media, Inc.	78
Midas Media I, Ltd.	78
Middleton, Charles W.	84
Minetti, Michael	70
Mini Gourmet Cookies	68
Mr. Coffee, Inc.	34
Minuteman Press International, Inc.	74
Mobil Oil Corporation	50
Monsanto Company	40
Moyer, Gregg C.	81
NCS Credit Network, Inc.	75
National Association of Social Workers	41
National City Bank of Minneapolis	73
National Credit Center, Inc.	75
National Credit Savers, Inc.	75
National Energy Specialists Association	75
National Health Care Associates	70
National Media Corporation	50
National Society of Professional Engineers	41
Nationwide Industries, Inc.	51
Nationwide Products Research & Development, Inc.	73
Nature's Cleanser, Inc.	51
New Image Way	70
Newbraugh, Frank	75
Nikki Fashions Ltd.	51
North American Plastics Corporation	34
North and South Associates, Inc.	75
Numex Corporation	35
Nutri/System, Inc.	35
O'Connor & Hannan	76
O'Rourke, Laura	68

Federal Trade Commission

Payco American Corporation	76
Payless Auto Sales, Inc.	76
PerfectData Corporation	51
Perry Buick Company	84
Peterson, Jay H.	79
Phan, Alan, V.	45
Phone Programs, Inc.	58
Phonequest, Inc.	84
Physicians Weight Loss Centers, Inc.	35
Physicians Weight Loss Center of American, Inc.	35
Pioneer Enterprises, Inc.	77
Pitts, Samuel Lee	75
Poletti, Dennis	73
Polgar, James	49
Pompeian, Inc.	52
Positive Response Advertising	50
Positive Response Marketing, Inc.	50
PerfectData Corporation	50

Table of Cases

S.C. Johnson & Son, Inc.	42
S.E.C. Enterprises, Inc.	70
S.E.C. Enterprises Sales, Inc.	70
S & L Professional Credit Clinic, Inc.	78
Sadiq, Soleiman	83
Safe-Stride International, Inc.	77
Salgado, Hazel Douglas	71
Sayah-Karaji, Iraj	71
Schmidheiny, Stephan	80
Scrumps	68
Secchiaroli, Richard J.	77
Security Printing, Inc.	70
Security Products International, Inc.	68
Seifer, Gerald	66
Select Auto Imports, Inc.	84
Service Corporation International	43
Shamgar, Tal	67
Sharper Image Corporation	52
Sierra Pacific Marketing, Inc.	70
Simpson, Tom	83
Sims, Wilbur Montgomery	76
Site for Sore Eyes, Inc.	52
Smith, Gregory A.	77
Smolev, Ira	57
Smoothline Corporation	57
Snelling and Snelling, Inc.	78
Solar Sales, Inc.	78
Spano, Benedict (Ben)	70
Spectrum Resources Group, Inc.	78
Spectrum Resources Group, Ltd.	78
Speedy Sign-A-Rama, USA, Inc.	74
Sporicidin Company, The	78
Sporicidin International	78
Stein, Murray L.	72
Stier, Samuel	67
Stier, Steven	67
Stock, Lynda Jo	78
Stone, Michael	67
Stouffer Foods Corporation	59
Southeast Colorado Pharmacal Association	43
Sunrise Auto & Cycles, Inc.	79
Sunshine Promotions	77
Sweeney, Robert	67
Swofford, Terry	72
Synchronal Corporation	57
Synchronal Group, Inc.	57
T. J. Motors, Inc.	85

Table of Cases

Wright, Walter J.	85
Wright, William P.	79
Woods, John	73
Worldwide Credit, Inc.	79
YKK (U.S.A.), Inc.	45
Yardpro, Inc.	68
Zabrin, Michael L.	74