

FEDERAL TRADE COMMISSION - 1993

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JANET D. STEIGER, *Chairman*  
MARY L. AZCUENAGA, *Commissioner*  
DEBORAH K. OWEN, *Commissioner*  
ROSCOE B. STAREK, III, *Commissioner*  
DENNIS A. YAO, *Commissioner*

DONALD S. CLARK, *Secretary*

EXECUTIVE OFFICES OF THE FEDERAL TRADE COMMISSION

**Pennsylvania Avenue at Sixth Street, N.W.  
Washington, D.C. 20580**

**Regional Offices**

**Atlanta, Georgia**

Room 1000  
1718 Peachtree Street, N.W.  
Zip Code: 30367

**Boston, Massachusetts**

Suite 810  
101 Merrimac Street  
Zip Code: 02114-4719

**Chicago, Illinois**

Suite 1860  
55 East Monroe Street  
Zip Code: 60603

**Cleveland, Ohio**

Suite 520-A  
668 Euclid Avenue  
Zip Code: 44114

**Dallas, Texas**

Suite 500  
100 N. Central Expressway  
Zip Code: 75201

**Denver, Colorado**

Suite 1523  
1961 Stout Street  
Zip Code: 80294

**Los Angeles, California**

Room 13209  
11000 Wilshire Boulevard  
Zip Code: 90024

**New York, New York**

Suite 1300  
150 William Street  
Zip Code: 10038

**San Francisco, California**

Suite 570  
901 Market Street  
Zip Code: 94103

**Seattle, Washington**

2806 Federal Building  
915 Second Avenue  
Zip Code: 98174

FEDERAL TRADE COMMISSION  
1993 ANNUAL REPORT

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## SUMMARY

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

In addition to carrying out its statutory enforcement responsibilities, the Commission advances the policies underlying Congressional mandates through cost-effective nonenforcement activities, such as consumer education. This report itemizes the Commission's accomplishments in fiscal year 1993.

### **COMPETITION MISSION**

The Bureau of Competition and the Commission's ten regional offices assisted the Commission in fulfilling its mission of maintaining competition in the U.S. economy. This included reviewing business practices in order to limit both private and governmental restraints on free and vigorous competition, thus ensuring that consumers have access to adequate sources of goods and services at reasonable, competitive prices. The Commission's participation in deregulation efforts helps in lowering costs and prices, lessening inflation, and increasing innovation. In the merger area, the number of Hart-Scott-Rodino premerger filings for fiscal year 1993 increased by approximately 16% over the number of transactions reported during fiscal year 1992. During that year, the premerger filing fee increased from \$20,000 to \$25,000. In fiscal year 1993, the Commission reviewed mergers in many sectors of the economy and determined to terminate the dairy merger reporting program, due to the small number of filings received during the last five years. The Commission continued to take measures to ensure compliance with Commission orders requiring divestitures and prior approvals of acquisitions.

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

### **CONSUMER PROTECTION MISSION**

The Bureau of Consumer Protection continued its mission to protect consumers from deceptive or unfair practices in the marketplace. The Bureau's activities included addressing health claims in food advertising; environmental advertising and labeling; general advertising issues; health care fraud; telemarketing, business opportunity, franchise, and investment fraud; mortgage lending and discrimination; as well as enforcing Commission orders, credit statutes, and a wide array of trade regulation rules. In fiscal year 1993, the Commission approved consent orders against several 900 number, gold card, and credit repair marketers. In several cases, the Bureau emphasized efficiency by concentrating on the roots of deceptive practices rather than their many outlets. In addition, the Commission issued consent orders involving health,

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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, legal interns, law clerks, and economists. The Personnel Division developed and administered training and continuing education programs, took steps to comply with the Executive Order to reduce the size of the workforce, and implemented a policy on family and medical leave. The Procurement and General Services Division started and completed numerous projects to improve Headquarters and other Commission facilities, including asbestos removal and the installation of fire-retardant doors in the Office of the Secretary.

The Information Services Division responded to almost 43,000 consumer complaints. The Commission also received over 1,000 requests, the greatest number received in over 12 years, for information under the Freedom of Information and Privacy Acts. In addition, approximately 2.5 million consumer and business pamphlets and brochures, which were produced by the Office of Consumer and Business Education, were distributed.

### 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. The program's objectives are to encourage voluntary compliance by individuals and organizations subject to the HSR Act, and to review all reported transactions in order to identify those that may pose serious antitrust problems. To insure voluntary compliance, the Commission provides assistance to any entity subject to the statute. When it appears that the reporting requirements have been violated, the Compliance Division conducts an investigation and recommends an enforcement action for civil penalties or other relief, when appropriate. At the close of the fiscal year, eight compliance investigations were on-going.

During fiscal year 1993, the Premerger Notification Office processed 1,846 transactions under the notification and filing requirements of the HSR Act. This is an increase of approximately 16% over the number of transactions reported to the Commission during fiscal year 1992. In October 1992, the appropriations legislation originating in the Committee on the Departments of



Commerce, Justice, State, the Judiciary, and Related Agencies, and ultimately enacted, increased the premerger filing fee from \$20,000 to \$25,000. The fee is required from each acquiring person contemplating a transaction reportable under the HSR Act. The Chairman issued 40 Requests for Additional Information or Documentary Materials that provided staff with the opportunity to give a transaction a more thorough review before either instituting an enforcement action or recommending that the parties be permitted to consummate the transaction. The staff provided informal advice and general information regarding the application and interpretation of the HSR Act and rules, the *Premerger Notification Sourcebook*, and the two *Premerger Introductory Guides* in approximately 10,000 instances.

The Premerger Notification Office prepared, and the Commission approved, four annual reports to Congress in fiscal year 1993: the *Eleventh Annual Report for Fiscal Year 1988*, the *Twelfth Annual Report for Fiscal Year 1989*, the *Thirteenth Annual Report for Fiscal Year 1990*, and the *Fourteenth Annual Report for Fiscal Year 1991*.

The United States District Court for the District of Columbia issued decisions in two separate complaints that sought civil penalties for violations of the reporting requirements of the HSR Act. A final judgment was entered against Harold A. Honickman to settle charges that he acquired the assets of the Seven-Up Brooklyn Bottling Company, Inc., a New York area soft drink bottler, without observing the notification and waiting period requirements of the HSR Act. On November 30, 1992, Honickman paid \$1,976,000 in civil penalties to the United States Treasury to settle the charges. In the other complaint, the Commission charged that Stephan Schmidheiny, of Hurden, Switzerland, acquired voting securities in two European firms that have manufacturing facilities in the U.S. before filing the notification required by the HSR Act. The settlement, requiring payment of a \$414,650 civil penalty, was awaiting the entry of final judgment by the district court at the close of the fiscal year. Both complaints and settlements were filed in federal court by Commission attorneys under a special authorization from the United States Attorney General.

On May 7, 1993, the Antitrust Division of the Department of Justice filed a brief in the United States Court of Appeals for the Seventh Circuit appealing the dismissal by the district court (N.D.Ill.) of a complaint alleging that William F. Farley acquired voting securities in West Point-Pepperell Inc., valued in excess of \$15 million, in violation of the filing requirements of the HSR Act. The oral argument was held September 21, 1993.

### **MERGERS AND JOINT VENTURES**

Mergers and joint ventures constitute an important and dynamic aspect of U.S. economic activity. In general, mergers can play an important role in promoting the efficient allocation of economic resources. The mergers and joint ventures program identifies and seeks to prevent mergers that may be harmful to competition and to consumers because they lessen actual or potential competition, increase the market power of the joining firms, lead to market dominance, or significantly increase the likelihood of collusion. Such transactions can result in increased prices to consumers and limitations on the

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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the Medical Center Hospital would eliminate competition for acute care inpatient hospital services in the Charlotte County, Florida area. In the third matter, General Electric (GE) Company and Chrysler Corporation abandoned their acquisition plans after the Commission authorized its staff to file a complaint in federal court to enjoin the merger. The Commission alleged that GE's proposed acquisition of the Chrysler Rail Transportation Corporation would decrease competition in the United States and Canada boxcar operating lease market.

In addition to the Part III consent order in Alliant, the Commission placed nine Part II consent agreements on the public record for comment during the fiscal year and finalized four of them. Among the final orders, the consent order in Dentsply International, Inc. permits the acquisition of certain dental supply assets of Johnson & Johnson but requires divestiture of Dentsply's domestic silver alloy products used for filling cavities. The final order in S.C. Johnson & Son, Inc. allows the acquisition of The Drackett Co. but requires the divestiture of Drackett's air freshener and furniture polish products. The consent order in Monsanto permits the acquisition of Chevron Corporation's Ortho Consumer Products Division but requires the divestiture of certain assets, including Ortho's Kleenup product line -- herbicides used to kill plants, weeds, and grasses. The fourth consent order, Consol, Inc., allows the company to proceed with the acquisition of Island Creek Coal, Inc. but orders the divestiture of the Curtis Bay Co., a wholly-owned subsidiary of Island Creek that owns the Bayside Coal Pier, a coal export terminal near the Port of Baltimore. Five other proposed consent agreements are awaiting final Commission action: (1) the proposed consent agreement in Dominican Santa Cruz Hospital/Catholic Healthcare West, which would require both hospitals to obtain prior Commission approval before acquiring the assets of any acute care hospital in Santa Cruz County, California; (2) the proposed consent agreement in Cooper Industries, Inc., which would require Cooper to license certain technology used in the manufacture of low voltage industrial fuses to an acquirer pre-approved by the Commission and to divest the necessary tooling, equipment, and machinery to the licensee; (3) the proposed consent agreement in Imperial Chemical Industries, PLC, which would permit the acquisition of certain assets of E.I. duPont de Nemours and Co. but would require Imperial to divest one of the three acrylic plastic plants it owns, while obtaining prior Commission approval for ten years before acquiring a substantial interest in any firm that owns or operates an acrylic plastic or sheet manufacturing facility in the United States; (4) the agreement in McCormick & Company, Inc., which would require it to divest certain onion seed assets to help establish a viable new firm to replace the competitor eliminated through its 1993 acquisition of the dehydrated onion business of Haas Foods, Inc.; and (5) the agreement in Columbia Hospital Corporation, which would require it to divest Kissimmee Memorial Hospital in order to acquire Galen Health Care Corporation and would require both Columbia and Galen to obtain prior Commission approval for ten years before acquiring any hospital in Osceola County, Florida.

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 allow Honickman and Brooklyn Beverage to acquire noncarbonated soft drink assets without obtaining prior Commission approval. In *KKR Associates, L.P.*, the Commission granted in part and denied in part a petition to reopen and modify a 1989 consent order.

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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 was denied. However, the order was modified to allow KKR to notify the Commission, instead of securing its prior approval, for acquisitions that did not involve the relevant products. The Commission also terminated a proceeding initiated by an order to show cause why the provisions requiring Institut Merieux S.A. to lease its Connaught BioSciences, Inc.'s rabies vaccine business, located in Toronto, Canada, to a Commission-approved lessee should not be modified. The termination of the proceeding has the effect of leaving the order in place.

Three other merger matters remained in adjudication: Coca-Cola Company, Coca-Cola Bottling Company of the Southwest, and R.R. Donnelley & Sons. The Commission removed Textron, Inc./Avdel PLC from adjudication, as a proposed consent agreement was being considered by the Commission at the end of the fiscal year.

The Commission's premerger notification program for dairies was terminated. The Commission ended this program after no antitrust enforcement actions were taken on the small number of filings received during the last five years. The program was established in 1974 to give the Commission advance notice of acquisitions that might pose antitrust concerns in the fluid milk processing industry. Large proposed mergers in the dairy industry will still be reported to the Commission under the premerger notification requirements of the HSR Act.

Finally, in an effort to alleviate uncertainty about the effect of antitrust policy on the health care industry, the Commission and the Antitrust Division of the Department of Justice developed enforcement policy statements designed to inform hospitals and other health care providers of antitrust safety zones under which the enforcement agencies will not challenge mergers and other joint activities. The six policy statements provide guidance in the following areas: (1) hospital mergers; (2) hospital joint ventures involving high technology or other high-cost medical equipment; (3) physicians' provision of information to purchasers of health care services; (4) hospital participation in exchanges of price and cost information; (5) joint purchasing arrangements among health care providers; and (6) physician network joint ventures. In addition, both agencies established a 90-day review process to provide responses to requestors seeking guidance on health care joint ventures and information exchanges.

### **HORIZONTAL RESTRAINTS**

During fiscal year 1993, the Commission opened 50 initial phase investigations to analyze and study business practices that raised questions about illegal horizontal restraints of trade, such as price fixing and other anticompetitive behavior among direct competitors. These practices generally harm consumers by raising prices and reducing the quantity and quality of goods and services. Illegal horizontal restraints can include collusive behavior, conduct that facilitates collusion, and other private restraints on competition -- practices that may deny purchasers access to the optimal variety, quantity, and quality of goods and services at competitive prices and that may deny sellers

the opportunity to produce, distribute, and sell goods and services in the variety and quantity and at the prices they would select under competitive conditions.

A particular focus of the program is the health care sector, which has been marked in recent years by rapidly rising costs. The Commission has used its authority to enforce the antitrust laws under Section 5, challenging unlawful conspiracies among health care providers through its investigations of anticompetitive collusion, coercive boycotts of cost containment programs, the anticompetitive use of ethical codes and industry standards, and other activities and practices that reduce competition among medical professionals. This program also examines practices of trade and professional associations, standards-setting organizations, and other professionals such as lawyers and accountants who allegedly raise prices, lower the quality and quantity of goods and services, and engage in other collusive activities that may distort pricing mechanisms or otherwise restrain competition under the aegis of seeking government regulation or self-regulation.

The Commission employs a strategy combining investigation, litigation, voluntary compliance, and negotiation in striving to eliminate to the fullest extent possible private restraints that limit the right to engage in competition. In addition, competition advocacy filings before federal, state, and local government agencies, *amicus curiae* briefs, and advisory opinions are provided where appropriate.

During fiscal year 1993, the Commission issued two administrative complaints. In California Dental Association, the complaint charged that the professional association illegally restricted California dentists from using truthful advertising to inform consumers about the selection of dental health providers, their care, prices, and available services. In Baltimore Metropolitan Pharmaceutical Association/Maryland Pharmacists Association, the complaint alleged that the two associations participated in an illegal conspiracy to boycott the prescription drug plan for Baltimore city government employees in an effort to increase the reimbursement rate paid to pharmacies for filling prescriptions. The matter was later withdrawn from adjudication; thereafter, the Commission accorded final approval to a consent order settling the allegations in the complaint.

All eight proposed consent agreements placed on the public record for comment were made final during fiscal year 1993: Southeast Colorado Pharmacal Association agreed not to enter into or otherwise encourage or cooperate in any agreements among pharmacies to boycott a prescription drug program in an effort to increase the reimbursement rate paid to member pharmacists for filling prescriptions; National Association of Social Workers agreed not to interfere with its members' use of truthful advertising practices and patient referral services; B&J School Bus Services, Inc. (Kansas City School Transportation) agreed not to enter into agreements to provide school transportation services that restrain competition through collective bidding practices; AE Clevite, Inc. agreed not to invite a competitor to fix or raise prices; ASFE, the Association of Engineering Firms Practicing in the Geosciences, agreed not to help or encourage its members to engage in a conspiracy to restrain competitive bidding in geotechnical engineering services in the United States; YKK (U.S.A.), Inc., the nation's largest manufacturer of

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zipper, 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. The proposed order, when final, will prohibit Keds from suggesting or interfering in the resale pricing policies of its dealers.

The six separate complaints against Harper & Row Publishers, Inc. and five other book publishers were withdrawn from adjudication to consider proposed settlements with each publisher. Harper & Row, The Hearst Corporation, The Macmillan Co., Inc., The Putnam Berkley Group, Inc., Random House, Inc., and Simon & Schuster, Inc. were charged with discriminating against independent book stores by offering lower prices to chain bookstores regardless of the size of the order.

The Commission modified the order in Clinique Laboratories, Inc. to allow the company to suggest to dealers the prices at which they should advertise Clinique products. Under the order, Clinique must also disclose to



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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 restraints on procompetitive business conduct and to provide legal and economic policy analysis of issues related to single firm anticompetitive behavior.

### ***COMPLIANCE***

The Compliance Division supported the other maintaining competition programs as part of the Commission's efforts to assure compliance with Commission orders to cease and desist from certain conduct, orders for divestiture, and other forms of relief.

## **CONSUMER PROTECTION MISSION**

Under the Consumer Protection Mission, the Commission strives to protect consumers from unfair or deceptive acts or practices and to allow consumers to make informed purchase choices. To this end, the Commission works to: increase the usefulness of advertising by ensuring that it is truthful and not misleading; stop instances of fraudulent or deceptive sales and marketing practices; and prevent creditors from using unlawful practices in granting credit, in maintaining credit information, in collecting debts, and in operating credit systems. The mission also includes a program directed toward educating consumers and businesses about their rights and responsibilities under laws and regulations administered by the Commission.

The Consumer Protection Mission includes five law enforcement programs: Advertising Practices; Service Industry Practices; Marketing Practices; Credit Practices; and Enforcement. Among the top enforcement priorities are: health claims in food advertising; environmental advertising and labeling; general advertising issues; health care fraud; telemarketing, business opportunity, franchise, and investment fraud; mortgage lending and discrimination; enforcement of Commission orders; and enforcement of the credit statutes as well as a wide variety of trade regulation rules and special statutes.

### ***ADVERTISING PRACTICES***

Under the advertising practices program, the Commission works to ensure that advertising claims are not false or misleading, so consumers can make informed purchases on the basis of truthful information. It also administers several federal laws, including those related to warnings in cigarette advertising and on smokeless tobacco promotional products. Under the advertising practices program, the Commission issued 23 consent orders and accepted 14 proposed consent agreements subject to final approval during fiscal year 1993, a total of 11 more cases than the previous fiscal year and an all-time high. In addition, one administrative complaint was issued by the Commission, bringing the number of matters in litigation during this fiscal year to three.

Many of the consent orders and proposed consent agreements involved environmental claims, such as biodegradable claims for trash bags (Mobil Oil Corporation, BPI Environmental, Inc., North American Plastics Corporation); ozone friendly claims for electronic office equipment care products (PerfectData Corporation); environmentally friendly and environmentally safe claims for aerosol products (DeMert & Dougherty, Inc.); and chlorine free, recycled, and recyclable claims for a coffee filter and its packaging (Mr. Coffee, Inc). In addition to cases in the environmental marketing area, Commission staff frequently participated in conferences and met with groups interested in environment-related issues to explain the environmental marketing guidelines issued by the Commission and to promote voluntary compliance with those guidelines.

Other settlements involved health claims for foods, such as unsubstantiated claims about the health benefits of olive oil (Pompeian, Inc.) and grapefruit (Gracewood Food Co.) and about the fat content of ice cream

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bars (The Isaly Klondike Co.) and salad dressing (The Clorox Co.). One matter in administrative litigation involved claims regarding the sodium content of frozen entrees (Stouffer Foods Corporation). In addition, the Supreme Court denied Kraft's petition for *certiorari*, and thereby let stand the Court of Appeals decision in favor of the Commission. The Commission had issued a final order and opinion addressing advertising for and the calcium content of Kraft singles cheese slices.

The Commission accepted for public comment consent agreements with six infomercial companies and issued an administrative complaint against a seventh. One complaint challenged deceptive practices in promoting real estate investment (Del Dotto Enterprises, Inc.). In another case, conducted in close cooperation with the Texas Attorney General and involving one of the country's largest producers of infomercials (Synchronal Corporation), as well as two expert endorsers and several other respondents, the settlement provided \$3.5 million in consumer redress, the highest amount ever secured in an infomercial case. In two other infomercial consent orders involving claims about a purported breast cancer cure, purported cellulite elimination, a purported baldness treatment, a purported pain reliever device, a purported facial skin rejuvenating system, an immersion style kitchen mixer, and bee pollen purportedly for weight loss, aging, and allergies (National Media Corporation and Michael S. Levey), the Commission obtained \$550,000 in consumer redress. In addition to challenging advertising claims for products, the Commission also alleged in five infomercial cases that the advertisements misrepresented that they were independent television programs, rather than commercials. The consent orders require the companies to disclose that the programs are paid advertisements.

Other cases relating to health and safety advertising claims involve an eye glass coating purportedly for protection against UV radiation (Site for Sore Eyes, Inc.), a purported radon remover (Ion Systems, Inc.), a continuous passive motion table purportedly for weight loss (Fleetwood Manufacturing, Inc.), and herbal products purportedly for gynecological problems and weight loss (Nature's Cleanser, Inc.).

The Commission also approved consent orders requiring two prominent catalog companies (The Right Start, Inc. and Sharper Image Corporation) to refrain from deceptively advertising products such as a purported telephone tap detector, a purported exercise device, a purported antifatigue nutritional supplement, a purported air filter, and a children's travel tray. In addition, the Commission approved consent orders against a company that made false and deceptive claims about the health risks of smoking a non-tobacco cigarette (Jazz Cigarettes); against a major light bulb manufacturer that failed to disclose that its incandescent light bulb -- promoted as eliminating pollution, saving energy, and cutting electric bills -- produced less light (General Electric Co.); and against a well-known residential lawn care company that made unsubstantiated claims about the safety of the pesticides it uses (Orkin Exterminating Co., Inc.). In addition, a large toy company (Hasbro Industries, Inc.) and its advertising agency (Griffin Bacal) agreed to settle allegations that they falsely represented the performance of certain toys, and the Commission

collected \$175,000 in civil penalties from Hasbro for violating a previous Commission order against the company. The Commission also approved consent orders against two companies settling allegations that they had deceptively marketed their 900 number information services to children (Fone Telecommunications, Inc. and Phone Programs, Inc.).

In the rulemaking area, the Commission published proposed rules concerning a technical amendment of the Smokeless Tobacco regulations regarding the rotation of the health warnings on promotional materials. In addition, as part of the Commission's 10-year review of its regulations, the Commission published a notice seeking comment on the Picture Tube Rule.

As part of the implementation of the Nutritional Labeling and Education Act, and in recognition of the importance of a coordinated federal policy for food advertising and labeling, the Commission committed itself to harmonizing its food advertising enforcement policies with those of the Food and Drug Administration and the United States Department of Agriculture.

### **SERVICE INDUSTRY PRACTICES**

The service industry practices program focuses on misrepresentations in the sale of investment goods and services, deception in the advertising and sale of health care services, and deception and anticompetitive effects from the use of standards and certifications. In the investment fraud area, the Commission filed eight new cases in federal district court against investment scams involving Federal Communications Commission wireless cable licenses, animated art cells, rare coins, and art works. These companies had estimated sales in excess of \$25 million, and an estimated 10,000 consumers were victimized by them. Two of these cases (Larkin, Hoffman, Daly & Lingren, Ltd. and O'Connor & Hannan) challenged the practices of law firms and a bank which allegedly assisted or aided and abetted the law violations of others. During fiscal year 1993, more than \$15 million, recovered in investment fraud cases, was distributed to fraud victims. In addition, another 12 judgments, ordering redress in excess of \$6.8 million, were obtained against fraudulent investment sellers.

The redesign of the software for the National Association of Attorneys General - FTC Telemarketing Fraud Databank was completed. The software underwent testing at eight test sites within and outside the Commission. Discussions were held with the Department of Justice regarding a possible pilot project in which various United States Attorneys' Offices would participate in the database on a pilot basis.

In the health care services area, the Commission challenged five of the nation's largest commercial diet program companies for engaging in allegedly deceptive advertising. Three of the companies signed consent agreements with the Commission (Nutri/System, Inc., Diet Center, Inc. and Physicians Weight Loss Centers of America, Inc.), and two companies are litigating (Jenny Craig, Inc. and Weight Watchers International, Inc.). In addition, the Commission gave final approval to consent orders against three providers of medically-supervised diet programs (Abbott Laboratories, Health Management Resources Corporation, and United Weight Control Corporation). The orders require the companies to qualify safety claims, to possess a reasonable basis for claims

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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. The Commission rejected a petition by five major providers of diet services that urged the Commission to end its investigations into whether those five companies had engaged in false or deceptive advertising and instead proceed by rulemaking. The Commission decided to complete its investigations of the petitioners and other weight loss programs.

Collection efforts continued on a \$21.5 million redress judgment obtained against a chain of weight loss clinics (Pacific Medical Clinics Management). As part of that effort, the individual defendant (James Norman Wells) was held in civil contempt by the district court for attempting to hide corporate and individual assets that could be used to help fund redress in this action. Wells was later held in criminal contempt by the district court.

In addition, the Commission accorded final approval to a consent order against sellers of training and marketing services to licensed physicians (Medical Marketing, Inc.), who in turn used these materials to promote a chemical face peel procedure to the public. The Commission alleged that these marketing materials contained deceptive statements about the safety, efficacy, and side effects of the peel procedure. Finally, ongoing investigations involved major diet programs, hospital providers, and other health care providers of infertility, cosmetic surgery, and smoking cessation services.

In fiscal year 1993, the Commission tentatively approved amendments to its Funeral Rule, to simplify the rule's requirement that funeral providers give consumers price information and to prohibit practices by funeral providers that prevent or deter consumers from exercising their rights under the rule to decline products and services they do not wish to purchase. Thereafter, the Commission accorded final approval to these amendments.

In the standards area, the Commission filed a case in federal district court against a laboratory (Pacific Inspection & Research Laboratory, Inc.) alleged to have manipulated test results relating to certification of the insulation qualities of windows and other fenestration products.

### **MARKETING PRACTICES**

The fraudulent telemarketing of consumer goods and services is a primary focus of the marketing practices program, along with enforcement of the Funeral and Franchise Rules. The program's antifraud efforts under section 13(b) of the Federal Trade Commission Act yielded thirteen stipulated or litigated redress or disgorgement orders totaling more than \$9.2 million in fiscal year 1993. One of these cases was filed against a telemarketing "root," or supplier, which allegedly provided fraudulent telemarketers with the means for perpetrating their fraud. The court approved a settlement in the Pioneer Enterprises, Inc. case requiring payment of \$1.5 million in consumer redress, virtually all of the unencumbered assets the defendants possessed, and imposing a comprehensive injunction barring similar conduct. David Wetherill, a defendant in K & M Marketing, Inc., was held liable for his role in a deceptive, multi-million dollar, prize promotion telemarketing scheme to sell vitamins, cosmetics, and other merchandise to consumers nationwide. For

assisting in the scam, Wetherill was ordered to pay \$2.5 million in consumer redress and was prohibited from engaging in telemarketing of any kind in the future.

In a Franchise Rule case (WhiteHead, Ltd.) a court ordered two individual defendants and the corporation through which they sold franchises for antique shops to pay \$725,000, to be used by the Commission for consumer redress, and to pay the government an additional \$290,000 in civil penalties. Mark N. Cohen, the founder of Academic Guidance Services, Inc., a company that licensed the right to sell college scholarship information to students, agreed to pay \$750,000 in consumer redress. AMREP Corporation agreed to pay \$350,000 in redress to consumers who bought land in New Mexico based on the company's false appreciation and resale representations. In another case, a court enjoined a purported trade association (National Energy Specialists Association) from deceptively representing that it investigates its members and its members' products before granting membership in the association, and ordered the defendants to disgorge \$1.44 million to the United States Treasury.

The Commission also filed eight Franchise Rule enforcement cases and opened a number of nonpublic investigations of Franchise Rule violations. Additionally, the Commission continued a program to assess the compliance of franchise/business opportunity show promoters with the Franchise Rule. The Commission also launched a number of joint enforcement initiatives with individual Attorneys General and the National Association of Attorneys General.

As mandated by the Telephone Disclosure and Dispute Resolution Act of 1992, the Commission promulgated a new rule to address misleading practices in the advertising and offering of pay-per-call services. The new 900-Number Rule requires companies that offer 900 number (pay-per-call) telephone services to disclose the costs of these services in their advertising and to begin calls costing more than two dollars with a preamble stating, among other things, the cost of the call. The new rule also establishes procedures for resolving consumer billing disputes for pay-per-call services and requires certain disclosures to be made in billing statements. The Commission also commenced a project to define an appropriate federal response to the problem of auto repair fraud.

In Funeral Rule enforcement, the Commission obtained seven settlements ordering payment of a total of \$250,500 in civil penalties. The Funeral Rule requires, among other things, that price and other specific information regarding funeral arrangements be made available to consumers to help them make informed choices and pay only for services they select.

The Commission also accorded final approval to seven consent orders against sellers of hearing aids to settle allegations that they made false and deceptive claims in Yellow Pages advertisements that Medicare helps cover the cost of hearing aids or hearing tests. The consent orders were with Center for Improved Communications; Sherwin Basil (Audio Logics); Susan Frugone (Audio Rx Hearing Aids); Bay Colony Audiology Center; Brooklyn Audiology Associates, P.C.; Sallye B. Carpentier (Brown-Potter Center); and Hearing Care Associates - Arcadia.

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In the warranty area, the Commission persuaded a bankruptcy court to provide protection to consumers who hold outstanding warranties with a bankrupt company. In addition, in Griffin Systems, an Administrative Law Judge issued an initial decision finding liability against a nationwide marketer of automobile service contracts for failing to honor its contracts and misrepresenting contract coverage. The order would prohibit the company from materially misrepresenting or unilaterally canceling any service contract it offers in the future. Thereafter, the Commission issued a final order and opinion affirming the judge's decision.

### ***CREDIT PRACTICES***

The Commission enforces federal laws to ensure the privacy of credit reports, equal access to credit, fair debt collection practices, and truthful lending practices. Enforcement actions taken under this program resulted in 13 consent orders and injunctions, containing provisions for consumer redress, civil penalties, and/or disgorgement amounting to \$1,144,000. The program had six matters in litigation during fiscal year 1993.

Cases involving the Fair Credit Reporting Act, the law governing the accuracy and privacy of consumer reports, highlighted the program's agenda for the fiscal year. The Commission approved enforcement actions against several "superbureaus" for furnishing consumer reports to various parties for impermissible purposes. In addition, the Commission approved a consent order against TRW, Inc., one of the three major credit bureaus in the U.S., requiring the firm to use only limited, identifying information from its consumer reporting database to create target marketing lists.

The Commission also took action against several information brokers, companies that buy large volumes of credit and other data about individual consumers at discounted rates and then resell the data to low-volume buyers. The Commission issued an administrative complaint against W.D.I.A. Corporation, alleging that it failed to adequately ensure that purchasers of its services have legally permissible purposes for obtaining the sensitive data. Thereafter, the matter was withdrawn from adjudication, and the Commission accorded final approval to a consent order settling the allegations in the complaint. Three other companies, CDB Infotek, I.R.S.C., Inc., and Inter-Fact, Inc., signed consent orders to settle similar allegations.

Lomas Mortgage U.S.A., Inc., a major mortgage lender, agreed to a consent order settling allegations that it deceptively represented the lock-ins it offered consumers on certain types of loans and failed, in some instances, to lock in the interest rate or the number of discount points at the level agreed to by consumers. The order prohibits the company from misrepresenting the terms or the nature of lock-in agreements it offers consumers in the future and requires the company to pay \$300,000 in consumer redress.

Cases involving credit marketing scams also highlighted the program's agenda for the fiscal year. The Commission approved consent orders against several 900 number, gold card, and credit repair marketers, including: Phonequest, Inc.; Arnold Joseph Barer; and National Credit Savers, Inc. In several cases, the Commission emphasized efficiency by concentrating on the roots of deceptive practices rather than their many outlets.

### **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 accorded final approval to administrative consent orders in Nikki Fashions, Inc. and United States Golf Association and filed a federal district court lawsuit against Crossroads Auto Mart. The Commission also resolved 18 matters involving alleged rule violations. These consent decrees prohibited further rule violations and imposed nearly \$500,000 in civil penalties.

Twelve of the consent decrees and one matter in litigation involve violations of the Used Car Rule. These actions are the result of sweeps of dealers conducted in cooperation with state and local officials. Because the Used Car Rule covers approximately 80,000 dealers and about 30 million used cars sold at the local level (about \$150 billion in annual sales), the Commission has been pursuing a strategy of working with the states to inspect dealers and prosecute violators. Through fiscal year 1993, the Commission has filed 81 cases and obtained more than \$1 million in civil penalties. The participating states have collectively obtained hundreds of settlements. Because of these successful joint efforts, the Commission engaged in a project with the National Association of Attorneys General (NAAG) to encourage joint enforcement of other FTC rules. At a May 1993 NAAG meeting, the Commission distributed a comprehensive handbook on enforcement of selected rules.

In Davis Brothers Oil, Inc. and William P. Wright, the Commission filed federal court complaints and consent decrees to resolve allegations that the defendants had violated the Alternative Fuels Rule; other matters are pending. Pursuant to the Energy Policy Act of 1992 (EPA 92), the Commission initiated a rulemaking on the Octane Rule to include certification and posting



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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, including sending 66 additional brochures to the Electronic Bulletin Board. The Office also updated the design of 42 brochures to improve readability in the Commission's information distribution area.

The Office produced eight radio Public Service Announcements, delivered by the Chairman for National Consumers Week, concerning high priority enforcement topics, such as 900 numbers, credit repair scams, and telemarketing scams. This radio project had a listening audience estimated at

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 stories for young people, the Office distributed a specialized packet of student consumer materials to 130 publishers, editors, and producers. Further, the Office participated in outreach events and encouraged and assisted the participation of the Commission's Bureau Consumer Protection/Regional Offices in outreach opportunities, such as National Consumers Week, conferences, exhibits, workshops, seminars, and media promotions.

Many of the educational materials and outreach efforts were carried out as joint efforts with the private and public sectors. For example, the Office worked with such organizations as the Alliance Against Fraud in Telemarketing, the American Association of Retired Persons, the American Automobile Association, the Consumer Federation of America, the Environmental Protection Agency, the National Association of Attorneys General, the National Coalition for Consumer Education, and the National Institute for Dispute Resolution.

### 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 American industrial economy, as they relate to antitrust and consumer protection.

The primary mission of the Commission is to enforce the antitrust and consumer protection laws. In fiscal year 1993, the Bureau of Economics continued to provide guidance and support to those activities. In the antitrust area, economists offered advice on the economic merits of potential antitrust actions. Situations where the marketplace performed reasonably well were distinguished from situations where the market might be improved by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding, to provide expert testimony, and to devise remedies that would improve market competition.

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

Although the Commission is primarily an enforcement agency, it is also charged with analyzing data and publishing information about the nation's industries, markets, and business firms. Much of this work is undertaken by the Bureau of Economics. In fiscal year 1993, economists conducted studies on a broad array of topics in antitrust and consumer protection.

#### **ANTITRUST**

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

The Bureau also maintains a small research program in support of the Commission's antitrust activities and participates in the Commission's Competition Advocacy Program. Ongoing studies include a retrospective on a Commission resale price maintenance case and a study of the potential for collusion in ocean shipping.

#### **CONSUMER PROTECTION**

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

In addition to the Bureau's direct support for individual consumer protection matters, staff economists worked on reports on consumer protection topics of interest to the Commission. Such ongoing study work includes examinations of the content of ads for cooking oils and margarines and the link between nutrition information and changes in food consumption over the past decade.

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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 continued to play a key role in fulfilling the Commission's consumer protection and competition missions in fiscal year 1993. Continuing a trend begun in 1991, the regional offices played an important role in merger enforcement, in addition to their overall enforcement activities in both the competition and consumer protection missions. The regional offices continued to serve as strong intermediaries with state and local enforcement officials to facilitate the Commission's law enforcement partnership with other authorities.

#### **BUDGET AND FINANCE**

The fiscal year 1993 appropriation for the Commission was \$86.9 million. The Commission spent \$86.7 million and used 953 work-years in fiscal year 1993. This was a decrease of 11 work-years from the previous year, as prescribed by Executive Order 12839, *Reduction of 100,000 Federal Positions*, dated February 10, 1993.

#### **ADMINISTRATION**

In addition to providing day-to-day administrative support to the Commission, the Division of Procurement and General Services completed several key initiatives during fiscal year 1993. These accomplishments included the award of contracts for: economic analysis and consulting services, Rolm PBX upgrade, support services for interns traveling to the U.S. under the Commission's grant from the Agency for International Development, legal training classes, a new Unix-based central computer to replace the aging Prime System, and purchases of over 200 personal computers for headquarters and regional offices. In addition, several hundred purchase orders and 30 small purchase cards were issued to provide for Commission requirements for routine goods and services. Numerous projects were either started or completed at the Headquarters physical plant and other Commission facilities: 601 Building document storage, lease renewal for the New York and Boston Regional Offices, courtyard/sidewalk paving, Childcare Center renovation, stockroom renovation, air quality testing, and security system upgrade.

#### **HUMAN RESOURCES**

In fiscal year 1993, the Commission shifted its human resource requirements to comply with the new Administration's initiatives to reduce the size of the Federal workforce. The Commission took steps to determine the number of SES, GS-15, and GS-14 positions which would be consistent with the objectives of Executive Order 12839. In addition, a number of supervisory positions were eliminated, and progress was made in identifying and eliminating unnecessary levels of review. The Commission also developed and implemented a policy on family and medical leave, made changes to its

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. The successful completion of these and other human resources objectives were vital to the overall quality of work life at the Commission.

### **INFORMATION MANAGEMENT**

The Commission's information management efforts are coordinated by the three divisions within the Office of the Deputy Executive Director for Planning and Information. This Office provides direct support to Commission staff in the use of information available to the staff; technical services related to the acquisition, development, installation, operation, and maintenance of automated information systems; and program management of Commission-wide information systems and issues.

#### *Direct Support*

Most of the direct support activities are coordinated by the Information Support Services Division (ISSD), which was formed in fiscal year 1993 to promote the most effective and productive use of information technology within the Commission. By teaming appropriate staff from each of the planning and information divisions, the direct support efforts promote productive use of computer software and resources through training and technical support, provide direct technical support for specific law enforcement investigations and litigation, and represent internal customers in strategic planning for implementation of new technology and software. In its first year, the division provided leadership for the cross-division LAN Application Review Committee, which reviews, coordinates, and facilitates customer information systems requests and promotes teamwork and communication within the planning and information divisions.

#### *Library*

The Library maintained the Commission's comprehensive research collection in legal, business, and economic subjects and provided research assistance to Commission staff and the public through a variety of information sources and systems. During fiscal year 1993, Library staff responded to over 11,500 reference questions, processed over 2,700 interlibrary loan requests, and circulated over 3,000 items. The Library also began work on installation of a new computerized, integrated library system. When fully implemented, this system will be used for library processing and administrative functions and will enable all Commission staff to access the library's catalog from their personal computers.

#### *Information Center*

The Information Center continued to train and assist Commission staff in the use of personal computers (PC) and PC and local area network (LAN)

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 representatives suspected of committing telemarketing fraud. The improvements included more secure, reliable, and cost effective data communications; streamlined data entry; improved and expanded reporting capability; and a less cumbersome user interface. The FTC Chairman and the President-elect of NAAG announced the new system. The Commission also completed the development and

implementation of the Management Reporting System (MRS), a system which allows users to more easily access and control financial, management, budget, and salary projection data from Commission databases. Another new system developed was the Westlaw Accounting System, which allows the Commission to better manage charges associated with the use of expensive online information and research services.

A number of improvements were made to existing information systems, including the development and installation of a new module to the Staff Time and Attendance Reporting System (STAR) that allows the Commission's administrative staff better control of information about how employees spend time on various Commission activities, programs, projects, and law enforcement efforts.

### ***Computer Hardware***

Over the course of the year, approximately 430 additional PCs were connected to the Commission's upgraded local area network (LAN) as part of a goal to have the entire Commission, including its ten regional offices, interconnected through a single, high performance network system. LANs were installed in four regional offices, bringing the number of regional offices that have been upgraded to that structure to six. In total, approximately 78% of the LAN installation initiative had been completed throughout the Commission by the end of fiscal year 1993.

The initiative to upgrade the PCs used by Commission staff progressed during the year, by replacing all of the Leading Edge PCs with PCs using 486-grade microprocessors and by reducing the number of PCs with 286-grade microprocessors to 150. Also, a substantial number of laser printers were upgraded in response to needs articulated by Commission staff for faster and better printers.

In the central computing area, progress was made to shift the Commission's environment from proprietary operating systems to scalable, Unix-based open systems. Several Unix-based servers were installed and initial steps were taken on some of the Commission's major applications to transfer them to these new platforms. The procurement for the replacement of one of the Commission's Prime systems was completed. A Unix-based computer was purchased and set up, and testing and implementation were begun.

### ***Data and Voice Communications***

Data communications capabilities were expanded, including Internet access and the installation of four 9600 baud modems for incoming access. The integration of the LAN and wide area network (WAN) was improved. CD-ROM and out-faxing capabilities were added to the LAN, as well as some remote access capability. A LAN central facility was established where all servers are located and monitored. Additionally, procurement for an upgrade to the Commission's PBX system was completed. This upgrade will not only keep the system current and add important capability to the communication



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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 policy development, information dissemination, access laws, and computer security.

### *Records and Data Management*

The planning and information divisions led a team of Commission staff who determined that the Commission needed to improve its text and document management efforts. The team identified the basic requirements and evaluated off-the-shelf software to support those requirements. A software package was selected, and the initial phase of that important project will be implemented in fiscal year 1994.

The Commission's data administration program began to move forward in fiscal year 1993. Data standards and procedures were implemented and some core data elements and their relationships were identified. The most striking improvement in this area was the increased awareness, from Commission managers and information system staff, of the need for and benefits obtained through an effective data administration program. The Commission began to see those benefits through reduction in the time required to develop new information systems because of the existence of standard data structures. As more data are analyzed in coming fiscal years, those benefits will continue to grow.

### *Information Dissemination*

The Planning and Information Office responded to approximately 43,500 consumer complaints and inquiries in fiscal year 1993. Those responses provided information about the rights and responsibilities of consumers and businesses related to the statutes and rules administered by the Commission. The responses were in the form of letters to consumers and publications created by the Bureau of Consumer Protection's Office of Consumer and Business Education. In addition, approximately 2.5 million consumer and business education pamphlets and brochures were distributed to the public, both as responses to specific requests from individual consumers and through bulk distribution to various consumer and business support and education centers across the country.

### *Access Laws*

Over 1,000 requests were considered under the Freedom of Information Act. This was the highest number of requests in over 12 years. The

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.)

*ASFE, 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 allegations raised by the proposed acquisition of Galen Health Care, Inc. According to the complaint issued with the proposed consent agreement, the acquisition would substantially lessen competition for acute care inpatient hospital services in Osceola County, Florida by significantly increasing already high levels of concentration and by creating a firm with the ability to wield unilateral market power, thereby increasing the possibility of higher medical costs to consumers. Under terms of the proposed consent agreement, Columbia and Galen are prohibited for ten years from acquiring any other hospital in the Osceola area without obtaining prior Commission approval.

*Consol, Inc.*

(See page 40.)

*Cooper Industries, Inc.*

Cooper will be allowed to acquire the Fusegear Group of BTR PLC under terms of a proposed consent agreement. Brush Fuses, Inc., the U.S. part of the Fusegear Group, manufactures and sells low voltage industrial fuses used to protect circuits in motors and controls and produces switchgears that regulate the amount of current that flows into an electrical device. According to the complaint accompanying the proposed consent agreement, the proposed acquisition could have an anticompetitive impact on the U.S. market for low voltage industrial fuses by: (1) increasing the already high levels of concentration; (2) eliminating competition between the fuses manufactured by Cooper's Bussman Division and Fusegear Group's Brush Fuses product line; and (3) increasing Cooper's ability unilaterally to exercise market power. Under terms of the proposed consent agreement, Cooper must license within

one year all Brush Fuses technology used to manufacture the low voltage industrial fuses to a licensee preapproved by the Commission. In an effort to ensure that the licensee can overcome the barriers to entering the market and begin production of a new product line without the usual applications of patents and UL certifications, the proposed consent agreement requires Cooper to provide technical support and assistance and to supply low voltage fuses to the licensee at a reasonable price until the licensee can manufacture and sell its own line of fuses. In addition, the proposed consent agreement requires Cooper to obtain prior Commission approval for ten years before acquiring certain firms engaged in the production of low voltage fuses.

*Dentsply International, Inc.*

(See page 40.)

*Dominican Santa Cruz Hospital*

Dominican and its parent, Catholic Healthcare West (Catholic), entered into a proposed consent agreement to settle allegations concerning their 1990 acquisition of AMI-Community Hospital. According to the complaint issued with the proposed consent agreement, the acquisition increased the two firm concentration ratio to approximately 76%, making Dominican and Catholic the dominant providers of acute care hospital services in Santa Cruz County, California. The complaint further alleged that the acquisition of a principal participant in the market could promote the likelihood of collusion in the area and deny patients and physicians the benefits of open competition based on quality, price, and service. Under terms of the proposed consent agreement, Dominican and Catholic are required to obtain prior Commission approval for ten years before acquiring any hospital in the Santa Cruz County area valued in excess of \$2 million.

*Imperial Chemical Industries PLC*

Under terms of a proposed consent agreement, Imperial can complete its acquisition of certain assets of E.I. duPont de Nemours but must divest one of three U.S. acrylic plastic manufacturing plants and related assets within 15 months to a Commission approved acquirer. Imperial can divest its manufacturing facility in either Memphis, Tennessee; Olive Branch, Mississippi; or Compton, California. The proposed consent agreement settles allegations that Imperial's proposed acquisition would substantially lessen competition in the manufacture and sale of acrylic plastics in the U.S. and increase the likelihood of collusion among the remaining firms in the market. Acrylic plastic is available under the *Lucite* and *Plexiglass* tradenames and is used in lighting fixtures, retail displays, and outdoor signs. In addition, the proposed consent agreement requires Imperial to obtain prior Commission approval for ten years before acquiring a substantial interest in any firm that owns or operates an acrylic plastic or sheet manufacturing facility in the U.S.

### *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 a company that has produced more than 2.5 million pounds of dehydrated onion products for sale in the U.S. during the year prior to its acquisition. The proposed order does not limit McCormick's ability to purchase seed or dehydrated onion products used in the ordinary course of its business.

### *Monsanto Company*

(See page 40.)

### *National Association of Social Workers*

(See page 41.)

*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 biodegradability 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 relatively quickly and offer a significant environmental benefit compared to untreated plastic bags. The proposed consent agreement prohibits unsubstantiated degradability or other environmental representations for any plastic product BPI markets in the future.

*G.C. Thorsen, Inc. d/b/a G.C. Electronics Inc., Texwipe Company, The*

G.C. Thorsen and Texwipe, manufacturers of computer and office equipment care and maintenance products, agreed to settle allegations that they made false

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 from making any environmental claims for any of their products unless they possess and rely upon competent and reliable scientific evidence to substantiate the claims.

### *Gracewood Fruit Company*

Gracewood Fruit agreed to settle allegations that it made numerous unsubstantiated health benefits claims about grapefruit, as well as several false claims about what various studies demonstrate about the benefits of grapefruit consumption. The proposed consent agreement requires the company to have reliable scientific evidence to back up future claims that eating normal quantities of grapefruit provides a variety of health benefits, including that it significantly reduces serum cholesterol and the risk of stroke, heart attack, and several types of cancer.

### *Lomas Mortgage U.S.A., Inc.*

Lomas agreed to settle allegations that it deceptively represented the lock-ins it offered consumers on certain types of loans and that it failed, in some instances, to lock in the interest rate or the number of discount points at the level agreed to by consumers. The proposed consent agreement prohibits Lomas from misrepresenting the terms or nature of lock-in agreements it offers consumers in the future and requires the company to pay \$300,000 in consumer redress.

### *Mr. Coffee, Inc.*

Mr. Coffee agreed to settle allegations that it made false and unsubstantiated environmental claims for its coffee filters and packaging. The proposed consent agreement prohibits false or unsubstantiated environmental claims about any paper product or package Mr. Coffee markets in the future, including claims concerning a new, chlorine-free manufacturing process and recycling claims contained on the Mr. Coffee filters package.

### *North American Plastics Corporation, Harold V. Engh, Jr.*

North American Plastics and an officer of the company, Harold V. Engh, Jr., agreed to settle allegations that they made unsubstantiated environmental claims for their EnviroGard plastic trash bags, including representations that, when disposed of in landfills, the bags break down relatively quickly and offer a significant environmental benefit compared with other plastic bags. The proposed consent agreement prohibits unsubstantiated degradability or environmental representations about the company's plastic trash bags in the future.

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

Numex and two of its officers, Gisela E. Flick and James L. McElhaney, M.D., agreed to settle allegations that they made numerous false or unsubstantiated claims in an infomercial promoting Therapy Plus, a handheld mechanical roller device they claimed would relieve various kinds of musculoskeletal pain, including the pain of arthritis. The infomercial allegedly included a deceptive expert endorsement and deceptive consumer testimonials. The proposed consent agreements prohibit similar deceptive practices in the future and require that future health and pain relief claims be substantiated with competent and reliable scientific evidence.

*Nutri/System, Inc., Diet Center, Inc., Physicians Weight Loss Centers, Inc., Physicians Weight Loss Centers of America, Inc.*

Nutri/System, Diet Center, Physicians Weight Loss Centers, and Physicians Weight Loss Centers of America, commercial diet program companies, agreed to settle allegations that they engaged in deceptive advertising by making unsubstantiated weight loss maintenance claims and by using consumer testimonials without substantiation that the testimonials represented the typical experience of dieters on the programs. The proposed consent agreements prohibit the companies from misrepresenting the performance or safety of any weight loss program they offer in the future and require them to have scientific data to back up future claims they make about weight loss and maintenance. The proposed consent agreements also set out standards for the type of evidence that would be required to support various maintenance claims.

*Orkin Exterminating Company, Inc.*

Orkin agreed to settle allegations that it made unsubstantiated advertising claims about the safety of the pesticides used in the company's residential lawn care service programs. The proposed consent agreement prohibits the company from advertising that its pesticides are as safe as some common household products or that they pose no significant risk to human health or the environment, without possessing competent and reliable scientific evidence to substantiate the claims.

*Osram Sylvania, Inc.*

Sylvania agreed to settle allegations that packages for its Energy Saver bulbs, which tout the bulbs' cost savings and environmental benefits, falsely represent that they provide the same amount of light as the ordinary, higher wattage bulbs they are designed to replace. The proposed consent agreement prohibits Sylvania from misrepresenting the relative light output or wattage of any light bulb it sells in the future. In addition, whenever Sylvania claims electricity cost savings or any environmental benefit for its bulbs that is attributable to the fact



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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.

**PART II CONSENT ORDERS ISSUED****COMPETITION MISSION** *AE Clevite, Inc.*

AE Clevite settled allegations that it invited a competitor to fix and raise prices. Since the time of the allegations, T&N PLC acquired AE Clevite and is its new parent company. According to the complaint accompanying the consent order, in 1988 the general manager of the Heavywall Bearing division of J.P. Industries, Inc., a subsidiary of T&N PLC, indicated to the managing director of Miba Gleitlager AG (Miba), an Austrian competitor, that Miba's prices for locomotive engine bearings sold in the U.S. aftermarket were lower than those charged by J.P. Industries and that Miba was therefore undercutting the market for bearings. The complaint further alleged that the Heavywall Bearing division officials, in an attempt to remove Miba as a competitive threat in the U.S., invited Miba to raise its prices for locomotive bearings to levels comparable with those of J.P. Industries. Part of the alleged invitation included J.P. Industries faxing its price list to Miba. Engine bearings are components of internal combustion engines that are used to reduce friction between rotating and stationary parts of engines. During 1988 and 1989, J.P. Industries and Miba manufactured more than 95% of the engine bearings sold in the U.S., according to the complaint. The consent order prohibits AE Clevite, T&N PLC, and all of their subsidiaries from encouraging or proposing that a competitor fix or raise prices for the manufacturing or distribution of locomotive engine bearings in the U.S.

*American Industrial Real Estate Association, Industrial Multiple, The*

American Industrial Real Estate and its wholly-owned subsidiary, Industrial Multiple, settled allegations that they adopted and enforced illegal membership restrictions on industrial real estate brokers. Industrial Multiple is the sole multiple listing service in the Los Angeles area that specializes in selling industrial property. The complaint issued with the consent order alleged that Industrial Multiple adopted policies that restricted membership to real estate brokers who were primarily engaged in industrial real estate and who met a minimum number and dollar amount of property transactions. The complaint also alleged that the respondents prohibited their brokers from accepting exclusive agency listings for property with less than 5,000 square feet, required brokers to disclose the total agreed commission involved in any transaction, and prevented brokers from accepting certain contractual terms that would allow the property owner to waive all commission fees. Under terms of the consent order, Industrial Multiple and American Industrial Real Estate are prohibited from, among other things, conditioning membership on the practices listed in the complaint and prohibiting any member from accepting a property published in an exclusive agency listing. The two real estate associations are also required to amend their by-laws, rules, and regulations to conform to the provisions of the order.

### *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 review program to, among other things, examine the business and competitive bidding practices of its member civil engineering firms. The peer review program established Terra Insurance, Ltd. (Terra), to offer professional liability insurance exclusively to ASFE members. According to the complaint, the peer review became a condition of obtaining or retaining Terra's insurance coverage through a review of an applicant's policies on competitive bidding practices, pricing, credit terms, and advertising. The complaint also alleged that during the review to obtain professional liability coverage, a low score could be received if Terra considered the ASFE member to be engaging in too much work obtained through competitive bidding or if the member was considered to be offering unduly low prices for services. A low score reduced the possibility that an ASFE member would become eligible for insurance coverage through Terra. The complaint further alleged that certain ASFE members exchanged competitively sensitive financial information, discouraged bid solicitations from other professional organizations through member conspired anti-bidding arrangements, and refused to submit bids on certain projects with the knowledge that other engineering professionals would also refuse. Under terms of the consent order, ASFE is prohibited from using

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, Kansas City School Transportation, to submit a joint bid for the school district's transportation services, in an effort to service the same school areas they had served in earlier years and thereby reduce competition among themselves. The Kansas City School Transportation joint venture was awarded the contract for five of the six areas in the school district and, according to the complaint, allocated among the four firms those portions of the school district which each company had previously serviced. Under terms of the consent order, each company is prohibited from entering into any agreement with any other provider of school transportation services in the Kansas City area that restrains competition through collective bidding practices, price fixing, or territorial allocation for the delivery of services. In addition, the three companies named in the order, B & J School Bus Service of Kansas City, Ryder Student Transportation Services of Miami, Florida, and Mayflower Contract Services of Overland Park, Kansas, are prohibited for three years from communicating plans to offer bids to provide services to any firm that provides or has provided school bus transportation services in the Kansas City school district referred to in the complaint.

*Consol, Inc.*

Under terms of a consent order, Consol would be permitted to acquire Island Creek Coal from Occidental Petroleum Corporation. According to the complaint issued with the consent order, Consol's \$480 million proposed acquisition would create a monopoly by combining Baltimore, Maryland's two leading firms that compete in the operation of coal exporting terminal services. The complaint alleges that through the acquisition Consol would lessen competition in the Port of Baltimore for the provision of coal export terminal

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services, including receiving and unloading coal from rail cars, blending coal, and transferring coal into deep draft vessels for transoceanic shipment. According to the complaint, the acquisition would allow Consol to become the dominant firm and lead to an increase in the price of export terminal services to coal producers, ultimately leading to a reduction of coal production in the northern Appalachian region of West Virginia, which is served by the Baltimore export terminals. The consent order permits Consol to acquire Island Creek Coal but requires the divestiture of the Curtis Bay Company, within twelve months, to an acquirer preapproved by the Commission. In addition, Consol must obtain prior approval before acquiring any firm that had, in the prior two years, provided coal export terminal services in or around the Port of Baltimore.

### *Dentsply International, Inc.*

Dentsply settled allegations resulting from its proposed acquisition of certain dental supply assets of the Professional Dental Care Products Division from Johnson & Johnson. Dentsply and Johnson & Johnson are competitors in the manufacture and distribution of dental sealants, alloys and composites used in tooth restoration, materials used for impressions, and other professional dental products. The complaint accompanying the consent order alleged that the acquisition would eliminate competition between Dentsply and Johnson & Johnson, increase the likelihood of collusion among the remaining firms in the market, and substantially reduce competition and raise prices in the U.S. for premium silver alloy, a product used by dentists to fill cavities. The consent order permits the acquisition but requires Dentsply to divest all U.S. manufacturing and marketing assets of its Valiant line of silver alloy products, within nine months, to an acquirer preapproved by the Commission. The consent order also requires Dentsply, among other things, to obtain prior Commission approval for ten years before acquiring any manufacturer or distributor of silver alloy products in the United States.

### *Monsanto Company*

Monsanto entered into a consent order that permits the \$416 million acquisition of the Ortho Consumer Products Division from Chevron Corporation. The complaint accompanying the consent order alleged that the acquisition would substantially lessen competition in the U.S. for residential non-selective herbicides designed to kill all types of brush, plants, weeds, and grasses. According to the Commission, Monsanto's Roundup brand products and Ortho's Kleenup brand are direct competitors in the manufacture and sale of residential lawn and garden agricultural herbicides. The consent order requires the divestiture, within 12 months, of the Kleenup product line, and assets used in the formulation of other herbicides developed and marketed by Ortho, to no more than three acquirers preapproved by the Commission. In addition, the order prohibits Monsanto for ten years from acquiring any firm engaged in 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 its members' use of truthful advertising concerning the quality and benefits of professional engineering services. According to the complaint issued with the consent order, NSPE adopted and maintained a code of ethics that restricted members from using advertising to make statements concerning the quality and availability of engineering services and published interpretations that declared that certain truthful advertising violated the provisions of the code. The complaint further alleged that these practices deprived consumers of truthful information necessary to the selection of an engineer and the benefits of competition among engineers in the provision of engineering services. The consent order allows NSPE to adopt and enforce reasonable guidelines governing members' advertising practices that the society believes to be false or deceptive. The NSPE, based in Alexandria, Virginia, represents approximately 77,000 professional engineers, land surveyors, and other engineering professionals throughout the U.S.

*Quality Trailer Products Corporation*

Under terms of a consent order, Quality Trailer agreed to refrain from conspiring with competitors or from unilaterally urging competitors to fix prices on certain products. According to the complaint issued with the consent

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order, Quality Trailer, of Azle, Texas, invited a competitor, American Marine Industries, based in Shreveport, Louisiana, to increase its prices for certain axle products. The complaint also indicated that if American Marine Industries had accepted the invitation to collude, the resulting agreement would have constituted an agreement in restraint of trade. The consent order prohibits Quality Trailer from, among other things, suggesting or requesting that another domestic manufacturer or seller of axle products raise, fix, or stabilize prices or price levels.

### *Realty Computer Associates, Inc. d/b/a Computer Listing Service*

Realty Computer agreed not to limit certain business practices of its member brokers. Realty Computer provides computerized multiple listings of available real estate properties in Clay and Platte Counties, Missouri to member real estate brokers. According to the complaint issued with the consent order, Computer Listing Service conspired with its members to refuse to publish exclusive agency listings that allow homeowners to waive all commissions or pay a reduced commission whenever homeowners sell their properties without the assistance of a broker. The complaint further alleged that Computer Listing Service required its members to engage in real estate brokerage full time and also to maintain a real estate office in the Clay and Platte County service area. Finally, the complaint alleged that the firm's restrictions on the delivery of real estate brokerage services and membership requirements have reduced consumers' ability to negotiate different agreements that facilitate the sale of residential property and have suppressed competition from part-time brokers located outside the Computer Listing Service area.

### *S.C. Johnson & Son, Inc.*

The Commission permitted Johnson to acquire The Drackett Company, a wholly-owned subsidiary of Bristol-Myers Squibb Company (Bristol-Myers), under terms of a consent order. The complaint issued with the consent order alleged that the acquisition could substantially lessen competition or tend to create a monopoly in the manufacture and sale of continuous action and aerosol air freshener products and furniture care products sold in the U.S. According to the complaint, the two firms are competitors: Johnson markets home care products such as Glade air freshener and Pledge and Favor furniture polish; Bristol-Myers, through its subsidiary, The Drackett Company, markets home care products such as Windex glass cleaner, Renuzit air freshener, Vanish toilet bowl cleaner, Drano drain pipe opener, and Endust and Behold furniture polishes. The consent order requires Johnson to settle the antitrust concerns stemming from the proposed acquisition by divesting all assets relating to The Drackett Company's Renuzit, Endust, and Behold brand assets within 12 months to an acquirer preapproved by the Commission. In addition, Johnson is required to obtain prior approval for ten years before acquiring any interest in any air freshener or furniture care product manufacturer or distributor. During the year, the Commission approved Johnson's divestiture of the Endust

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.*



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 office in Rockland County and also to be a resident of New York. Exclusive agency listings allow homeowners to pay a reduced commission or, in some instances, no commission if they sell their real estate property themselves. Under an exclusive right-to-sell listing, the homeowner pays an agreed upon commission to any broker who locates a buyer for the property. Under the terms of the consent order, United Real Estate is prohibited from, among other things, interfering with the publication of exclusive agency listings in its multiple listing service (MLS), restricting its members from soliciting the relistings of a homeowner's property currently listed by the MLS, and excluding from membership brokers who operate part-time brokerage services in the county. The consent order allows United Real Estate to set reasonable advertising restrictions on homeowners who have properties currently listed on an MLS, to adopt reasonable policies or rules to assure that properties listed are adequately serviced, and to ensure that its member brokers do not use MLS information concerning specific listed properties as a basis for solicitation.

### *YKK (U.S.A.) Inc.*

YKK entered into a consent order to settle allegations that it attempted to solicit an agreement from its largest competitor, Talon, Inc., to eliminate certain discounts to customers. The complaint issued with the consent order alleged that an attorney for YKK sent a letter to the President of Talon accusing the company of engaging in unfair business tactics through its practice of offering free installation equipment for use in the application of zippers to customers who purchased chain, slider, and other zipper components. According to the complaint, the letter requested that Talon immediately cease offering the free service (viewed as a form of discounting) and withdraw all outstanding offers for free equipment. The complaint further alleged that an agreement between YKK and Talon to end this form of discounting would have constituted an unreasonable restraint of competition. YKK, the largest manufacturer of zippers and related products in the U.S., and Talon are direct competitors. The two firms account for approximately 82% of all zippers manufactured and sold in the U.S. The consent order prohibits YKK from entering into any agreement with a competitor to fix or raise prices or service levels for zippers and related products. In addition, the consent order prohibits YKK from requesting that a

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. The consent order prohibits specific, allegedly false claims for Jazz or substantially similar products and also prohibits Phan from making any future health or safety claims about any smoking product, unless they are true and substantiated by competent and reliable scientific evidence.

*Bay Colony Audiology Center & David Citron, III,  
Brooklyn Audiology Assocs., P.C. & Richard Kaner,  
Sherwin Basil d/b/a Audio Logics,  
Sallye B. Carpentier d/b/a Brown-Potter Hearing Aid Center,  
Center for Improved Communications & Jack Brown,  
Susan Frugone & Patricia Keane d/b/a Audio Rx Hearing Aids,  
Hearing Care Associates & Gregory Frazer*

Seven hearing aid sellers and their officers agreed to settle allegations that they made false and deceptive claims in Yellow Pages advertisements that Medicare helps cover the cost of hearing aids or hearing tests. The consent orders require them to correct future Yellow Pages advertisements and to prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibit them from misrepresenting the coverage provided by any medical insurance for any hearing related device or service they offer in the future.

*CC Pollen Company, Bruce R. Brown, Carol M. Brown, Royden Brown*

CC Pollen and its principals, Bruce R. Brown, Carol M. Brown, and Royden Brown, agreed to settle allegations that they falsely represented in an

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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 dressings as containing no fat, when in fact the dressings do contain fat. The consent order prohibits Clorox from future misrepresentations regarding the total fat, saturated fat, cholesterol, or sodium content of any of its salad dressings.

### *Collins Buick, Inc., William Kevin Collins*

Collins Buick and its principal operating officer, William Kevin Collins, agreed to settle allegations that they made numerous deceptive advertising claims and violated the Truth in Lending Act (TILA) and the Consumer Leasing Act (CLA), with regard to the credit sale and lease of automobiles and other motor vehicles. The consent order prohibits the respondents from engaging in future practices that misrepresent the terms of any auto sales or lease contract or that violate the TILA or CLA.

### *Conair Corporation*

Conair agreed to settle allegations that it made false and unsubstantiated claims for its California Facial Skin Rejuvenating System, including that it tones and

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 consumers or, in the alternative, disclose that there are additional charges; disclose to consumers, via telephone or in-person at any rental location, all fuel charges, charges for additional drivers, geographic driving restrictions, and restrictions on a driver’s age; and disclose to consumers through its computerized reservation system any mandatory fuel charges, other mandatory charges, or charges not reasonably avoidable by consumers.

*Fleetwood Manufacturing, Inc., Thomas A. Fleetwood*

Fleetwood Manufacturing and its owner, Thomas A. Fleetwood, agreed to settle allegations that they made false and unsubstantiated weight loss claims in advertisements and promotional materials for their continuous passive motion exercise tables. The consent order prohibits such false and unsubstantiated claims in the future.

*Fone Telecommunications, Inc.*

Fone Telecommunications agreed to settle allegations of unfairly and deceptively marketing its 900 telephone number information services directed at children. The consent order prohibits the company from misrepresenting premium offers, requires a preamble statement at the beginning of each children’s message giving them a chance to hang up without charge, and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

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### *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 advertising agency, Griffin Bacal, agreed to settle allegations that they falsely represented the performance of certain toys in Hasbro's G.I. Joe line. The companies agreed not to engage in this type of deceptive toy promotion in the future.

### *Ion Systems, Inc.*

Ion Systems agreed to settle allegations that it made false and unsubstantiated representations about the ability of its NO-RAD Radon System to remove the harmful byproducts of radon gas from homes and to reduce the risk of cancer associated with radon byproducts. The consent order prohibits the company from making the allegedly false representations or unsubstantiated performance claims detailed in the complaint, and from knowingly selling or distributing components of the NO-RAD Radon System or any similar device to others who the company knows or has reason to know make unsubstantiated performance claims about the devices.

### *I.R.S.C., Inc. d/b/a Information Resource Service Company, Inter-Fact, Inc., James Polgar, Bruce R. Marks, CDB Infotek, Rick L. Rozar, Jack H. Reed*

The three firms, superbureaus that buy large volumes of credit and other information about consumers at discounted rates and then resell the data to low volume buyers, agreed to settle allegations that they failed to adequately ensure that their customers had a legally permissible purpose for obtaining the sensitive information and that they had violated other provisions of the Fair Credit Reporting Act. The consent orders settling the allegations require, among other things, that the firms take specific steps to protect the privacy of their reports in the future. These steps include requirements that the firms conduct periodic audits of customers who have more than one use for reports, obtain written certifications from new subscribers regarding the use of the reports they expect to order, and verify the identity of all subscribers to ensure

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*

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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 they violated the Textile Fiber Products Identification Act and the Wool Products Labeling Act by removing the country of origin and fiber content labels, and, in some instances, the care labels, from the garments they

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 made false and misleading environmental claims in the marketing of its PerfectDuster II aerosol cleaning product. The consent order prohibits the company from making environmental claims for any of its products unless the company possesses and relies upon competent and reliable scientific evidence to support its claims.

*Pompeian, Inc.*

Pompeian agreed to settle allegations that it made false and unsubstantiated claims regarding olive oil's superiority to vegetable oil in providing health benefits to consumers. The consent order prohibits the company from, among other things, representing that eating olive oil lowers cholesterol or is healthier for the heart than eating vegetable oil, unless the claims are substantiated by competent and reliable scientific evidence.

*Right Start, Inc., The, Stanley M. Fridstein*

The Right Start, a mail order company, and its president, Stanley M. Fridstein, agreed to settle allegations that they ran false and unsubstantiated advertising claims in their catalog regarding both an air filter and a children's tray for use in automobiles. The consent order prohibits them from making such false and unsubstantiated advertising claims in the future.

*Sharper Image Corporation, Richard Thalheimer*

Sharper Image and its president, Richard Thalheimer, agreed to settle allegations that they made false or unsubstantiated advertising claims in the Sharper Image catalog for three products they sold: a purported telephone tap detector, an exercise device, and a purported antifatigue nutritional supplement. The consent order prohibits the corporation and its president from making the challenged claims for these or similar products in the future.

*Site for Sore Eyes, Inc.*

Site for Sore Eyes agreed to settle allegations that it did not have a reasonable basis for asserting that the UV400 coating it sold for eyeglasses would protect consumers' eyes from harmful UV rays emitted by computer terminals. The consent order bars the company from claiming that any eyeglasses or related products it sells will protect consumers' eyes from radiation from any source, unless it has valid scientific evidence to support such a claim.



### *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 trademarks which imply fiber content of a fiber not present in the product.

### *Value Rent-A-Car Systems, Inc.*

Value agreed to settle allegations that it failed to disclose certain significant charges and limitations when providing price quotations for its car rentals. The consent order requires Value to disclose to consumers, in its advertisements and via telephone, any airport surcharges; all charges resulting from a driver's age that are applicable to the contemplated rental; all geographic driving restrictions that apply where rentals are advertised as having unlimited mileage; restrictions on the unlimited mileage; all mandatory charges, or charges that are not reasonably avoidable by the consumer; and additional charges.

**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 when Prudential Insurance Company of America (Prudential), the insurer of the drug benefit plan, initiated a cost containment program designed to reduce the reimbursement rate paid to the participating pharmacies, the associations urged their members to withdraw from the plan in an effort to reduce the number of participating pharmacies below Baltimore's contract specifications and to force Prudential to raise the reimbursement rate back to the original level. The Commission alleged that these actions and other activities of the respondents restrained competition among pharmacists and pharmacies in Maryland.

*California Dental Association*

The Commission issued an administrative complaint alleging that the California Dental Association (CDA) conspired with its members to restrict truthful advertising designed to inform consumers about the price and quality of dentists and dental services in the state. The complaint alleged that CDA adopted a code of ethics prohibiting its members from offering coupons for discounted services, advertising special senior citizen prices, and reporting the results of free dental screenings of school children on forms bearing the dentists' names and addresses. The complaint further alleged that the CDA enforced compliance with the rules that banned truthful advertising by threatening to expel members and refusing membership. CDA is a professional association that represents the interests of its approximately 15,000 member dentists who practice in California.

*Columbia Hospital Corporation*

The Commission issued an administrative complaint alleging that Columbia Hospital's proposed acquisition of Medical Center Hospital in Punta Gorda, Florida from Adventist Health System/Sunbelt Health Care Corporation could create anticompetitive effects for the delivery of acute care inpatient services to consumers in the Charlotte, Sarasota, and DeSoto County areas of Florida. According to the complaint, the acquisition would eliminate competition between Medical Center Hospital and Fawcett Memorial Hospital, a general

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acute care hospital in Port Charlotte, Florida owned by Columbia Hospital. The complaint further alleged that since there is only one other hospital within the three county area and since the entry of a new hospital in the area is unlikely due to extensive state regulations and other factors such as the long lead time necessary to open a hospital, the acquisition would increase the already high levels of concentration and enhance the possibility of collusion or coordinated behavior by the remaining firms in the market. The United States District Court for the Middle District of Florida granted the Commission's motion for a preliminary injunction to enjoin the acquisition until the administrative proceedings have been completed.

### **CONSUMER PROTECTION** *Del Dotto Enterprises, Inc., David P. Del Dotto, Yolanda Del Dotto* **MISSION**

The Commission issued an administrative complaint alleging that David P. and Yolanda Del Dotto and their firm, Del Dotto Enterprises, deceptively represented numerous features of their Cash Flow System, including that it has helped hundreds of thousands of consumers make substantial sums of money buying and selling real estate. David and Yolanda Del Dotto and their firm also allegedly misrepresented that certain infomercials they used to market the Cash Flow System were independent television programs, rather than paid advertisements, and that computers and related products sold to customers would be delivered within a specified or reasonable period of time.

*Jenny Craig, Inc., Jenny Craig International, Inc.,  
Weight Watchers International, Inc.*

The Commission issued an administrative complaint alleging that Jenny Craig, Jenny Craig International, and Weight Watchers International engaged in deceptive advertising by making unsubstantiated weight loss maintenance claims and by using consumer testimonials without substantiation that the testimonials represented the typical experience of dieters on the program.

*Trans Union Corporation, Inc.*

The Commission issued an administrative complaint alleging that Trans Union, one of the three major credit bureaus in the U.S., violated the Fair Credit Reporting Act by illegally using the credit-related information it maintains in its consumer reporting database to compile lists of consumers that are then used by some of Trans Union's clients, including credit grantors, for purposes not permitted under the law. Trans Union also allegedly advertised its lists in direct marketing publications.

*W.D.I.A. Corporation, Janice L. Campanello, Mark W. Hanna*

The Commission issued an administrative complaint alleging that W.D.I.A. and two of its officers, Janice L. Campanello and Mark W. Hanna, in connection with their role as *information brokers*, those who buy large volumes of

consumer credit and other information at discounted rates from the major credit bureaus and then resell the data to lower volume buyers, failed to adequately ensure that purchasers of their services have legally permissible purposes for obtaining the sensitive data. In addition, W.D.I.A. allegedly did not meet federal requirements when reporting public record information about job seekers to prospective employers, when that information could reduce the job seekers' chances of employment.

**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 Omexin System for Hair, for a cellulite treatment called the Anushka Bio-Response Body Contouring Program, or for both. The proposed consent agreement requires Synchronal to pay \$3.5 million into a consumer redress fund and prohibits it and two of its officers, Ira Smolev and Richard E. Kaylor, from making any unsubstantiated product claims in the future. Further, the proposed consent agreement prohibits the corporations and their officers from disseminating the two infomercials and from misrepresenting the results of any tests or studies in connection with the marketing of any product or service in the future.

*Trans Union Corporation, Inc.*

Trans Union, one of the three major credit bureaus in the U.S., agreed to settle allegations in connection with its prescreening practice of providing lists of consumers meeting certain credit criteria to credit grantors. The company allegedly failed to require these credit grantors to make a firm offer of credit to each person on these lists, as required by a federal law that governs the privacy of consumer credit data. The proposed consent agreement requires Trans Union to modify and enforce its future contracts to reflect this requirement. Related charges against the company remain to be litigated.

**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** *American Family Publishers*

American Family Publishers, one of the largest sellers of magazine subscriptions in the United States, agreed to settle allegations that it violated the Federal Trade Commission Act when it hired collection firms and knowingly approved or assisted in the use of deceptive debt collection practices. American Family Publishers allegedly used debt collection agencies to send consumers deceptive attorney collection letters that were on the letterhead of attorneys when, in fact, no attorneys were actively or substantially involved in the collection of the debts at issue and no legal action was about to be initiated if the debts were not paid. The consent order requires American Family Publishers, among other things, to instruct its debt collectors to comply with the Fair Debt Collection Practices Act in the future.

*Phone Programs, Inc.*

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

### INITIAL DECISIONS

#### **COMPETITION MISSION** *Adventist Health System/West, Ukiah Adventist Hospital*

An Administrative Law Judge's initial decision dismissed a 1989 administrative complaint that challenged Ukiah Adventist Hospital's 1988 acquisition of substantially all of the assets of Ukiah Hospital Corporation and Ukiah General Hospital. The complaint alleged that the acquisition injured consumers by reducing competition in general acute care hospital services by making Adventist Hospital the dominant medical facility, owning three of the five hospitals in southeastern Mendocino and Lake Counties, California. Ukiah Adventist Hospital is owned by Adventist Health System/West, a nonprofit religious corporation operating hospitals in the western United States. Health Trust, Inc.-The Hospitals Company, the owner of more than 20 hospitals throughout the United States, also owns and operates both Ukiah Hospital Corporation and Ukiah General Hospital. The Administrative Law Judge ruled that the acquisition did not restrict competition in the provision of general acute care hospital services but, instead, will provide better medical care to Ukiah residents through the creation of a larger and more efficient hospital. Commission staff filed an appeal of the initial decision. Adventist Health System filed a complaint in the federal district court of Washington, D.C. to enjoin the Commission's administrative proceedings. That case is pending in the United States Court of Appeals for the Ninth Circuit. (*See - Adventist Health System/West*, page 86.)

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

An Administrative Law Judge's initial decision upheld the Commission's allegations that Griffin Systems, its president, Gennaro J. Orrico, its vice president, Alfonso S. Giordano, and its former president, Robert W. Boughton, deceptively and unfairly promoted Vehicle Protection Plan auto service contracts and misrepresented the terms for canceling the service contracts they sold to consumers. The Administrative Law Judge's initial decision prohibits the defendants from materially misrepresenting or unilaterally canceling any service contract they offer in the future.

#### *Stouffer Foods Corporation*

An Administrative Law Judge's initial decision upheld the complaint allegations that Stouffer made deceptive claims regarding the sodium content of its Lean Cuisine frozen entrees and prohibited the company from misrepresenting the sodium content of any frozen food product it markets in the future. The Administrative Law Judge's initial decision rejected the complaint allegation that Stouffer's use of one gram rather than *milligram*, the commonly used unit of measurement for sodium, was unfair and deceptive.

*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.



### FINAL COMMISSION ORDERS

#### **COMPETITION MISSION** *Harold A. Honickman*

On a remand from the District of Columbia United States Court of Appeals, the Commission issued a final order denying Harold A. Honickman's petition to acquire certain assets from the Seven-Up Brooklyn Bottling Company, as it did not fall within the guidelines of the failing company defense. Under the terms of a 1991 consent order that settled charges stemming from Honickman's acquisition of the Seven-Up Brooklyn Bottling Company, Honickman is required to obtain prior Commission approval before acquiring assets relating to the distribution and sale of carbonated soft drinks in the New York metropolitan area.

#### *Occidental Petroleum Corporation*

The Commission upheld a 1986 administrative complaint that challenged Occidental's acquisition of the polyvinyl chloride business of Tenneco Polymers, Inc., a subsidiary of Tenneco, Inc.. The final order and opinion upheld the initial decision of an Administrative Law Judge, who had ruled that the acquisition would substantially reduce competition in the U.S. in the production of the three types of polyvinyl chloride (PVC): mass and suspension PVC homopolymer, suspension PVC copolymer, and dispersion PVC. PVC is a thermoplastic resin used to make a variety of plastic products: pipe, vinyl siding, wire and cable insulation, packaging film for meat and produce, medical and surgical tubing, and vinyl floor tile. The Commission rejected Occidental's argument, on appeal from the Administrative Law Judge's initial decision, that suspension copolymer PVC should be included in the PVC homopolymer market because of the ease of supply side substitution. Instead, the Commission concluded that the conversion of a plant to produce suspension copolymer would be time-consuming and could not be accomplished economically due to the substantial production cost differences in the two products. The Commission also rejected Occidental's arguments that imports of dispersion PVC from foreign producers broaden the market beyond the United States. The Commission concluded that customer concerns about foreign producers' timely deliveries, consistent product quality, and the lack of technical assistance to domestic purchasers, meant that foreign producers do not provide an alternative to domestic suppliers for regular, long-term supplies of PVC. Under terms of the final order, Occidental must divest the homopolymer manufacturing plant in Pasadena, Texas and the suspension copolymer PVC and dispersion PVC plant in Burlington, New Jersey within 12 months to an acquirer preapproved by the Commission. The final order also requires Occidental to obtain prior Commission approval for ten years before acquiring any part of a firm engaged in the production of PVC in the United States. On June 2, 1993, Occidental filed a petition in the United States Court of Appeals for the Second Circuit seeking review of the Commission's decision and final order. The petition was withdrawn from active consideration to

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 at which its products would be resold. The consent order was modified to delete the provision that whenever Clinique recommends retail prices to dealers, the dealers must be informed in writing that they are free to set their own prices.

#### *KKR Associates, L.P.*

KKR petitioned the Commission to reopen and modify a 1989 consent order that prohibited certain acquisitions of firms engaged in the production and sale of packaged nuts, ketchup, and oriental food without obtaining prior Commission approval. The Commission modified the consent order to require only notification of acquisitions of products named in the complaint so long as KKR is not engaged in the production of those products at the time of the acquisition. KKR's request to delete entirely the 10-year prior approval requirement was denied. The consent order settled allegations that KKR's acquisition of RJR Nabisco, Inc. would reduce competition in the production and sale of branded ketchup, shelf-stable oriental entrees, noodles, and vegetables, soy sauce, and packaged nuts.

#### *Promodes, S.A.*

At the request of Promodes and its wholly-owned subsidiary, The Red Food Stores, Inc., the Commission reopened and modified a 1990 consent order that required Red Food Stores to divest six specific grocery stores in Tennessee and Georgia to settle antitrust concerns resulting from the 1989 acquisition of seven Kroger Company retail grocery stores located in the Chattanooga, Tennessee area. The Commission modified the consent order to permit Red Food Stores to substitute a Dayton Boulevard supermarket in Chattanooga (not named in the order) for divestiture instead of the South Terrace supermarket of East Ridge, Tennessee originally specified in the 1990 consent order. According to the petition, Red Food Stores was unable to sell the East Ridge supermarket due to declining sales and increasing financial losses; the store was not attractive to potential buyers. The Commission approved the sale of the Dayton Boulevard store to Smith & Woods Management Corporation of Maryville, Tennessee. Also during the year, the Commission modified the consent order to end Red Food Stores' obligation to divest two other stores specified in the 1990 consent order, one on Lee Highway in Chattanooga and one on Battlefield Parkway in Fort Oglethorpe, Georgia.

#### **CONSUMER PROTECTION** *Tarra Hall Clothes, Inc., Abraham Cohen*

**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 Lincolnshire, Illinois.

#### **CONSUMER PROTECTION MISSION** *Academic Guidance Services, Inc., Mark N. Cohen, David Ginsberg*

The Commission obtained settlements with Mark N. Cohen, founder of Academic Guidance Services, and its former president, David Ginsberg, settling allegations that they deceptively marketed to prospective business operators the right to sell college financial aid information to students. The settlement permanently bans the defendants from using false or misleading statements to market any business opportunity in the future. In addition, Mark N. Cohen agreed to pay \$750,000 in redress to injured consumers.

#### *American Standard Credit Systems, Inc. d/b/a The Bankcard Service Center d/b/a First National Bankcard Center*

The Commission alleged that American, which handled the marketing and fulfillment services for a California bank's secured Visa and MasterCard credit card program, in connection with its role as the root organization in an allegedly deceptive 900 number marketing scheme, provided other marketers with materials that falsely represented the nature of the cards, who could obtain

them, and the cost of applying. The Commission is seeking a permanent injunction and consumer redress.

*Americlean, Ltd., Inc. d/b/a BMV Motors Corporation*

Americlean, 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 company is prohibited from engaging in any violations of the Used Car Rule in the future.

*AMREP Corporation*

AMREP agreed to pay \$350,000 as partial refunds to consumers who bought land in New Mexico from the company. The agreement is the result of a complaint filed in federal district court in 1987 seeking redress for certain consumers who bought tracts of undeveloped land at Rio Rancho Estates in New Mexico between 1972 and 1977 based on AMREP's false and misleading claims.

*Andrew D. Levine, A.D.L. Fine Arts, Inc., M.C.L. Fine Arts, Inc.*

The Commission alleged that Andrew D. Levine, a New York art dealer, and his firms, A.D.L. Fine Arts and M.C.L. Fine Arts, distributed counterfeit art prints to retailers and aided and abetted art galleries and other retailers in misrepresenting the authenticity and other aspects of the prints to consumers. The Commission is seeking a permanent injunction barring the defendants from engaging in the alleged deceptive practices and redress for injured consumers.

*Applied Telemedia Engineering and Management, Inc., Gerald Seifer, Anthony Liggio*

Applied Telemedia Engineering and Management (ATEAM) agreed to settle allegations of misrepresenting that consumers who purchased their services were highly likely to win a valuable license enabling them to own and operate a wireless cable television system. Two agreements with ATEAM and its two principal officers, Gerald Seifer and Anthony Liggio, prohibit them from misrepresenting the economic viability of a wireless cable television system or any other investment offering. In addition, ATEAM and Gerald Seifer are required to pay \$100,000 in consumer redress, and Anthony Liggio is required to post a \$50,000 performance bond before selling any investment and to place 5% of the gross proceeds of any investment he sells into an escrow account for consumer redress.

*B.C.S. Group, Incorporated  
d/b/a Business Computer Systems a/k/a Megasource,*

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*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 give promised refunds or credits, among other allegations. The settlement prohibits any false or misleading representations in connection with the shipping of, repair of, refunds for, or credit for any merchandise the defendants offer in the future. The defendants previously provided refunds or other restitution to consumers injured by the alleged conduct.

*Building Inspector of America, Inc., The, Ralph L. Tisei, Beverly A. Tisei, Lawrence H. Finklestone*

The Commission alleged that The Building Inspector of America, a franchisor of home inspection services, and its officers violated the Franchise Rule by, among other things, making unsubstantiated earnings claims to prospective franchisees. The Commission is seeking a permanent injunction, civil penalties, and consumer redress.

*Cambridge Exchange, Ltd., The, Michael Stone, Samuel Stier, Richard Attas, U.S. Museum and Gallery Archives, Inc., Robert Sweeney, Wellington Art Ltd., Inc., Steven Stier, Jeffrey Emmons d/b/a Emmons Nationwide Appraisals*

A court froze the assets of The Cambridge Exchange and several others participating in a scheme to sell animation drawings and other artworks to consumers nationwide. The Commission alleged that the defendants made numerous false statements about the art's worth and investment value. The court barred the defendants from engaging in the alleged deceptive practices pending trial. The Commission is seeking to extend the injunctions on the challenged conduct permanently and to obtain redress for injured consumers.

*Can-Do Worldwide Marketing, Inc., Patrick Christopher Andreoli, Melbrett, Inc., Mel Meyers a/k/a Mel Mason*

A federal district court issued an asset freeze and a temporary restraining order against Can-Do Worldwide Marketing, its owner, Patrick Christopher Andreoli, a salesman, Mel Meyers, and Meyers' company, Melbrett, Inc., halting deceptive practices in connection with the telemarketing of cosmetics and other merchandise to consumers nationwide. According to the complaint, consumers spent from \$399 to thousands of dollars on the defendants' cosmetics and other merchandise, based on the defendants' false promises that these consumers had won cash prizes and would receive free vacations as bonuses in return for purchases.

*Car Checkers of America, Inc., Auto Checkers International, Inc.*

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 to lingerie and were to be placed in retail settings. The Commission is seeking permanent injunctions and consumer redress.

*Case Equipment Company, Anthony J. Casella a/k/a A. J. Case and A. J. Casella*



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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.

*Denny Mason, Benedict ("Ben") Spano, S.E.C. Enterprises, Inc.,  
S.E.C. Enterprises Sales, Inc., Security Printing, Inc.,  
National Health Care Associates, Future World, Inc.,  
American Health Associates, Inc., AA Investments, Inc.,  
New Image Way, Anthony Della-Iacono, Fletcher McKamie,  
Patrick Brett, Michael Minetti, Ricky Mason, Randy Mason,*

*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. The settlement prohibits the defendants from making the types of misrepresentations alleged in the complaint and from providing other distributors with the means to engage in this type of deception in the future. In addition, the settlement requires the defendants to regularly evaluate promotions by distributors.

*Federal Coin Repository, Ichak Listinger*

Federal Coin Repository, a marketer of rare coins, and its owner, Ichak Listinger, agreed to pay \$95,000 in consumer redress to settle allegations that they misrepresented the investment value and potential of the rare coins they sold to consumers. The defendants are permanently enjoined from misrepresenting the investment potential or profitability of the coins or other investments they sell and from misrepresenting that they are affiliated with a government entity. The settlement also requires them to fully disclose the risks associated with investing in their coins in the future.

*Fitness Express, Inc., Frank LoPinto, Gino T. LoPinto, Fitness Express Enterprises, Inc., Vincent S. Andrich*

The court issued a temporary restraining order against Fitness Express, Fitness Express Enterprises, and their owners, halting challenged sales practices and

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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 risk, 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 future coin sales. The settlement includes a \$5 million judgment against Golden Oak and a \$1 million judgment against Ronald H. Michel.

*Hazel A. Douglas a/k/a Hazel Douglas Salgado  
d/b/a Douglas Company, The*

A court issued a temporary restraining order against Hazel A. Douglas in connection with an allegedly deceptive employment opportunity scheme she operated nationwide. The Commission alleged that company salespersons falsely told callers responding to newspaper advertisements that the company was hiring construction and hotel workers for jobs in Antigua, Aruba, Mexico, and other foreign locations. Applicants paid good faith security deposits, ranging from \$150 to \$300, that were to be refunded. In numerous instances, applicants received neither the promised job nor a refund of their deposit. The Commission is seeking a permanent injunction and consumer redress.

*H.K.S. Purchasing Corporation, Peter Jamisen*

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

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settlement permanently bars English from making the types of misrepresentations alleged in the complaint.

*Jon A. Gentile, Sam Kingsfield*

The Commission obtained settlements with Jon A. Gentile, president, and Sam Kingsfield, sales manager, of Western Trading Group in connection with their roles in an allegedly deceptive scheme to market leveraged investments in precious metals by telephone. The settlements prohibit the defendants from misrepresenting the investment potential, risk, or any other material feature of any investment they offer in the future. The settlements also require the defendants to disclose to consumers the full amount of any fees charged in connection with any precious metals or currency investment offering they make.

*K&M Marketing II, Inc., Continental Sales, Inc., D.L.W., Inc.,  
Wave Crest, Ltd., Inc., John Woods, Dennis Poletti, James Alpert,  
David Wetherill, United Health Products, Inc. d/b/a K&M Marketing,  
Nationwide Products Research & Development, Inc.,  
Healthway Products, Inc. d/b/a Healthway Products of Texas*

The Commission obtained judgments against K&M Marketing II, David Wetherill, six corporations, and three other individuals based on allegations that they made false claims that consumers would receive awards of substantial value if they purchased the defendants' vitamins, cosmetics, or other merchandise. Wetherill owns six of the seven named companies. The seven corporate defendants agreed to orders prohibiting them from engaging in any type of telemarketing activity in the future. Dennis Poletti agreed to waive his right to approximately \$56,000 that was frozen by a federal district court and is banned from working as a boiler room telephone seller. Wetherill was ordered to pay more than \$2.5 million in consumer redress and is prohibited from engaging in telemarketing in the future. John Woods and James Alpert had default judgments entered against them and were ordered to pay \$1.7 million in consumer redress.

*Larkin, Hoffman, Daly & Lindgren, Ltd.,  
National City Bank of Minneapolis*

The Commission alleged that the law firm of Larkin, Hoffman, Daly & Lindgren and National City Bank of Minneapolis fraudulently agreed to prevent the Commission from collecting on an \$11.2 million federal court judgment against a coin dealer, William J. Ulrich, and his firm, Security Rare Coin & Bullion Corporation. According to the complaint, the defendants helped the coin marketer fraudulently transfer several million dollars in rare coins into trusts for his three daughters, and then convert a substantial portion of the coins back to his own use. They also unlawfully acted to conceal assets belonging to the coin marketer to put these assets beyond the reach of 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, Pablo Picasso, and Salvador Dali to art dealers who then sold them to consumers. The settlement prohibits Zabrin and his firm from falsely representing, or from substantially assisting others in falsely representing, the authenticity of any art work, the artist's signature, or the investment potential of any art work. The settlement requires the defendants to pay \$43,000 and the proceeds from the sale of five art works into a consumer redress fund.

*Minuteman Press International, Inc., Speedy Sign-A-Rama, USA, Inc.*

The Commission alleged that Minuteman Press and its wholly-owned subsidiary, Speedy Sign-A-Rama, a corporation that sells retail sign franchises, made deceptive claims to potential buyers regarding the earnings potential for the two franchises. The defendants also allegedly violated the Franchise Rule by failing to disclose transfer fees and by making earnings claims without providing the required earnings documents. The Commission is seeking consumer redress for injured consumers and a permanent injunction barring the defendants from future violations of the Franchise Rule and from collecting undisclosed transfer fees.

*National Credit Savers, Inc., National Credit Center, Inc., Samuel Lee Pitts*

National Credit Savers, National Credit Center, and Samuel Lee Pitts, owner of both companies, agreed to pay \$300,000 in consumer redress to settle allegations that they deceptively marketed Gold Cards and other credit cards to consumers using direct mail and 900 telephone numbers. The settlement also prohibits the defendants from making false representations and imposes

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several disclosure requirements on them in connection with any credit cards or credit-related services they offer in the future.

*National Energy Specialists Association, Frank Newbraugh*

A federal court entered a judgment against the National Energy Specialists Association (NESA), a self-described trade association of marketers who sell energy saving products to consumers. The company and its executive director, Frank Newbraugh, allegedly made numerous false and misleading claims about the qualifications and expertise of NESA members, prerequisites for membership, and their warranty program. The court issued an order prohibiting NESA and Newbraugh from misrepresenting any material feature of any energy industry trade association they operate in the future. In addition, the court ordered the defendants to disgorge more than \$1.44 million, NESA's total income from 1985 to 1990.

*NCS Credit Network, Inc., Blessing Ahuruonye, Hyacinth Ahuruonye*

The Commission obtained a settlement with NCS, a credit repair company, to settle allegations that it misrepresented its services, success rate, and refund policies. The settlement prohibits NCS and its principals, Blessing and Hyacinth Ahuruonye, from misrepresenting their ability to improve consumers' credit histories or to provide a service enabling most consumers to obtain major unsecured credit cards. The settlement also imposes certain other specific prohibitions on the defendants that prevent them from further harming those consumers that are already clients.

*North and South Associates, Inc., Devon Burt a/k/a Michael L. Tomsik, Shakir A. Dhanji*

The Commission obtained a settlement with North and South Associates, alleging that they engaged in a deceptive scheme offering jobs in the Caribbean. The judgment permanently enjoins the company from falsely promising that it has found jobs for individuals, is hiring workers on behalf of other firms, or will fully refund deposits applicants have paid to hold purported jobs, and requires the payment of \$45,373 in consumer redress by the company and its directors, Devon Burt and Shakira A. Dhanji.

*O'Connor & Hannan, Fred Lucas, Wilbur Montgomery Sims, Melamed Rare Coins, Richard Melamed*

The Commission obtained four settlements in connection with a 1990 \$11.2 million judgment against William J. Ulrich, a coin marketer, and Security Rare Coin and Bullion Corporation. The law firm of O'Connor & Hannan agreed to transfer to the Commission a \$250,000 lien it holds on a house once owned

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,  
Vitasystems Enterprises, Inc., Sunshine Promotions,  
Regency Marketing Enterprises, Inc., Vita Tek Marketing,  
21st Century Marketing, Inc., Christopher A. Easley, Richard J. Secchiaroli*



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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 misrepresenting that they can improve individual credit reports by removing negative information and from failing to honor their money back guarantee. The court also ordered the defendants to pay \$434,000 for consumer redress.

*Snelling and Snelling, Inc.*

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 voltage surge suppressors would save consumers 20% on their electric bills and extend the life of fluorescent light bulbs by eight to ten times. The settlement prohibits future energy savings claims unless the company possesses competent and reliable evidence to substantiate them.

*Spectrum Resources Group, Ltd., James D. Greenbaum,  
Spectrum Resources Group, Inc., Charles C. Davis,  
Integrated Wireless, Inc., Sid Rudich, Midas Media I, Ltd.,  
Midas Media, Inc., Jeff Jolcover*

The Commission alleged that a cluster of Las Vegas and Washington, D.C.-based wireless cable investment opportunity sellers and their principal officers engaged in deceptive sales practices. A court issued a temporary restraining order against the defendants and froze all of their assets to preserve funds for consumer redress. The defendants allegedly sold interests for \$7,500 to \$20,000 in limited liability corporations and partnerships for the development of wireless cable projects in Texas and Nebraska. The Commission asked the court to permanently bar the defendants from engaging in the allegedly deceptive practices and to order consumer redress.

*Sporicidin Company, The d/b/a Sporicidin International*

Sporicidin, a manufacturer which promoted and sold a chemical germicide for sterilizing or disinfecting medical instruments, agreed to settle allegations that it falsely advertised the effectiveness of the product, Sporicidin -- Cold Sterilizing Solution. The settlement permanently bars the company from making any representation about the effectiveness of any dilution of Sporicidin or any other disinfectant product in cleaning or disinfecting any medical instrument or device, unless it possesses competent and reliable scientific evidence to substantiate such representations.

*Sunrise Auto & Cycles, Inc., Mark B. Antal, Clayton R. Bailey, Jr.*

Sunrise Auto & Cycles, a used car dealership, and two of its officers agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on the side window of used cars offered for sale, and that they did not provide other warranty information required by the Warranty Disclosure Rule. The settlement prohibits the defendants from engaging in any future violations of the Used Car and Warranty Disclosure Rules.

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*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.

**CIVIL PENALTY ACTIONS****COMPETITION MISSION** *Harold A. Honickman*

Harold A. Honickman paid \$1,976,000 in civil penalties to the United States Treasury to settle allegations that he violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). According to the complaint, Honickman, a bottler of carbonated soft drinks in the metropolitan New York area, acquired more than \$15 million in assets of another New York bottler, Seven-Up Brooklyn Bottling Company, Inc., without notifying the antitrust enforcement agencies. The complaint and consent order were filed in federal court by Commission attorneys under a special authorization of the United States Attorney General.

*Stephan Schmidheiny*

Stephan Schmidheiny agreed to pay \$414,650 in civil penalties to settle allegations that he failed to file notification required by the HSR Act before he acquired voting securities in two European firms that do business in the United States. The complaint alleged that Schmidheiny, of Hurden, Switzerland, acquired control of two Swiss corporations, Landis & Gyr AG in January 1988 and Wild Leitz Holding AG in June 1989; did not notify the Commission until August 1989, when he discovered the violation; and did not file the proper notification and report forms required by the HSR Act until more than 17 months later. Both of the acquired firms have manufacturing facilities in the United States. Landis & Gyr produces various types of electric and electronic equipment. Wild Leitz produces and sells drafting instruments and photographic equipment. The premerger rules require foreign persons who acquire control of businesses with more than \$110 million in U.S. assets or annual sales to file notification under the HSR Act prior to consummating the acquisition. The complaint and proposed order were filed in federal court by Commission attorneys acting as special attorneys to the United States Attorney General. The settlement is pending final action by the district court.

**CONSUMER PROTECTION MISSION** *American Systems, Inc. d/b/a Clean Cars of Tampa, Inc., Joe A. Potts*

American Systems, a used car dealership, and company officer Joe A. Potts agreed to settle allegations that they 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 \$5,000 civil penalty.

*Bachman Company, The*

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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 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 \$23,000 civil penalty.

*Car City, Inc., Gregg C. Moyer*

Car City, a used car dealership, and a company officer, Gregg C. Moyer, agreed to settle allegations that they 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 \$7,500 civil penalty.

*Channel Home Centers, Inc.*

Channel Home Centers, a retailer of home improvement products, agreed to settle allegations that it violated the R-value Rule by failing to make certain disclosures in its advertising for home insulation products. The settlement prohibits future violations of the R-value Rule and requires payment of a \$3,584 civil penalty.

*Comisky-Roche Funeral Home, Ronald W. Brown*

Ronald W. Brown, owner of Comisky-Roche Funeral Home, agreed to settle allegations that he violated the Funeral Rule by failing to provide customers seeking to make funeral arrangements with consumer information required under the Rule. The settlement prohibits future violations of the Funeral Rule and requires payment of a \$15,000 civil penalty.

*Davis Brothers Oil, Inc., Paul E. Davis*

Davis Brothers Oil, a gasoline distributor, and its president, Paul E. Davis, agreed to settle allegations that they violated the Octane Rule by failing to certify the octane ratings of gasoline they transferred to retail service stations, and by failing to keep delivery tickets or letters of certification on which they based their octane certifications. The settlement prohibits future violations of the Octane Rule and requires payment of a \$25,000 civil penalty.

*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 with knowledge that the Commission previously had determined that such conduct was unfair or deceptive and unlawful. The settlement requires payment of a \$175,000 civil penalty.

*Hechinger Company, The*

Hechinger, a major retailer of home improvement products in the Washington, D.C. area, agreed to settle allegations that it violated the R-value Rule by failing to make certain disclosures in its advertising for home insulation products. The settlement prohibits future violations of the R-value Rule and requires payment of a \$40,000 civil penalty.

*Imperial Motors, Ltd., Mousa Mahgerefteh, Soleiman Sadiq*

Imperial Motors, a used car dealership, and two of its officers agreed to settle allegations that they 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

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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*

Liberty 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, and that it did not provide other warranty information required by the Warranty Disclosure Rule. The settlement prohibits future violations of the Used Car and Warranty Disclosure Rules and requires payment of a \$4,000 civil penalty.

*Lillian Vernon Corporation*

Lillian Vernon, a mail order company, agreed to settle allegations that it violated the Mail Order Rule by failing to refund to consumers the appropriate shipping and handling charges when making refunds for unshipped merchandise. The settlement prohibits future violations of the Mail Order Rule and requires payment of a \$310,000 civil penalty.

*Macias Mortuary Services d/b/a California Funeral Service  
d/b/a Chapels of Suhr and Weiboldt d/b/a Tom Simpson,  
Alex E. Macias*

Macias Mortuary Services and its president and co-owner, Alex E. Macias, 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 \$60,000 civil penalty.

*Memorial Guardian Plans, Inc.*

Memorial Guardian Plans, owner of two funeral homes, agreed to settle allegations that it violated the Funeral Rule by requiring consumers to buy the company's caskets in order to use the funeral home's services. The settlement requires payment of a \$25,000 civil penalty. This is the first case the Commission has brought alleging that a funeral home tied the provision of funeral services to the purchase of a casket.

*Meyer Funeral Home, Inc.*

Meyer Funeral Home agreed to settle allegations that it 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 \$32,500 civil penalty.

*Charles W. Middleton d/b/a Crossroads Auto Mart*

The Commission alleged that Charles W. Middleton violated the Used Car Rule by failing to display the required Buyers Guide on the windows of each used car offered for sale and by failing to include in the guide all prepurchase information required by the Rule. The Commission is seeking civil penalties and a permanent injunction prohibiting future Used Car Rule violations.

*PaineWebber Mortgage Finance, Inc.*

PaineWebber Mortgage Finance, a mortgage finance company, agreed to settle allegations that it violated the record keeping requirements of the Equal Credit Opportunity Act. The settlement requires the defendant to comply with the record keeping requirements of the Equal Credit Opportunity Act in the future and requires payment of a \$10,000 civil penalty.

*Perry Buick Company*

Perry Buick, 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, and that it did not provide other warranty information required by the Warranty Disclosure Rule. The settlement prohibits future violations of the Used Car and Warranty Disclosure Rules and requires payment of a \$3,000 civil penalty.

*Phonequest, Inc., Arnold Joseph Barer*

Phonequest, an information provider that uses 900 and 976 telephone services, and its attorney, Arnold Joseph Barer, agreed to settle allegations that they violated the Fair Debt Collection Practices Act by misrepresenting that an attorney would bring collection suits against consumers who had refused to pay disputed 900 telephone service charges. The settlement prohibits future violations of the Fair Debt Collection Practices Act and requires civil penalty payments of \$20,000 by Phonequest and \$5,000 by Barer.

*Select Auto Imports, Inc.*

Select Auto Imports, 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, and that it did not provide other warranty information required by the Warranty Disclosure Rule. The settlement prohibits future violations of the Used Car and Warranty Disclosure Rules and requires payment of a \$15,000 civil penalty.

*Tasca Lincoln-Mercury, Inc., Robert Tasca, Jr.*

Tasca Lincoln-Mercury, a used car dealership, and its president, Robert Tasca, Jr., agreed to settle allegations that they violated the Used Car Rule by failing to display the required Buyers Guide on the side window of used cars offered



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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.

*Harold A. Honickman*

On April 16, 1993, the United States Court of Appeals for the District of Columbia affirmed, in part, the district court's decision and dismissed the complaint that challenged the Commission's denial of Harold A. Honickman's application for prior approval to reacquire assets of the Seven-Up Brooklyn Bottling Company (voluntarily divested by Honickman prior to 1990.) The district court held that the Commission had applied proper notice and procedures, in compliance with the Administrative Procedures Act, in considering the prior approval application under the provisions of a July 25, 1991, consent order. On appeal, the appellate court affirmed the Commission's denial of Honickman's application and remanded the matter to the Commission for further proceedings concerning Honickman's acquisition under the failing company defense.

*Olin Corporation*

On February 26, 1993, the United States Court of Appeals for the Ninth Circuit affirmed a 1990 Commission decision that ordered Olin to divest the swimming pool chemical business it acquired from the FMC Corporation in 1985. The 1985 administrative complaint alleged that the acquisition would substantially lessen competition in the manufacture and sale of chlorinated isocyanurate and calcium hypochlorite dry swimming pool sanitizers used to kill algae and bacteria. On August 12, 1993, Olin's petition for rehearing was denied.

*Ticor Title Insurance Company*

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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.

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**SUPREME COURT DECISIONS**

**COMPETITION MISSION** *Detroit Auto Dealers Association*

On November 9, 1992, the Supreme Court denied the Detroit Auto Dealers' petitions for *certiorari* from the 1992 Court of Appeals decision that ruled that a dealer agreement on hours of operation was illegal. The case was on remand from the United States Court of Appeals for the Sixth Circuit to determine the applicability of the nonstatutory labor exemption as it relates to automobile dealers who entered into collective bargaining agreements with unions to limit showroom hours of operation.

### 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, chilling innovation, raising prices, or reducing the quality of goods and services. The goal of the Commission's advocacy activities is to reduce such harm to consumers by informing appropriate governmental and self-regulatory bodies about the potential effects on consumers, both positive and negative, of proposed legislation, rules, or industry guides or codes. The Office of Consumer and Competition Advocacy (OCCA) was the central source of planning, coordination, review, and information for the staff's work in this area. During fiscal year 1993, Commission staff submitted comments and one amicus curiae brief to federal and state agencies. Comment submissions have covered subject areas such as advertising, antitrust, communications, health care, occupational licensing, labeling, and transportation. The following is a summary of the advocacy comments completed and submitted in fiscal year 1993.

**FEDERAL AGENCIES** *Federal Communications Commission: Interconnection Regulations;  
NTSC-ATV Receiver Manufacturing.*

The staff of the Bureau of Economics filed comments in response to a Federal Communications Commission (FCC) Second Notice of Proposed Rulemaking to extend to switched access service some rules about rates and access recently adopted for special access service. The rules would increase competition to the local transport element of the switched access market by requiring certain local exchange carriers (LECs) to offer expanded opportunities to interconnect with their switched access networks to provide for interstate switched transport. Staff supported the proposal, suggesting that permitting non-LEC firms to provide local transport services, combined with requiring LECs to provide the local loop access to end users necessary to complete long distance calls, would benefit consumers and that permitting LECs greater flexibility to price their services according to their costs would help ensure efficient entry.

The staff of the Bureau of Economics filed comments in response to a Federal Communications Commission (FCC) Notice of Proposed Rulemaking to require that television receivers be capable of receiving both standard National Television Systems Committee (NTSC) broadcasts and the new advanced television (ATV) signals. Staff suggested that requiring television manufacturers to produce dual-mode television receivers capable of both NTSC and ATV reception during the transition period prior to full conversion to ATV is undesirable. Such a requirement may harm consumers by limiting their choices and forcing them to purchase equipment they would not otherwise purchase. Staff concluded that consumers' interests can best be served by permitting the production of different types of television receivers so that

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consumers can choose for themselves the equipment they prefer when viewing ATV broadcasts.

### **STATES** *Illinois: Alternative Health Care Facilities.*

The Chicago Regional Office submitted comments to the Illinois State Senate on a bill to amend the Illinois Ambulatory Surgical Treatment Center Act. The bill would authorize a pilot program to establish alternative health care facilities, birth centers, and post-surgical recovery care centers for relatively healthy patients who are receiving treatments that are not expected to lead to complications. Birth centers would specialize in childbirth services for healthy mothers without complications and would only require a maximum stay of 24 hours. Post-surgical recovery care centers would provide recovery care for generally healthy patients undergoing surgical procedures that require a maximum stay of up to 72 hours. Staff suggested that the bill may alter the competitive relationships among different providers but could also affect the nature and quality of care consumers receive by providing new ways of offering services to consumers. Thus, staff supported the bill, concluding that it would allow innovations in health care delivery which could increase competition and efficiency and lower prices.

### *Maine: Optometry Regulation.*

The Boston Regional Office testified before the Joint Standing Committee on Business Legislation of the Maine House of Representatives on a bill that would amend Maine's laws governing optometry. The bill would permit an optometrist to locate in a mercantile establishment but would still retain restrictions on employment and other commercial relationships. Staff supported the bill but advised that some remaining restraints may still inhibit forms of providing services that might increase competition and benefit consumers.

### *Massachusetts: Optometry Regulation; Pharmacy, Any-Willing-Provider Bill.*

The Office of Consumer and Competition Advocacy submitted comments to the Massachusetts Division of Registration on proposed changes to Massachusetts' laws governing the practice of optometry. The comments focused on the proposed rules that affect the settings in which optometrists may practice. The proposed regulations would permit optometrists to practice in mercantile locations where optical goods are sold, as long as no contract or other arrangement gave a nonprofessional control over matters requiring professional judgment, no referral fees were involved, and separate facilities requirements were met. Staff recommended that the proposal to permit optometrists to locate within and lease space from optical goods stores or other mercantile establishments could lead to greater competition and to efficiencies in operation that could benefit consumers; however, potentially significant

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 greater freedom to choose where they obtain pharmacy services, it appears 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.

*Michigan: Trucking Regulation.*

The Cleveland Regional Office testified before the Michigan Public Service Commission (MPSC) on legislation proposing amendments to its rules regulating intrastate trucking. The rules could make entry into the market for motor carriers easier by eliminating detailed restrictions on authorities, frivolous protests, and noncompetitive compromises of application proceedings. Staff advised that relaxing restrictions on entry into the trucking industry has benefitted consumers and competition by increasing choices, improving service, and reducing prices. Staff suggested that the MPSC reconsider using broad and general grants of operation authority, rather than the narrow authorities the MPSC proposed (in an effort to reduce protests). Staff supported the proposed rules as a means to promote productivity, efficiency, and competition within the intrastate trucking industry in Michigan.

*Missouri: Chiropractor Advertising.*

The Chicago Regional Office submitted comments to the Missouri Board of Chiropractic Examiners on their proposal to impose several disclosure requirements on offers of free or discounted services. The rules would require detailed disclosures on a form to be signed by each patient and in all communications and advertisements offering free or discounted services. The proposed rules would require that any practitioner offering free or discounted service could not charge the patient for any other services that same day or within 72 hours. The staff advised that the proposed rules would place unnecessarily broad constraints on the communication of price information to the public and that the obligations and conditions they would place on the offers of free and discounted services may be more burdensome than necessary.



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to protect against deceptive and misleading advertising. Instead, their likely effect would be to inconvenience consumers and discourage advertising and price competition.

*Montana: Denturist Regulation; Any-Willing-Provider Requirements.*

The Denver Regional Office submitted comments on legislation to prevent denturists from entering certain business relationships with dentists. The staff advised that such restrictions on business format may prevent the formation and development of forms of professional practice that may be innovative or more efficient, provide comparable or higher quality services, and offer competition to traditional providers. Thus, staff concluded that the bill could impair competition and thereby injure consumers.

The Office of Consumer and Competition Advocacy submitted comments in response to a request from the Montana Attorney General on the recently enacted any-willing-provider law. The law limits the ability of preferred provider organizations (PPOs) to arrange for services through contracts with health care providers, by requiring a PPO to enter into a contract with any provider willing to meet the terms the PPO sets. The staff advised that by preventing PPOs from limiting the panel of providers, the law discourages contracts with providers in which lower prices are offered in exchange for the assurance of higher volume. Thus, staff concluded, although the law may be intended to assure consumers greater freedom to choose where they obtain services, it appears 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.

*New Jersey: Medical Board Advertising Regulation; Pharmacy, Any-Willing-Provider Bill.*

The New York Regional Office submitted comments in response to a request from the New Jersey Board of Medical Examiners (Board) on its advertising regulations concerning specialty certification. The regulations currently prohibit physicians from advertising board certification in a specialty unless the certifying agency is recognized by the Board. Staff noted that programs to certify competence can help consumers differentiate among professionals, because they convey information about the services being offered and the professional's recognized competence. However, staff recommended that programs to regulate advertising of certifications should help ensure that claims about certification are not deceptive and that they do not unnecessarily deny consumers information about a certification that is true and not deceptive. Staff also suggested that the Board consider some regulation short of a complete ban, such as a disclaimer, on advertising of certification by entities not on the approved list.

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.

*Pennsylvania: Pharmacy, Any-Willing-Provider Bill.*

The Office of Consumer and Competition Advocacy submitted comments in response to a request from the Pennsylvania Senate 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 greater freedom to choose where they obtain pharmacy services, it appears likely to have the unintended effect of denying

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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 themselves in advertisements. Staff also suggested that the Council consider a more flexible general supervision approach for dental hygienists. For several professions, the staff recommended removing prohibitions on guarantees or statements implying unique or unusual abilities. Staff cautioned the Board of Psychologists that the American Psychological Association's ethical principles contained provisions that could lead to significant competition problems.

The Office of Consumer and Competition Advocacy submitted comments in response to a request from the South Carolina House of Representatives 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 greater freedom to choose where they obtain pharmacy services, it appears 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.

*Texas: Any-Willing-Provider Proposals.*

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

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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.

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