

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

AMERICA'S FAVORITE CHICKEN COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3504. Complaint, July 5, 1994--Decision, July 5, 1994

This consent order prohibits, among other things, a Georgia-based fast-food corporation from misrepresenting the extent to which any product or package is capable of being recycled, or the extent to which recycling collection programs are available for such products, and from making claims about any environmental benefit of its products or packaging unless it possesses competent and reliable scientific evidence to substantiate the claims.

Appearances

For the Commission: *C. Steven Baker* and *Catherine R. Fuller*.

For the respondent: *Jane B. Long*, in-house counsel, Atlanta, GA.

COMPLAINT

The Federal Trade Commission, having reason to believe that America's Favorite Chicken Company, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

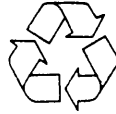
PARAGRAPH 1. Respondent America's Favorite Chicken Company ("A.F.C."), is a Minnesota corporation with its principal office or place of business at Six Concourse Parkway, Suite 1700, Atlanta, Georgia.

PAR. 2. Respondent has offered for sale, sold, advertised, labeled and distributed food products that are contained in disposable paper packaging to the public.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements, including product labeling, for paper packaging it uses to contain its food products, including but not necessarily limited to the attached Exhibit 1.

The aforesaid product labeling (Exhibit 1) includes the following statement and depiction of a three chasing arrow symbol:



Recyclable Package

PAR. 5. Through the use of the statement and depiction contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit 1, respondent has represented, directly or by implication, that A.F.C. paper packaging is recyclable after ordinary use.

PAR. 6. In truth and in fact, while A.F.C. paper packaging is capable of being recycled, the vast majority of consumers cannot recycle the paper packaging because there are virtually no collection facilities that accept food contaminated paper for recycling. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statement and depiction contained in the advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit 1, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representation.

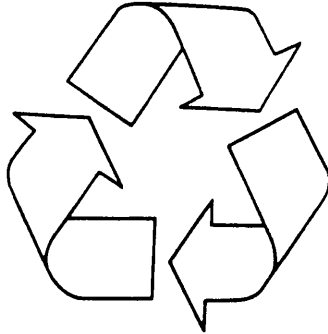
PAR. 8. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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Complaint

EXHIBIT 1



Recyclable
Package

CHURCH'S CHICKEN

 **CHICKEN** 

1 16 D



POPEYES CHICKEN

EXHIBIT 1

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent America's Favorite Chicken Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its principal office or place of business at Six Concourse Parkway, Suite 1700, Atlanta, Georgia.

2. The acts and practices of the respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

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Decision and Order

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

The term "*product or package*" means any product or package, including, but not limited to, any item used by respondent to contain, serve, or package goods, offered for sale, sold or distributed to the public by respondent, its successors and assigns, under any brand name of respondent, its successors and assigns; and also means any such product or package sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

The term "*competent and reliable scientific evidence*" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

It is ordered, That respondent, America's Favorite Chicken Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, distribution, or use of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which any such product or package is capable of being recycled or the extent to which recycling collection programs for such product or package are available.

II.

It is further ordered, That respondent, America's Favorite Chicken Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through

any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, distribution, or use of any product or package in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product or package offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representations; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV.

It is further ordered, That the respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of

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Decision and Order

subsidiaries, or any other change in the corporation which may affect compliance obligations under this order.

VI.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Complaint

118 F.T.C.

IN THE MATTER OF

COLUMBIA HEALTHCARE CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3505. Complaint, July 5, 1994--Decision, July 5, 1994*

This consent order requires, among other things, the respondents to operate the HCA Aiken Regional Medical Center, in South Carolina, as a separate, independent hospital until it is divested to a Commission-approved acquirer. In addition, for ten years, the order prohibits the respondents from acquiring, without prior Commission approval, any other hospital in the Augusta-Aiken area.

Appearances

For the Commission: *David M. Narrow, Mark Horoschak and Mary Lou Steptoe.*

For the respondents: *Ky Ewing, Vinson & Elkins, Washington, D.C. Judy Whalley, Howrey & Simon, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents, Columbia Healthcare Corporation ("Columbia") and HCA-Hospital Corporation of America ("HCA"), corporations subject to the jurisdiction of the Commission, have entered into an agreement whereby Columbia will acquire 100 percent of the voting stock of HCA; that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. 21(b), and Section

5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint the following definitions shall apply:

a. “*Columbia*” means Columbia Healthcare Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky .

b. “*HCA*” means HCA-Hospital Corporation of America, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee.

c. “*Acute care hospital*” means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

d. “*Acute care inpatient hospital services*” means 24-hour inpatient health care, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities. In Georgia and South Carolina, acute care inpatient hospital services are provided only by health care institutions licensed as hospitals and further licensed or certified to provide acute care (as opposed to other types of hospital care, such as psychiatric, substance abuse, rehabilitation or subacute skilled nursing care).

THE PARTIES

PAR. 2. As of October 18, 1993, Columbia owned and operated, directly or through wholly-owned subsidiaries, 87 acute care hospitals in 17 states. In 1992, the predecessors of Columbia, which merged to form Columbia effective September 1, 1993, had

sales of more than \$4.8 billion. Among the acute care hospitals respondent Columbia owns and operates is Augusta Regional Medical Center ("Augusta Regional"), in Augusta, Georgia.

PAR. 3. As of October 18, 1993, HCA owned and operated, directly or through wholly-owned subsidiaries, 72 acute care hospitals in 17 states. As of December 31, 1992, HCA's hospitals had sales of more than \$5.1 billion. Among the acute care hospitals respondent HCA owns and operates is HCA Aiken Regional Medical Centers ("Aiken Regional") in Aiken, South Carolina, about 15 miles northeast of Augusta, Georgia.

JURISDICTION

PAR. 4. Columbia and HCA, at all times relevant herein, have been and are now engaged in or affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12. The businesses of Columbia and HCA, at all times relevant herein, have been and are now in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE PROPOSED ACQUISITION

PAR. 5. On or about October 2, 1993, Columbia and HCA entered into an agreement whereby Columbia will acquire 100 percent of the voting stock of HCA, and HCA stockholders will receive in exchange Columbia voting stock. The total value of the HCA stock to be acquired by Columbia is about \$4.006 billion.

NATURE OF TRADE AND COMMERCE

PAR. 6. The relevant line of commerce in which to analyze the proposed acquisition is the production and sale of acute care inpatient hospital services and/or any narrower group of services contained therein.

PAR. 7. The relevant section of the country is a three-county urban area including the cities of Augusta, Georgia, and Aiken, South Carolina, and consisting of Richmond County, Georgia, Columbia County, Georgia, and Aiken County, South Carolina ("Augusta-Aiken").

MARKET STRUCTURE

PAR. 8. The Augusta-Aiken relevant market is highly concentrated, whether measured by the Herfindahl-Hirschmann Index (“HHI”) or by four-firm concentration ratios.

ENTRY CONDITIONS

PAR. 9. Entry into the Augusta-Aiken relevant market is difficult due to certificate-of-need regulation of entry by the States of Georgia and South Carolina, substantial lead times required to establish a new hospital, and other factors.

COMPETITION

PAR. 10. Augusta Regional and Aiken Regional are actual and potential competitors in the Augusta-Aiken relevant market.

EFFECTS

PAR. 11. The effects of the aforesaid acquisition, if consummated, may be substantially to lessen competition in the Augusta-Aiken relevant market in the following ways, among others:

(a) It would eliminate actual and potential competition between Augusta Regional and Aiken Regional, and between Aiken Regional and others;

(b) It would significantly increase the already high level of concentration in the market;

(c) It would eliminate Aiken Regional as a substantial independent competitive force;

(d) It may enhance the possibility of collusion or interdependent coordination by the remaining firms in the relevant market; and

(e) It may deny patients, physicians, third-party payers, and other consumers of hospital services in the relevant market the benefits of free and open competition based on price, quality, and service.

VIOLATIONS CHARGED

PAR. 12. The acquisition agreement described in paragraph five above violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 13. The acquisition described in paragraph five, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation into the proposed acquisition of HCA-Hospital Corporation of America by Columbia Healthcare Corporation, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days (and having duly considered the comments received), now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Columbia Healthcare Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky.

2. Respondent HCA-Hospital Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. “*Columbia*” means Columbia Healthcare Corporation, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky, as well as its directors, officers, employees, agents, representatives, parents, divisions, subsidiaries, affiliates, and their respective successors and assigns, and the directors, officers, employees, agents, or representatives of Columbia’s divisions, subsidiaries, affiliates, and their respective successors and assigns.

B. “*HCA*” means HCA-Hospital Corporation of America, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee, as well as its directors, officers, employees, agents, representatives, parents, divisions, subsidiaries, affiliates, and their respective successors and assigns, and the directors, officers, employees, agents, or representatives of HCA’s divisions, subsidiaries, affiliates, and their respective successors and assigns.

C. “*Respondents*” means Columbia and HCA, collectively and individually.

D. “*Acute care hospital*” means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

E. To “*acquire an acute care hospital*” means to directly or indirectly acquire the whole or any part of the assets of an acute care hospital; to acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates an acute care hospital; or to enter into any other arrangement to obtain direct or indirect ownership, management or control of an acute care hospital or any part thereof, including but not limited to a lease of or management contract for an acute care hospital.

F. To “*operate an acute care hospital*” means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

G. “*Affiliate*” means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

H. “*Person*” means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

I. “*Augusta-Aiken*” means the three-county area consisting of the counties of Richmond and Columbia in Georgia and Aiken County in South Carolina.

J. “*HCA Aiken Regional Medical Centers*” means the general acute care hospital currently owned and operated by HCA at 202 University Parkway, Aiken, South Carolina, all of its title, properties, stock, rights, privileges, and other assets and interests, and all other related HCA assets and interests in Augusta-Aiken, of whatever nature, tangible and intangible, including without limitation all medical office buildings, other buildings, machinery, equipment, and other property of whatever description, except for accounts receivable and cash.

K. “*Commission*” means the Federal Trade Commission.

II.

It is further ordered, That:

A. Within twelve (12) months after the date this order becomes final, respondents shall divest, absolutely and in good faith, HCA Aiken Regional Medical Centers. HCA Aiken Regional Medical Centers shall be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. A condition of approval by the Commission of the divestiture shall be a written agreement by the party or parties acquiring HCA Aiken Regional Medical Centers that it will not sell for a period of ten (10) years from the date of the divestiture, directly or indirectly, through subsidiaries, partnerships or otherwise, without the prior approval of the Commission, HCA Aiken Regional Medical Centers to any other person who operates, or will operate immediately following such sale, any other acute care hospital in Augusta-Aiken. The purpose of the divestiture required by this order is to ensure the continuation of HCA Aiken Regional Medical Centers as an ongoing, viable acute care hospital and to remedy the lessening of competition alleged in the Commission's complaint.

B. Respondents shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as respondents have divested HCA Aiken Regional Medical Centers or until such other time provided in the Agreement to Hold Separate.

C. Pending divestiture, respondents shall take such action as is necessary to maintain the viability and marketability of HCA Aiken Regional Medical Centers and shall not cause or permit the destruction, removal or impairment of any assets or businesses of HCA Aiken Regional Medical Centers, except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the prior approval of the Commission, HCA Aiken Regional

Medical Centers as required by paragraph II of this order within twelve (12) months after the date this order becomes final, the Commission may appoint a trustee and respondents shall consent to the appointment of a trustee by the Commission to effect the divestiture required by paragraph II of this order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondents shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A. of this order, respondents shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures of acute care hospitals. If respondents have not opposed, in writing, the selection of any trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest HCA Aiken Regional Medical Centers.

3. The trustee shall have eighteen (18) months from the date of approval of the trust agreement described in paragraph III.B.8 of this order to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or

by the Court for a court-appointed trustee; provided, however, that the divestiture period may only be extended two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to HCA Aiken Regional Medical Centers, or any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for the divestiture under this paragraph III in an amount equal to the delay, as determined by the Commission or the Court for a court-appointed trustee.

5. Subject to respondents, absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of HCA Aiken Regional Medical Centers. The divestiture shall be made in the manner set out in paragraph II of this order; provided, however, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a Court may set. The trustee shall have authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the Court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a

commission arrangement contingent on divestiture through the trustee.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

8. Within thirty (30) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the Court, respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the Court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain HCA Aiken Regional Medical Centers.

12. The trustee shall report in writing to respondents and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, no respondent shall, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

- A. Acquire any acute care hospital in Augusta-Aiken; or
- B. Permit any acute care hospital it operates in Augusta-Aiken to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in Augusta-Aiken.

Provided, however, that no acquisition shall be subject to this paragraph IV of this order if the fair market value of (or, in case of a

purchase acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000).

V.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondents shall not permit all or any substantial part of any acute care hospital they operate in Augusta-Aiken to be acquired by any other person (except pursuant to the divestiture required by paragraph II of this order) unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondents shall require as a condition precedent to the acquisition.

VI.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondents made at their principal offices, respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in respondents' possession or control relating to any matter contained in this order; and

B. Upon five days' notice to respondents and without restraint or interference from respondents, to interview their officers or employees, who may have counsel present, regarding such matters.

VII.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully satisfied the divestiture obligations of this order, respondents shall

submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestiture.

B. Annually, beginning on the first anniversary of the date this order becomes final, and continuing for nine (9) years thereafter, respondents shall submit a verified report demonstrating the manner in which they have complied and are complying with this order.

VIII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries or affiliates, or any other change in respondents which may affect compliance obligations arising out of this order.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and among Columbia Healthcare Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky, and HCA-Hospital Corporation of America, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee (collectively and individually referred to as "respondents"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the

Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the “Parties”).

Whereas, on or about October 2, 1993, Columbia Healthcare Corporation entered into an agreement to acquire all of the voting stock of HCA-Hospital Corporation of America (hereinafter the “Acquisition”); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order (“consent order”), which would require divestiture of HCA Aiken Regional Medical Center (“ARMC”) in Aiken, South Carolina, the Commission must place the consent order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission’s Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the assets and businesses of ARMC during the period prior to the issuance of the consent order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission’s ability to require the divestiture of ARMC as described in paragraph II of the consent order, and the Commission’s right to seek to restore ARMC as a viable independent acute care hospital; and

Whereas, the purpose of this Agreement and the consent order is to:

- (i) Preserve ARMC as a viable independent acute care hospital pending its divestiture, and
- (ii) Remedy any anticompetitive effects of the Acquisition; and

Whereas, respondents’ entering into this Agreement shall in no way be construed as an admission by respondents that the Acquisition is illegal; and

Whereas, respondents understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt

from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the consent order, it will not seek further relief from respondents with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the consent order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to seek divestiture of ARMC as held separate pursuant to this Agreement, as follows:

1. Respondents agree to execute and be bound by the attached consent order.

2. Respondents agree that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a - 2.c, they will comply with the provisions of paragraph 3 of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the consent order, unless by that date the Commission has issued such order; or

c. The day after the divestiture required by the consent order has been completed.

3. Respondents will hold the assets and businesses of ARMC as they are presently constituted separate and apart on the following terms and conditions:

a. ARMC, as it is presently constituted, shall be held separate and apart and shall be operated independent of respondents (meaning here and hereinafter, respondents excluding ARMC) except to the extent that respondents must exercise direction and control over ARMC to assure compliance with this Agreement.

b. Respondents shall not exercise direction or control over, or influence directly or indirectly, ARMC or any of its operations or

businesses; provided, however, that respondents may exercise only such direction and control over ARMC as is necessary to assure compliance with this Agreement.

c. Respondents shall maintain the viability and marketability of ARMC and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair its marketability or viability.

d. Except for the single respondent director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined in subparagraph 3.h), respondents shall not permit any director, officer, employee, or agent of respondents to also be a director, officer or employee of ARMC.

e. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, respondents shall not receive or have access to, or use or continue to use, any "material confidential information" of ARMC not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to respondents from sources other than ARMC, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

f. Respondents shall not change the composition of the management of ARMC except that the directors or members serving on the New Board or Management Committee of ARMC (as defined in subparagraph 3.h) shall have the power to remove employees for cause.

g. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a-3.f hereof, shall be subject to a majority vote of the New Board or Management Committee (as defined in subparagraph 3.h).

h. Respondents shall either separately incorporate ARMC and adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement or establish separate business ventures with articles of agreement covering the conduct of ARMC in accordance with this Agreement. Respondents shall also elect a new three person board of directors ("New Board")

or Management Committee (“Management Committee”) of ARMC. Respondents may elect the directors to the New Board or select the members of the Management Committee; provided, however, that such New Board or Management Committee shall include no more than one respondent director, officer, employee, or agent. Except as permitted by this Agreement, the director of the New Board or member of the Management Committee who is also a respondent director, officer, employee or agent, shall not receive in his or her capacity as a New Board director or Management Committee member material confidential information and shall not disclose any such information received under this Agreement to respondents or use it to obtain any advantage for respondents. Said director of the New Board or member of the Management Committee who is also a respondent director, officer, employee or agent, shall enter a confidentiality agreement prohibiting disclosure of material confidential information (as that term is defined in subparagraph 3.e.). Such New Board director or Management Committee member shall participate in matters which come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transaction exceeding \$1,000,000 and carrying out respondents’ responsibility to assure that ARMC is maintained in such manner as will permit its divestiture as an ongoing, viable acute care hospital. Except as permitted by this Agreement, such New Board director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters, that would involve a conflict of interest if respondents and ARMC were separate and independent entities. Meetings of the New Board or Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

i. All earnings and profits of ARMC shall be retained separately in ARMC if necessary, respondents shall provide ARMC with sufficient working capital to operate at its current rate of operation, and to carry out any capital improvement plans for ARMC which have already been approved.

j. Should the Federal Trade Commission seek in any proceeding to compel respondents (meaning here and hereinafter respondents including ARMC) to divest ARMC, or to seek any other injunctive

or equitable relief, respondents shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondents also waive all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondents made to their principal offices, respondents shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of respondents and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondents relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondents, and without restraint or interference from respondents, to interview officers or employees of respondents, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

Having reason to believe that the Columbia Healthcare Corporation's acquisition of HCA-Hospital Corporation of America may substantially lessen competition in the Augusta, Georgia-Aiken, South Carolina market, I concur in the decision to require divestiture of the Aiken Regional Medical Center. I dissent from the decision not to challenge the transaction with respect to the Chattanooga, Tennessee market.

In Chattanooga, the merger will combine HCA's Parkridge Medical Center and Columbia's East Ridge Hospital in an already highly concentrated market. In 1985, after a full administrative hearing, the Commission ordered HCA to divest certain assets, including North Park Hospital, which has considerable similarity to

East Ridge. *Hospital Corporation of America*, 106 FTC 361, *aff'd*, 807 F.2d 1381 (7th Cir. 1986). Although some characteristics of the Chattanooga hospital market may have changed since 1985, I am not persuaded that the competitive situation is so fundamentally different to justify abandonment of the Commission's earlier position.

DISSENTING STATEMENT OF COMMISSIONER DEBORAH K. OWEN

"Please listen to us.... We are the ones who live here."

Thus pled one of over 100 intensely interested residents of South Carolina who commented unfavorably on the Commission's proposal to require the sale of the Aiken Regional Medical Centers ("Aiken RMC"). Despite this outpouring of protest, the Commission has declined to reconsider its stance. I dissent from this decision for two reasons. First, and principally, I do not find reason to believe that, after the merger, anticompetitive effects are likely in the Augusta/Aiken geographic market. Second, the application of the DOJ/FTC hospital merger "safety zone" in another market affected by this merger creates, at the very least, an appearance of inconsistency in our enforcement, and perhaps has even permitted the consummation of an anticompetitive merger to monopoly.

Divestiture

Having read all of the comments submitted to the Commission, I believe that they provide ample support for the projection that anticompetitive effects stemming from common ownership of Augusta Regional Medical Center ("Augusta Regional") and Aiken RMC are unlikely. While the hospitals clearly have competitors in common, they are 25-30 miles apart. Several comments noted that a patient would pass several much larger hospitals, with more services, in driving from Aiken RMC to Augusta Regional.¹ Such travel is "inconvenient at best and impractical under many situations."² An Aiken doctor observed that he could "count

¹ See, e.g., Letter from Philip J. Lord, reporter, Aiken Standard (undated)("going to Augusta Regional Medical Centers for care is plain dumb.... [Y]ou would pass several, much larger hospitals that offer more services and larger staffs. Passing these ... to get to another community hospital, like Aiken Regional, doesn't make sense."); Letter from Wade M. Brodie, Director, Aiken County National Bank (3/21/94).

² Letter from John A. Paulus, President, Kalamazoo County Hospital, Kalamazoo, Michigan (undated).

comfortably on one hand” the number of his patients who have gone to Augusta Regional in 17 years.³ One comment noted that few, if any, physicians have privileges at both hospitals.⁴ An Aiken family summed it up: “We... have never even seen August [sic] Regional Medical Center.... [W]e do not know anyone who has used Augusta Regional.”⁵

Not only is there little direct competition between the hospitals, but members of the community foresee competitive benefits from combining these two complementary facilities. Many comments voiced the opinion that common ownership of the two modestly sized hospitals, operating at opposite ends of the geographic market, would provide enhanced competition for the much larger University Hospital.⁶ Others noted that managed care providers and local employers would enjoy the efficiency of being able to deal with both hospitals through a single contract.⁷ The Governor of the State of South Carolina argued that joint ownership of the two hospitals would obviate the need for two open heart programs, where one would do, at considerable cost savings.⁸

Finally, I note that the Commission’s action has already had its costs. It has caused “unnecessary anxiety,” according to one letter.⁹ Several comments, including one lengthy, painstakingly handwritten letter, complained that the Commission’s decision has severely disrupted the recruitment and retention of both medical and non-medical staff, and particularly physicians.¹⁰ Perhaps some will merely shrug this off, but I believe that action such as the Commission takes today fosters unnecessary, and otherwise avoidable, resentment toward the federal government in the soul of America that lies outside our Beltway. Three letters to the commission illustrate. An Aiken resident comments: “[T]his is an

³ Letter from Jack L. Ratliff, M.D. (4/21/94).

⁴ Letter from Ronald Paolini, D.O. (2/17/94).

⁵ Letter from Marilyn G. Swanson and J. Lars Swanson (4/16/94).

⁶ See, e.g., Letter from Victoria M. Stoepler, M.D. and Victoria C. Mosteller, M.D. (2/21/94).

⁷ See, e.g., Letter from Georganne Franklin, Employment Coordinator, Aiken Regional Medical Centers (4/13/94).

⁸ Letter from The Honorable Carroll A. Campbell, Jr. (3/3/94).

⁹ Letter from Deidre Collins (4/27/94).

¹⁰ See, e.g., Letter from George A. Poda, M.D. (2/9/94).

excellent example of the kind of 'help' we do not need from Washington with medical care."¹¹ Another citizen of South Carolina writes: "It is this type of governmental decision-making that so angers and baffles the public."¹² One commentator in particular reflects the local dissatisfaction with what is apparently perceived as unnecessary intrusion by the federal government. His message to the FTC: "Get out of my face."¹³

Merger to Monopoly

While I continue to believe that the Columbia/HCA merger does not pose a competitive problem in the Augusta/Aiken area, I cannot, however, conclude with reasonable confidence that the merger has no anticompetitive effects in any hospital market across the country. There is evidence (although incomplete) that in one market, the consolidation of the Columbia and HCA hospitals may create a monopoly that could injure consumers.

In that market, one of the hospitals satisfies the statistical criteria for the hospital merger "safety zone" as set forth in the Statements of Enforcement Policy in the Health Care Area, adopted in September 1993 by the Department of Justice and the Federal Trade Commission (over my dissent).¹⁴ Based on its size alone, the acquisition of this hospital has been declared by the federal enforcement agencies to be immune from antitrust review.¹⁵

¹¹ Letter from Jay D. Bilyeu (undated).

¹² Letter from Sandra F. Hobbs (4/27/94).

¹³ Letter from George P. Fitzgerald (3/20/94).

¹⁴ Department of Justice and Federal Trade Commission Antitrust Enforcement Policy Statements in the Health Care Area, 4 Trade Reg. Rep. (CCH) paragraph 13,150; Dissenting Statement of Commissioner Deborah K. Owen on DOJ/FTC Antitrust Enforcement Policy Statements in the Health Care Area (September 14, 1993).

¹⁵ Department of Justice and Federal Trade Commission Antitrust Enforcement Policy Statements in the Health Care Area, 4 Trade Reg. Rep. (CCH) paragraph 13,150 at 20,757:

The Agencies will not challenge any merger between two general acute-care hospitals where one of the hospitals (1) has an average of fewer than 100 licensed beds over the three most recent years, and (2) has an average daily inpatient census of fewer than 40 patients over the three most recent years, absent extraordinary circumstances. This antitrust safety zone will not apply if that hospital is less than 5 years old.

It is not clear what constitutes "extraordinary circumstances" within the contemplation of the Policy Statement. The Commission's action in this matter may, however, be viewed as implicit support for the proposition that a merger to monopoly does not qualify as an "extraordinary circumstance."

This is not to suggest that the Commission is indifferent to the monopolization of all hospital markets. In January of this year, the Commission voted unanimously to authorize staff to file a preliminary injunction to prevent the merger to monopoly of the only two acute care hospitals in Pueblo, Colorado.¹⁶ In Pueblo, the requirements of the hospital merger “safety zone” were not satisfied, so a full investigation and analysis of the likely competitive effects of the merger were undertaken, in accordance with the 1992 Horizontal Merger Guidelines.¹⁷ In such a traditional analysis, the Commission considers whether the merging hospitals are economically viable, whether significant efficiencies may be achieved by combining the hospitals, whether these efficiencies are merger-specific, and whether cost savings are likely to be passed on to consumers in the form of lower prices or higher quality. Most critically, the Commission also evaluates whether the anticipated efficiency benefits outweigh the substantial anticompetitive risks associated with the creation of a monopoly. Under a Guidelines analysis, the Commission’s action in the Pueblo merger suggests a conclusion that the likely anticompetitive effects outweigh the possible efficiencies stemming from the merger.

The Commission did not, however, conduct a thorough investigation of the market in which the merger of Columbia and HCA may have created a monopoly. The Commission abandoned its traditional approach to merger analysis upon determining that the HCA hospital falls within the “antitrust safety zone.”¹⁸

¹⁶ Parkview Episcopal Medical Center, FTC File No. 931-0125.

¹⁷ U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, reprinted in 4 Trade Reg. Rep. (CCH) paragraph 13,104 (Apr. 2, 1992).

¹⁸ The Commission’s inconsistent application of the antitrust laws to hospital mergers has apparently not escaped public attention. See Letter from Clark D. Moore, M.D. (3/1/94) (“I note in the recent issue of *Modern Health Care*, that Columbia HCA was awarded a three hospital monopoly in the Florida Panhandle, and it simply amazes me that our hospital [Aiken RMC] has been ordered to be divested when monopolies such as this have been allowed to proceed unhindered. In the interests of fairness, I would think that the Federal Trade Commission should reconsider their order to divest our hospital.”); Letter from William R. Marshall, M.D. (3/15/94) (“Please explain the rationale for your approval of the Columbia Health Care merger with Hospital Corporation of America particularly as it applies to Northwest Florida where our medical community has no other alternative for hospital services. This hospital monopoly encompasses Ft. Walton Beach, Niceville and Destin metropolitan areas affecting the lives of 200,000 people.”); Letter from Richard A. Philipp (undated) (inquiring why mergers were allowed in Florida and elsewhere “that created a higher market share of beds” than in Augusta/Aiken).

In sum, the Antitrust Enforcement Policy Statements in the Health Care Area may have claimed their first casualty. Perhaps a full investigation would have demonstrated that the merger, though creating a monopoly, posed no anticompetitive problem. But we will never know at the level of confidence that consumers have a right to expect of us. For this reason, and for the reasons voiced by the anguished health care consumers in Aiken, South Carolina, I dissent.

IN THE MATTER OF
LEPAGE'S, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3506. Complaint, July 19, 1994--Decision, July 19, 1994

This consent order prohibits, among other things, the Pennsylvania manufacturers of adhesive tapes from misrepresenting that any product or package is capable of being recycled, or the extent to which recycling collection programs are available for such products, and from making unsubstantiated claims that its products or packages are degradable, biodegradable or photodegradable, or that their degradability offers any environmental benefit when disposed of as trash in a sanitary landfill.

Appearances

For the Commission: *Michael Dershowitz, Kevin Bank and C. Lee Peeler.*

For the respondents: *Nancy Bryson, Crowell & Moring, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that LePage's, Inc., a corporation, and LP Holdings, Inc., a corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent LePage's, Inc. ("LePage's"), is a Pennsylvania corporation. Respondent LP Holdings, Inc. is a Delaware corporation. It dominated and controlled the acts and practices of its then wholly-owned subsidiary, LePage's, Inc. Respondents have their principal offices or places of business at 120 Delta Drive, Pittsburgh, Pennsylvania.

PAR. 2. Respondents have advertised, labeled, offered for sale, sold, and distributed adhesive tapes, including LePage's Biodegradable Transparent Tape, and other products to the public.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. LePage's Biodegradable Transparent Tape is a cellophane tape made from wood pulp and adhesive material. The retail tape product is sold with a hard clear non-foam polystyrene plastic dispenser. The dispenser does not identify the type(s) of plastic resin from which it is made. The tape and dispenser are attached to a non-corrugated paperboard or cardboard backcard.

PAR. 5. Respondents have disseminated or have caused to be disseminated advertisements, including product labeling, and other promotional materials, for LePage's Biodegradable Transparent Tape, including but not necessarily limited to the attached Exhibits A through C.

The aforesaid product labeling (Exhibit A) includes the following statement on the front:

NEW! BIODEGRADABLE TRANSPARENT TAPE

The aforesaid product labeling (Exhibit A) also includes the following statements on the back:

BIODEGRADABLE TRANSPARENT TAPE
DEGRADES RAPIDLY
ENVIRONMENTALLY SAFE

A subsequent version of the aforesaid product labeling (Exhibit B) includes the following statements on the front:

NEW! BIODEGRADABLE TRANSPARENT TAPE
... ON A RECYCLABLE DISPENSER

The aforesaid product labeling (Exhibit B) also includes the following statements on the back:

BIODEGRADABLE TRANSPARENT TAPE
DEGRADES RAPIDLY
ENVIRONMENTALLY SAFE
Recyclable Package

The aforesaid product labeling (Exhibit B) also includes the following depiction of a three chasing arrow symbol on both the front and back:



Another version of the aforesaid product labeling (Exhibit C) includes the following statements on the front:

NEW! BIODEGRADABLE TRANSPARENT TAPE
DISPENSER IS RECYCLABLE IN COMMUNITIES WHICH HAVE P.S.
RECYCLING FACILITIES

The aforesaid product labeling (Exhibit C) also includes the following statement on the back:

BIODEGRADABLE TRANSPARENT TAPE

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertising and labeling attached as Exhibits A through C, respondents have represented, directly or by implication, that:

A. LePage's Biodegradable Transparent Tape will completely break down and return to nature -- *i.e.*, decompose into elements found in nature -- within a reasonably short period of time after customary disposal;

B. Compared to other transparent tape, LePage's Biodegradable Transparent Tape offers a significant environmental benefit after customary disposal.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph six, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph six, respondents did not possess

and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertising and labeling attached as Exhibits B and C, respondents have represented, directly or by implication, that their plastic tape dispenser is recyclable.

PAR. 10. In truth and in fact, while the plastic tape dispenser is capable of being recycled, the vast majority of consumers cannot recycle it because there are only a few collection facilities nationwide that will accept the non-foam polystyrene dispenser for recycling. Therefore, the representation set forth in paragraph nine was, and is, false and misleading.

PAR. 11. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertising and labeling attached as Exhibit B, respondents have represented, directly or by implication, that their paperboard backcard is recyclable.

PAR. 12. In truth and in fact, while the paperboard backcard is capable of being recycled, the vast majority of consumers cannot recycle it because there are only a few collection facilities nationwide that will accept the non-corrugated paperboard or cardboard backcard for recycling. Therefore, the representation set forth in paragraph eleven was, and is, false and misleading.

PAR. 13. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertising and labeling attached as Exhibits B and C, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs nine and eleven, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 14. In truth and in fact, at the time they made the representations set forth in paragraphs nine and eleven, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph thirteen was, and is, false and misleading.

PAR. 15. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

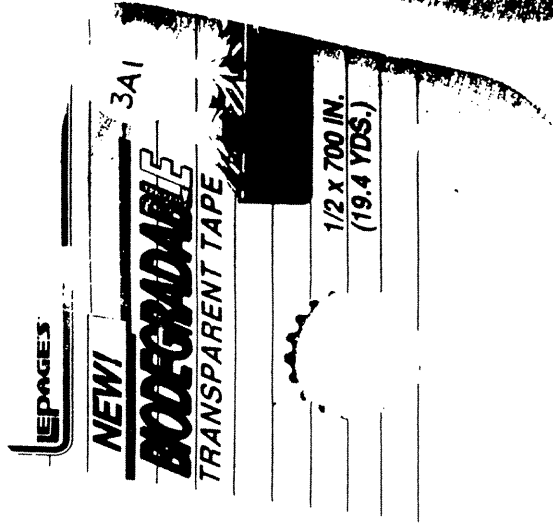


Exhibit A

EXHIBIT B

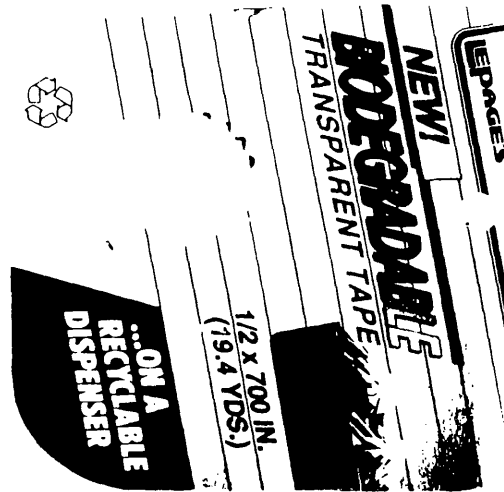


Exhibit B

EXHIBIT C

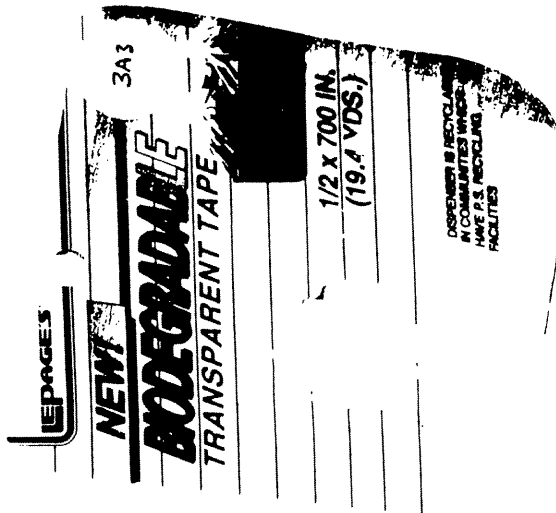


Exhibit C

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent LePage's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 120 Delta Drive, in the City of Pittsburgh, State of Pennsylvania.

Respondent LP Holdings, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 120 Delta Drive, in the City of Pittsburgh, State of Pennsylvania. It

dominates and controls the acts and practices of its wholly-owned subsidiary, LePage's, Inc.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

The term "*product or package*" means any product or package that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under the LePage's brand name or any other brand name of respondents, their successors and assigns; and also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

"*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

It is ordered, That respondents, LePage's, Inc., a corporation, and LP Holdings, Inc., a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade

Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication:

(1) That any such product or package is degradable, biodegradable, or photodegradable; or,

(2) Through the use of such terms as degradable, biodegradable, or photodegradable or any other similar term or expression, that any such product or package offers any environmental benefits when consumers dispose of it as trash that is buried in a sanitary landfill,

unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

II.

A. *It is further ordered*, That respondents, LePage's, Inc., a corporation, and LP Holdings, Inc., a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

(1) Any such product or package is capable of being recycled; or,

(2) Recycling collection programs for such product or package are available.

B. Provided, however, respondents will not be in violation of Part II(A)(2) of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any non-foam polystyrene or any non-corrugated paperboard or cardboard product

or package, if they truthfully represent that such product or package is recyclable, provided that:

(1) Respondents disclose clearly, prominently, and in close proximity to such representation:

(a) In regard to any non-foam polystyrene product or package, that such product or package is recyclable in the few communities with recycling collection programs for non-foam polystyrene; and in regard to any non-corrugated paperboard or cardboard product or package, that such product or package is recyclable in the few communities with recycling collection programs for non-corrugated paperboard or cardboard; or

(b) The approximate number of U.S. communities with recycling collection programs for such product or package; or

(c) The approximate percentage of U.S. communities or the U.S. population to which recycling collection programs for such product or package are available; and

(2) In addition, in the case of a non-foam polystyrene product or package, such product or package itself bears a clear identification of the specific plastic resin(s) from which it is made.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears.

III.

It is further ordered, That respondents, LePage's, Inc., a corporation, and LP Holdings, Inc, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product or package offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

IV.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

It is further ordered, That respondents shall distribute a copy of this order to each of their operating divisions and to each of their

officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

VI.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporations such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations under this order.

VII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

OAK HILL INDUSTRIES CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3507. Complaint, July 19, 1994--Decision, July 19, 1994

This consent order prohibits, among other things, a New York manufacturer, of plastic plates, bowls and utensils, and its officer from misrepresenting that any product or package is capable of being recycled, or the extent to which recycling collection programs are available for such products, and from making any unsubstantiated representation that any product or package it markets offers any environmental benefit.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *Nancy Cascella, Hahn & Hessen, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Oak Hill Industries Corp., a corporation, and Malcolm Foster, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Oak Hill Industries Corp. ("Oak Hill"), is a New York corporation with its principal office or place of business at 330 East 59th Street, New York, NY.

Respondent Malcolm Foster is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

PAR. 2. Respondents have advertised, labeled, offered for sale, sold, and distributed Oak Hill brand plastic plates, bowls and utensils, and other products to the public.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Oak Hill brand plastic plates, bowls and utensils are made from non-foam polystyrene and are packaged in thin plastic packaging which is sometimes made from polypropylene film and at other times from low-density polyethylene film. The plastic plates, bowls, utensils and plastic packaging do not identify the type(s) of plastic resin from which they are made.

PAR. 5. Respondents have disseminated or have caused to be disseminated advertisements, including product labeling, for their Oak Hill brand plastic plates, bowls and utensils, including but not necessarily limited to the attached Exhibits A - C.

The aforesaid product labeling for Oak Hill brand plastic plates and bowls (Exhibits A - B) includes the following statement on the front of the plastic film packaging:

recyclable

The aforesaid product labeling (Exhibits A - B) also includes the following depiction of a three chasing arrow symbol on the front of the plastic film packaging:



The aforesaid product labeling for Oak Hill brand plastic utensils (Exhibit C) includes the following statement on the front of the plastic film packaging:

RECYCLABLE

The aforesaid product labeling (Exhibit C) also includes the following depiction of a three chasing arrow symbol on the front of the plastic film packaging:



PAR. 6. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A - C, respondents have represented, directly or by implication, that Oak Hill brand plastic plates, bowls and utensils are recyclable.

PAR. 7. In truth and in fact, while Oak Hill brand plastic plates, bowls and utensils are capable of being recycled, the vast majority of consumers cannot recycle them because there are only a few collection facilities nationwide that will accept the non-foam polystyrene plates, bowls or utensils for recycling. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A - C, respondents have represented, directly or by implication, that the plastic film packaging of Oak Hill brand plastic plates, bowls and utensils is recyclable.

PAR. 9. In truth and in fact, while the plastic film packaging of Oak Hill brand plastic plates, bowls and utensils is capable of being recycled, the vast majority of consumers cannot recycle it because there are only a few collection facilities nationwide that will accept the polypropylene film or low-density polyethylene film plastic packaging for recycling. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A - C, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs six and eight, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 11. In truth and in fact, at the time they made the representations set forth in paragraphs six and eight, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

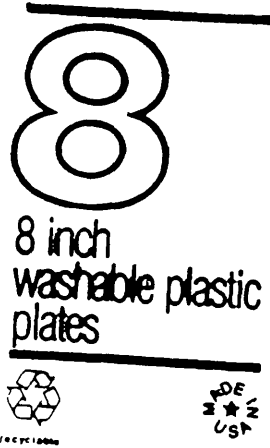
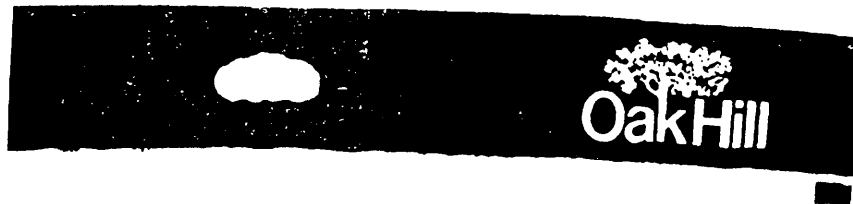


Exhibit A

EXHIBIT B

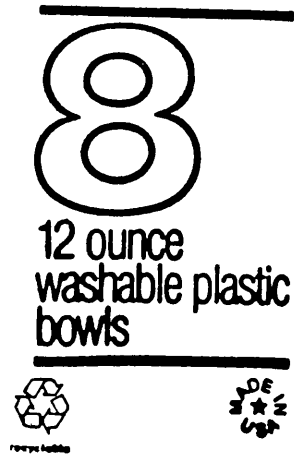


Exhibit B

EXHIBIT C



50

Washable plastic
tableware



Exhibit C

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Oak Hill Industries Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 330 East 59th Street, in the City of New York, State of New York.

Respondent Malcolm Foster is an officer of said corporation. He formulates, directs, and controls the acts and practices of said corporation. His address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

The term “*product or package*” means any product or package that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under the Oak Hill brand name or any other brand name of respondents, their successors and assigns; and also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

“*Competent and reliable scientific evidence*” shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

A. *It is ordered*, That respondents, Oak Hill Industries Corp., a corporation, its successors and assigns, and its officers, and Malcolm Foster, individually and as an officer of said corporation, and respondents’ agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

- (1) Any such product or package is capable of being recycled; or,
- (2) Recycling collection programs for such product or package are available.

B. Provided, however, respondents will not be in violation of Part I(A)(2) of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any non-foam polystyrene,

polypropylene film, or low-density polyethylene film product or package, if they truthfully represent that such product or package is recyclable, provided that:

(1) Respondents disclose clearly, prominently, and in close proximity to such representation:

(a) In regard to any non-foam polystyrene product or package, that such product or package is recyclable in the few communities with recycling collection programs for non-foam polystyrene; in regard to any polypropylene film product or package, that such product or package is recyclable in the few communities with recycling collection programs for polypropylene film; and in regard to any low-density polyethylene film product or package, that such product or package is recyclable in the few communities with recycling collection programs for low-density polyethylene film; or

(b) The approximate number of U.S. communities with recycling collection programs for such product or package; or

(c) The approximate percentage of U.S. communities or the U.S. population to which recycling collection programs for such product or package are available; and

(2) In addition, such product or package itself bears a clear identification of the specific plastic resin(s) from which it is made.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears.

II.

It is further ordered, That respondents, Oak Hill Industries Corp., a corporation, its successors and assigns, and its officers, and Malcolm Foster, individually and as an officer of said corporation,

and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product or package offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV.

It is further ordered, That the corporate respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

V.

It is further ordered, That the individual respondent shall notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution, and/or manufacturing of any plastic product or package or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale, distribution, and/or manufacturing of any plastic product or package. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this order.

VII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

AJM PACKAGING CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3508. Complaint, July 19, 1994--Decision, July 19, 1994

This consent order prohibits, among other things, a Michigan seller of disposable paper plates and its president from representing that any product it sells offers any environmental benefit unless it can substantiate the claim, or from misrepresenting that any paper product or package is capable of being recycled, or the extent to which recycling collection programs for it is available.

Appearances

For the Commission: *Mary Koelbel Engle and Dean C. Forbes.*
For the respondents: *Jeffrey G. Heuer, Jaffe, Raitt, Heuer & Weiss, Detroit, MI.*

COMPLAINT

The Federal Trade Commission, having reason to believe that AJM Packaging Corporation, a corporation, and Abram Epstein, individually and as officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent AJM Packaging Corporation is a Michigan corporation with its office and principal place of business located at 6910 Dix Avenue, Detroit, Michigan.

Respondent Abram Epstein is president of the corporate respondent named herein. He formulates, directs, and controls the acts and practices of the corporate respondent. His business address is the same as that of the corporation.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents have advertised, offered for sale, sold, and distributed paper plates to the public under such trade names as Nature's Own Green Label.

PAR. 3. The acts or practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements for Nature's Own Green Label paper plates, including, but not necessarily limited to, package labeling attached as Exhibit A. These advertisements contain the following statement:

MADE FROM 100% RECYCLABLE AND BIODEGRADABLE PAPER

PAR. 5. Through the use of the statement contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that respondents' paper plates are recyclable after ordinary use.

PAR. 6. In truth and in fact, while respondents' paper plates are capable of being recycled, the vast majority of consumers cannot recycle them because there are virtually no collection facilities that accept used paper plates for recycling. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statement contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that:

1. Respondents' paper plates will completely break down and return to nature -- *i.e.*, decompose into elements found in nature -- within a reasonably short period of time after customary disposal;

2. Respondents' paper plates offer a significant environmental benefit after customary disposal.

PAR. 8. Through the use of the statement contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs five and

seven, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 9. In truth and in fact, at the time they made the representations set forth in paragraphs five and seven, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

EXHIBIT A



DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than the jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent AJM Packaging Corporation is a Michigan corporation with its office and principal place of business at 6910 Dix Avenue, Detroit, Michigan. Respondent Abram Epstein is the president of said corporation. He formulates, directs, and controls the acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITION

For purposes of this order, the following definition shall apply:

“*Product or package*” means any product or package, including but not limited to bags and plates, that is offered for sale, sold, or distributed to the public by respondents, their successors and assigns, under the “Nature’s Own Green Label” brand name or any other brand name of respondents, their successors and assigns; and also means any such product or package sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

I.

It is ordered, That respondents AJM Packaging Corporation, a corporation, its successors and assigns, and its officers, and Abram Epstein, individually and as officer of said corporation, and respondents, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication:

(1) That any such product or package is degradable, biodegradable, or photodegradable; or,

(2) Through the use of such terms as degradable, biodegradable, photodegradable, or any other substantially similar term or expression, that the degradability of any such product or package offers any environmental benefit when disposed of as trash that is ordinarily buried in a sanitary landfill,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, competent and reliable scientific evidence shall mean tests, analyses,

research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondents AJM Packaging Corporation, a corporation, its successors and assigns, and its officers, and Abram Epstein, individually and as officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any paper product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which any such paper product or package is capable of being recycled or the extent to which recycling collection programs for such product or package are available.

III.

It is further ordered, That respondents AJM Packaging Corporation, a corporation, its successors and assigns, and its officers, and Abram Epstein, individually and as officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product or package offers any environmental benefit, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

IV.

It is further ordered, That respondents may continue to deplete their existing inventory of "Penthouse" brand paper plates product packaging in the normal course of business without violating this order until October 31, 1993.

V.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation or the basis relied upon for such representation, including complaints from consumers.

VI.

It is further ordered, That respondent AJM Packaging Corporation shall distribute a copy of this order within sixty (60) days after service of this order upon it to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling and advertising and placement of newspaper, periodical, broadcast, and cable advertisements covered by this order.

VII.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the service date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment

whose activities relate to the manufacture, sale, or distribution of paper products, or of his affiliation with a new business or employment in which his own duties and responsibilities relate to the manufacture, sale, or distribution of paper products. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VIII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this order.

IX.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

MIA ROSE PRODUCTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3509. Complaint, July 19, 1994--Decision, July 19, 1994

This consent order prohibits, among other things, a California-based corporation and its officer from making any representation about the efficacy or performance of any air cleaning, air freshening, or insecticidal product, unless the respondents possess and rely upon competent and reliable scientific evidence to substantiate the representation.

Appearances

For the Commission: *Linda K. Badger* and *Jeffrey Klurfeld*.

For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Mia Rose Products, Inc., a corporation, and Mia Palencar, individually and as an officer of said corporation (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Mia Rose Products, Inc. is a California corporation, with its principal office or place of business at 3555-B Harbor Gateway South, Costa Mesa, California.

Respondent Mia Palencar is an officer of the corporate respondent. Individually or in concert with others, she formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. Her principal office or place of business is the same as that of the corporate respondent.

PAR. 2. Respondents have advertised, labeled, offered for sale, sold, and distributed non-aerosol air freshening sprays, including Air Therapy and Pet Air, and other products to consumers. Air Therapy and Pet Air contain the same active ingredient, “d-limonene,” which

is produced by distilling the essential oils from citrus fruit or certain other plants.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Air Therapy, including but not necessarily limited to the attached Exhibits A-C. These advertisements and promotional materials contain the following statements:

A. Air Therapy "PURIFIES ... FRESHENS ... PROTECTS ... the air you breathe." (Exhibit A).

B. "AIR THERAPY 100% NATURAL AIR PURIFYING MIST." (Exhibit A).

C. "SAFELY ELIMINATES: Odors, Smoke, Pollen, Household Insects. PERFECT FOR: Home, Office, Fans, Filters, Ventilation Systems." (Exhibit A).

D. "CONCENTRATED - ONE SPRAY DOES IT!" (Exhibit A).

E. "PURIFY your air while you freshen it... 100% Natural Ingredients - 100% Effective." (Exhibit B).

F. "ELIMINATE ODORS, SMOKE, ALLERGY-CAUSING POLLEN, AIRBORNE BACTERIA, cleansing the air while still maintaining natural pureness. CIGARETTE AND CIGAR SMOKE is eliminated instantly as each droplet ATTRACTS AND ABSORBS SMOKE when misted HIGH in the air." (Exhibit B).

G. "Air Therapy remains simple with no unnecessary artificial ingredients or additives that actually harm the mucous membranes and only temporarily mask the existing odors." (Exhibit B).

H. "Highly CONCENTRATED ... GUARANTEED--NON-TOXIC--Long Lasting. 100 TIMES STRONGER than conventional products. One spray does it!" (Exhibit B).

I. "More than an air freshener." (Exhibit C).

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-C, respondents have represented, directly or by implication, that Air Therapy:

A. Is effective in cleaning or purifying indoor air.

B. Is more effective in cleaning or purifying indoor air than conventional air cleaning products.

C. Eliminates smoke when sprayed in the air.

D. Eliminates pollen when sprayed in the air.

- E. Eliminates airborne bacteria when sprayed in the air.
- F. Eliminates household insects when sprayed in the air.
- G. Eliminates, rather than masks, odors when sprayed in the air.

PAR. 6. In truth and in fact:

- A. Air Therapy is not effective in cleaning or purifying indoor air.
- B. Air Therapy is not more effective in cleaning or purifying indoor air than conventional air cleaning products.
- C. Spraying Air Therapy into the air does not eliminate smoke.
- D. Spraying Air Therapy into the air does not eliminate pollen.
- E. Spraying Air Therapy into the air does not eliminate airborne bacteria.
- F. Spraying Air Therapy into the air does not eliminate household insects.
- G. Spraying Air Therapy into the air masks, rather than eliminates, odors.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Pet Air, including but not necessarily limited to the attached Exhibit D. These advertisements and promotional materials contain the following statements:

- A. "PET AIR PURIFIES ... FRESHENS ... PROTECTS ... the air you share." (Exhibit D).
- B. "PET AIR is a SAFE, 100% extremely effective method of CLEANING THE AIR, purifying while it protects you and your pets, environment." (Exhibit D).
- C. "ELIMINATE ANIMAL ODORS & SMOKE, ODOR-CAUSING-airborne bacteria, cleansing the air while still maintaining natural pureness." (Exhibit D).
- D. "Each droplet contains millions of active electrical charges (ions), nature's own air cleaners, that ATTRACT AND NEUTRALIZE offensive odors and continually cleanse the air of odor-causing bacteria, allergy-causing pollen, pet dander and harmful microscopic pollutants." (Exhibit D).
- E. "PET AIR remains simple with no unnecessary artificial ingredients or additives that actually harm the mucus membranes and only temporarily mask the existing odors." (Exhibit D).

F. "ONE SPRAY DOES IT! ADVANTAGES: Highly CONCENTRATED ... GUARANTEED--NON-TOXIC ... Long Lasting. 100 TIMES STRONGER than conventional products." (Exhibit D).

PAR. 8. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph seven, including but not necessarily limited to the advertisements and promotional materials attached as Exhibit D, respondents have represented, directly or by implication, that Pet Air:

- A. Is effective in cleaning or purifying indoor air.
- B. Is more effective in cleaning or purifying indoor air than conventional air cleaning products.
- C. Eliminates smoke when sprayed in the air.
- D. Eliminates pollen when sprayed in the air.
- E. Eliminates airborne bacteria when sprayed in the air.
- F. Eliminates pet dander when sprayed in the air.
- G. Eliminates, rather than masks, odors when sprayed in the air.

PAR. 9. In truth and in fact:

- A. Pet Air is not effective in cleaning or purifying indoor air.
- B. Pet Air is not more effective in cleaning or purifying indoor air than conventional air cleaning products.
- C. Spraying Pet Air into the air does not eliminate smoke.
- D. Spraying Pet Air into the air does not eliminate pollen.
- E. Spraying Pet Air into the air does not eliminate airborne bacteria.
- F. Spraying Pet Air into the air does not eliminate pet dander.
- G. Spraying Pet Air into the air masks, rather than eliminates, odors.

Therefore, the representations set forth in paragraph eight were, and are, false and misleading.

PAR. 10. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraphs four and seven, including but not necessarily limited to the advertisements and promotional materials attached as Exhibit A-D, respondents have represented, directly or by implication, that Air Therapy and Pet Air are more effective than conventional air freshening products.

PAR. 11. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraphs four and seven, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-D, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs five, eight, and ten, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 12. In truth and in fact, at the time they made the representations set forth in paragraphs five, eight and ten, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eleven was, and is, false and misleading.

PAR. 13. The acts or practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

118 F.T.C.

EXHIBIT A

PURIFIES...

FRESHENS...

PROTECTS...
the air you breathe

AIR THERAPY.
100% NATURAL AIR PURIFYING MIST

Contains essential oils distilled from *real citrus*...nothing else!

| | | | |
|--------------|---------------------|---------------|-----------------------|
| SMOKE | HOUSEHOLD | OFFICE | VENTILATION |
| ● Odors | ● Pollen | ● Home | ● Furniture |
| ● Smoke | ● Household Insects | ● Office | ● Ventilation Systems |

CONCENTRATED. ONE SPRAY. DONE!

Available in 1 fl. oz., 5 fl. oz. & 16 fl. oz. Bottles

NON-ALCOHOL
CHEMICAL-FREE
RECYCLABLE

MIA ROSE®
PRODUCTS, Inc. 1-714-662-5465
1-800-292-6339

C-3509
B157619

EXHIBIT B



"Refresh Your Life"™

C-3509
B157619

PURIFY your air
while you freshen it

Chemical-Free Cruelty-Free

CONTENTS:

Pure essential oils distilled from real citrus
and exotic herbs, nothing else!

100% Natural Ingredients • 100% Effective

NON-AEROSOL

Use with confidence—NO FLUOROCARBONS

UNLIKE ANYTHING ON THE MARKET TODAY

(Read Your Labels)

OBJECTIVE IN PRODUCT DEVELOPMENT

To develop a superior product for today's environmental needs: One of the safest and most effective methods of cleansing the air in your personal environment. Thereby taking the place of commercial, chemical additive air fresheners and deodorizers.

ELIMINATE ODORS, SMOKE, ALLERGY-CAUSING POLLEN, AIRBORNE BACTERIA, cleansing the air while still maintaining natural pureness.

CIGARETTE AND CIGAR SMOKE is eliminated instantly as each droplet actively **ATTRACTS AND ABSORBS SMOKE** when misted **HIGH** in the air.

Air Therapy remains simple with no unnecessary artificial ingredients or additives that actually harm the mucous membranes and only temporarily mask the existing odors.

Air Therapy is also **Aroma Therapy** (healing energy from nature's scents) basically recharging your energy with ionized air.

HOW IT WORKS

Functions similarly to the ionizer machine. Each droplet contains millions of active electrical charges (ions), nature's own air cleansers, that **ATTRACT AND NEUTRALIZE** offensive odors.

MULTI-PURPOSE

- HOMES and AUTOMOBILES. SPRAY INTO CLOSETS, ashtrays, under seats. Spray directly into FANS, ventilation systems, air conditioning units.
- DOCTORS /DENTISTS OFFICE
- HOTELS/RESTAURANTS
- BOATS (pour into bilge and waste holding tanks).
- BEAUTY SALONS (perms and acrylic nail odors).
- GARAGES, CAMPERS, WORKROOMS (tar, kerosene and paint smells). Eliminates AFTER-FIRE ODORS, BURNED FOOD and FISH smells.
- Strong enough for KENNELS, CAGES and STABLES. Use after fumigation or flea bombing.
- SAFE for BABY'S NURSERY (diaper pail).

AIR THERAPY® PROVEN EFFECTIVE

MIX directly into CAT LITTER.

SPRAY directly on area where STUBBORN and SOUR odors persist or MILDEW STAINS or MUSTY odors are present, or POUR directly into urinals & garbage chutes. Use by itself or in conjunction with automatic plug-in type air purifiers—portable or permanent models. Lightly spray the filters that are contained within the machine or fill the attached cup.

"Essential oils from citrus fruit have been proven highly effective in eliminating household pests such as flies, ants, wasps, fleas and crickets through both direct contact and close exposure to the vapors. At the same time it is not only safe for humans, but smells good too."
—Science News, October 1983

ADVANTAGES

Highly CONCENTRATED ... GUARANTEED--

NON-TOXIC--Long Lasting. 100 TIMES STRONGER than conventional products. **One spray does it!**

- 1 fl. oz. POCKET SIZE--travel, auto.
- 5 fl. oz. CONVENIENT PERSONAL SIZE. (Recyclable Aluminum)--home, office, or countertop usage.
- 15 oz. ECONOMY SIZE. Easy mist top, safe CO₂ propellant
- 16 fl. oz. INDUSTRIAL SIZE for larger areas used with any trigger sprayer or to REFILL the stone cup in our wall-mount dispenser

Also Available:

- A unique WALL-MOUNT DISPENSER with stone filled cup and open-flow fan for continuous scent.

Mia Rose® Products Incorporated
Corporate Office (714) 662-5465
FAX (714) 662-5891
Order Desk 800-292-6339

EXHIBIT B

EXHIBIT C

Also Available in:

- Original Orange
- Extra Lime
- Spearmint

"Refresh Your Life"

100's natural purifying mists for the air you breathe...

POCKET SIZE
1.02, Non-Aerated
Box of 50 in full color display.

POCKET SIZE
1.1 OZ. Non-Aerated
Individually packaged on color display card. Hang on hook or nail on shelf.

PERSONAL SIZE
5.1 OZ. Non-Aerated
Bottle
Box of 12
Color display

INDUSTRIAL SIZE
16.8 OZ. Non-Aerated
Aerosol hand sprayer.
Easy to use.

Purifies Freshens Prevents
The air you breathe. **NATURALLY!**

AIR Therapy

The advertisement features a central image of a store display with various sizes of AIR Therapy mists. The products are arranged on shelves and hanging from a rack. The background is dark, making the white and light-colored packaging stand out. Text is overlaid on the image to describe the different product sizes and their packaging options. The AIR Therapy logo is prominently displayed in the bottom right corner, featuring a stylized 'A' and 'R' with a leaf and the word 'Therapy' below it.

C-3509
B157619
EXHIBIT C

EXHIBIT D

PET AIR

FOR PETS & THE PEOPLE
WHO LOVE THEM!



C-3509
B157619

**PURIFIES, FRESHENS & PROTECTS
THE AIR YOU SHARE...
...NATURALLY**

PET AIR is a **SAFE**, 100% extremely effective method of **CLEANING THE AIR**, purifying, while it protects you and your pets' environment. Experience the longlasting effect of **REAL**, natural citrus scents.

PET AIR contains **IONS** (active electrical charges) that are nature's own air cleaners. Ions **ATTRACT, NEUTRALIZE** and **ABSORB ALL** pet **ODORS** in seconds when misted **HIGH** in the air or directly on source of odor. Eliminates **SMOKE**, too.

Use **PET AIR** for household pests (fleas, flies, ants and crickets). The scent of real citrus keeps insects away from pet beds and carpets.

"Essential oils from citrus fruit have been proven highly effective in eliminating household pests such as flies, ants, wasps, fleas and crickets through both direct contact and close exposure to the vapors. At the same time it is not only safe for humans, but smells good too."
-Science News, October, 1983

CONTENTS

1 concentrated clear liquid derived from a perfect blend of organic essential oils. Our essential oils are pure concentrated oils distilled from **CITRUS FRUITS AND HERBS, NOTHING ELSE.**

OBJECTIVE IN PRODUCT DEVELOPMENT

To develop a superior product for today's pet owners' needs: **ELIMINATE ANIMAL ODORS & SMOKE, ODOR-CAUSING** airborne bacteria, cleansing the air while still maintaining natural freshness. **PET AIR** remains simple with no unnecessary, artificial ingredients or additives that actually harm mucus membranes and only temporarily mask the existing odors.

**UNLIKE ANYTHING ON THE MARKET
TODAY**

HOW IT WORKS

Functions similarly to the ionization machine. Each droplet contains millions of active electrical charges (ions), nature's own air cleaners, that **ATTRACT AND NEUTRALIZE** offensive odors and continually cleanse the air of odor-causing bacteria, allergy-causing pollen, pet dander and harmful microscopic pollutants.

CRUELTY FREE

NO HARMFUL CHEMICALS

MULTI-PURPOSE

- **KENNELS, CAGES and STABLES**, use after fleabombing and fumigation
- **DOG HOUSES — PET BEDDING**
- **Spray directly in CAT LITTER**
- **GARBAGE CHUTES and BINS**
- **CAMPERS, GARAGES, TENTS**
- **BOATS, MOTELS — anywhere you take your pet!**

ENVIRONMENTAL BENEFITS

The balance of **NATURAL INGREDIENTS** eliminates the need for chemical preservatives or additives of any kind. **PET AIR** is also **AROMA THERAPY** (healing energy from nature's scents) basically recharging you & your **PET'S ENERGY** with ionized air.

ONE SPRAY DOES IT!

ADVANTAGES

Highly **CONCENTRATED... GUARANTEED—NON-TOXIC—** will not harm you, your pet or our natural environment. Long Lasting. **100 TIMES STRONGER** than conventional products.



Mia Rose® Products Incorporated
Corporate Office (714) 662-5465
FAX (714) 662-5891
Order Desk 800-292-6339

EXHIBIT D

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Mia Rose Products, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3555-B Harbor Gateway South, in the City of Costa Mesa, State of California.

Respondent Mia Rose Palencar is an officer of said corporation. She formulates, directs, and controls the policies, acts and practices of said corporation, and her principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondents Mia Rose Products, Inc., a corporation, its successors and assigns, and its officers, and Mia Palencar, individually and as an officer of said corporation, and respondents, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Air Therapy, Pet Air or any substantially similar product in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

- A. Such product is effective in cleaning or purifying indoor air.
- B. Such product is more effective in cleaning or purifying indoor air than conventional air cleaning products.
- C. Spraying such product into the air eliminates smoke.
- D. Spraying such product into the air eliminates pollen.
- E. Spraying such product into the air eliminates airborne bacteria.
- F. Spraying such product into the air eliminates household insects.
- G. Spraying such product into the air eliminates pet dander.
- H. Spraying such product into the air eliminates rather than masks odors.

For the purposes of this order, “substantially similar product” shall mean any air cleaning or air freshening product which contains d-limonene as its sole active ingredient.

II.

It is further ordered, That respondents, Mia Rose Products, Inc., a corporation, its successors and assigns, and its officers, and Mia Palencar, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in

connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any air cleaning, air freshening, or insecticidal product in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the efficacy or performance of any such product, unless such representation is true, and at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this order, “competent and reliable scientific evidence” shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV.

It is further ordered, That the provisions of this order shall not apply to the printing on cans of Air Therapy or Pet Air which were manufactured prior to September 1, 1993, and shipped by respondents to distributors or retailers prior to four (4) months from the date of issuance of this order.

V.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution or subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

VI.

It is further ordered, That the individual respondent shall, for a period of five (5) years after the date of service of this order upon her, promptly notify the Commission, in writing, of her discontinuance of her present business or employment and of her affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VII.

It is further ordered, That the corporate respondent shall, within ten (10) days from the date of service of this order upon them, distribute a copy of this order to each of its officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or is in communication with customers or prospective customers, or who have any responsibilities with respect to the subject matter of this order; and for a period of five (5) years, from the date of issuance of this order, distribute a copy of this order to all of respondent's future such officers, agents, representatives, independent contractors, and employees.

VIII.

It is further ordered, That respondents shall, within sixty (60) days from the date of service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9189. Complaint,* Dec. 20, 1984--Decision, July 20, 1994*

This consent order prohibits, among other things, the association of motor vehicle dealers and a former officer, James Daniel Hayes, from entering into, continuing or carrying out any agreement to establish, fix or maintain any hours of operation of any dealer in the Detroit area. In addition, the consent order requires the respondent association to amend its bylaws to comply with the provisions of the order, and to place, in the city's two daily newspapers for four consecutive weeks, at least four advertisements a week stating that certain area dealers are required by the Commission order to maintain extended hours (at least 62 hours a week) for a one-year period and listing the dealers subject to the requirement.

Appearances

For the Commission: *Ernest A. Nagata and Mary Lou Steptoe.*

For the respondents: *Martin E. Crandall, Stringari, Fritz, Krager, Ahearn & Crandall, Detroit, MI. Howard E. O'Leary, Dykema, Gossett, Spencer, Goodnow & Trigg, Washington, D.C. Lawrence F. Ranieszski, Colombo & Colombo, Bloomfield Hill, MI. Christopher J. MacAvoy, Collier, Shannon & Scott, Washington, D.C. Fred L. Woodworth, Dykema, Gossett, Spencer, Goodnow & Trigg, Detroit, MI. Glenn A. Mitchell, Stein, Mitchell & Mezines, Washington, D.C. John F. Youngblood, Abbott, Nicholson, Quilter, Esshaki & Youngblood, Detroit, MI.*

DECISION AND ORDER

The Federal Trade Commission having issued its two count complaint charging the respondents named in the complaint issued in this matter on December 20, 1984, with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

* Complaint previously published at 108 FTC 193 (1986).

Respondents Detroit Auto Dealers Association, Inc. (“DADA”) and James Daniel Hayes, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order for Count I of the complaint, an admission by the identified respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in Count I of such complaint, and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn Count I of the of the complaint from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent DADA is an incorporated trade association for motor vehicle dealers with its principal place of business located at 1800 W. Big Beaver Rd., Troy, MI.
2. Respondent James Daniel Hayes was, at relevant times, an officer of DADA, and as such formulated, directed and controlled the acts and practices of DADA. James Daniel Hayes’ mailing address is 2845 Palmerston Rd., Troy, MI.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as it relates to Count I of the complaint and of the identified respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That for the purposes of this order, the following definitions shall apply:

1. “*Person*” means any natural person, corporation, partnership, association, joint venture, trust, or other organization or entity, but not governmental entities.

2. “*Dealer*” means any person who receives on consignment or purchases motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such person.

3. “*Dealer association*” means any trade, civic, service, or social association whose membership is composed primarily of dealers.

4. “*Detroit area*” means the Detroit, Michigan metropolitan area, comprising Macomb County, Wayne County and Oakland County in the State of Michigan.

5. “*Hours of operation*” means the times during which a dealer is open for business to sell or lease motor vehicles.

6. “*Weekday hours*” means the hours of 9:00 a.m. to 6:00 p.m. Monday through Friday.

7. “*Non-weekday hours*” means hours other than 9:00 a.m. to 6:00 p.m. Monday through Friday.

8. “*Respondent*” means any dealership, individual, or association respondent.

I.

It is further ordered, That DADA and James Daniel Hayes shall cease and desist from, directly or indirectly or through any corporate or other device, entering into, continuing, or carrying out any agreement, contract, combination, or conspiracy, in or affecting commerce (as “commerce” is defined in the Federal Trade Commission Act), with any other respondent or other dealer or dealer association in the Detroit area to establish, fix, maintain, adopt, or adhere to any hours of operation.

II.

It is further ordered, That DADA and James Daniel Hayes shall cease and desist from, directly or indirectly or through any corporate or other device, performing any of the following acts or practices or encouraging, inducing, or requiring any person to perform any of the following acts or practices, or entering into, continuing, or carrying out any agreement, contract, combination, or conspiracy with any other person in the Detroit area to do or perform any of the following acts or practices:

A. Exchanging information or communicating with any other respondent or other dealer or dealer association in the Detroit area concerning hours of operation, except to the extent necessary (i) to comply with any order of the Federal Trade Commission, (ii) after two (2) years from the date this order becomes final, to incorporate individual dealers' hours of operation in lawful joint advertisements, and (iii) in connection with special sales events or promotions sponsored or coordinated by DADA, including but not limited to the North American International Auto Show; or

B. Requesting, recommending, coercing, influencing, inducing, encouraging, or persuading, or attempting to request, recommend, coerce, influence, induce, encourage, or persuade, any other respondent or other dealer or dealer association in the Detroit area to maintain, adopt or adhere to any hours of operation.

III.

It is further ordered, That respondent DADA shall:

A. Beginning thirty (30) days after this order becomes final, and for a period of not less than four (4) weeks thereafter, place and cause to be disseminated each week at least four (4) advertisements, including one in the Thursday editions of the Detroit News and the Detroit Free Press, one in the Saturday edition of the combined Detroit News and Free Press, and one in any other edition of the Detroit News, the Detroit Free Press, or the combined Detroit News and Free Press. Each advertisement shall (1) list all dealership respondents which within ten (10) days prior to the placement of the advertisement are subject to a final Commission order to maintain minimum weekly hours of operation, (2) list all non-respondent dealerships in the Detroit area that are owned or operated by an individual respondent who within ten (10) days prior to the placement of the advertisement is subject to a final commission order to maintain minimum weekly hours of operation, and (3) disclose that all such orders have a minimum hours requirement of 62 hours per week, or 58 hours per week where applicable. For the purpose of complying with Part III.A.(2), above, DADA shall use its best efforts to identify all non-respondent dealerships in the Detroit area that are owned or operated by an individual respondent. The advertisements shall be devoted exclusively to the content set forth in paragraph B.

hereto. The advertisements shall be clear and prominent containing a banner headline in 24 point or larger bold type so that it can be readily noticed, with the principal portion of the text in 12 point or larger type, and the list of respondent and nonrespondent dealerships in 9 point or larger type. The advertisement shall be a minimum of one-eighth (1/8) of a page and shall be placed in the same location at which advertisements for the sale of new automobiles ordinarily appear; and

B. The advertisements referred to in paragraph A. of this section shall state as follows:

AUTO DEALERS OPEN
FOR EXTENDED HOURS

Prior to [date of order] most Detroit area automobile dealers have not been open for business on Saturday or on Tuesday, Wednesday, or Friday evening. As a result of a consent order of the Federal Trade Commission, the following Detroit area automobile dealers must offer expanded shopping hours of a minimum of 62 hours per week for one year and are free to choose their own hours thereafter.

[list dealerships]*

* Dealers noted with an asterisk must offer a minimum of 62 shopping hours per week during Daylight Savings Time and a minimum of 58 hours at other times.

IV.

It is further ordered, That DADA shall, for a period of five (5) years from the date this order becomes final, cause to be made minutes of all business meetings of its membership, its board of directors, and its committees. Such minutes shall (i) identify all persons attending such meeting, (ii) include a certification, signed by the presiding officer and the secretary under penalty of perjury, that states whether hours of operation were discussed at the meeting, and (iii) summarize what was discussed at the meeting. If hours of operation were discussed at any business meeting subject to this order, then the minutes of such meeting shall identify the participants in the discussion of hours of operation and state in detail the

substance of the discussions). DADA shall retain such minutes (including, but not limited to, the required certifications) for a period of five (5) years from the date the minutes were created. Such minutes shall be provided to the Commission upon request.

V.

It is further ordered, That DADA shall:

A. Within sixty (60) days from the date this order becomes final, amend its bylaws, rules and regulations to eliminate any provision inconsistent with any provision of this order;

B. Within sixty (60) days from the date this order becomes final, amend its bylaws, rules and regulations to incorporate: (1) a provision that prohibits its members from discussing at any formal or informal membership, board of directors, or committee meeting the hours of operation of any dealer, except to the extent necessary to comply with any order of the Federal Trade Commission; and (2) a provision that requires expulsion from membership of any member who violates such prohibition;

C. Within ten (10) days after the amendment of any bylaws, rules or regulations pursuant to this order, furnish a copy of such amended bylaws, rules or regulations to all members, and within ten (10) days of any new member joining DADA, furnish to such new member a copy of the bylaws, rules and regulations of DADA; and

D. Within sixty (60) days after receiving information from any source concerning a potential violation of any bylaw, rule, or regulation required by Part V.B. of this order, investigate the potential violation, record the findings of the investigation, and expel for a period of one (1) year any member who is found to have violated any of the bylaws, rules or regulations required by Part V.B. of this order.

VI.

It is further ordered, That DADA shall, for a period of five (5) years from the date this order becomes final, provide to the Commission the name and address of any member expelled pursuant to the requirements of Part V.D. of this order within ten (10) days after such expulsion.

VII.

It is further ordered, That within ten (10) days after the date this order becomes final DADA shall provide a copy of the order to each of its officers, directors, members and employees. For a period of five (5) years from the date this order becomes final, DADA shall provide a copy to each new member and new employee, within ten (10) days after the date the employee is hired or the new member joins DADA.

VIII.

It is further ordered, That DADA and James Daniel Hayes shall, within ninety (90) days after this order becomes final and annually thereafter for a period of five (5) years, file with the Commission a verified written report setting forth in detail the manner and form in which they have complied with this order. The requirements of Parts VIII and IX shall not apply to James Daniel Hayes; provided, however, that James Daniel Hayes shall, within ninety (90) days after this order becomes final, file with the Commission a verified written report stating that he is no longer employed by DADA or any other dealer association in the Detroit area and does not own or operate a dealership in the Detroit area; provided, further, that if circumstances change whereby James Daniel Hayes shall become employed by DADA or any other dealer association in the Detroit area, or shall own or operate a dealership in the Detroit area, then he shall notify the Commission at the earliest practicable date of such a change and shall begin complying with the requirements of Parts VIII and IX of this order.

IX.

It is further ordered, That for a period of five (5) years from the date this order becomes final, DADA shall notify the Commission at least thirty (30) days prior to any proposed change in corporate status (such as dissolution, assignment, or sale) that results in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in DADA which may affect compliance obligations arising out of the order. James Daniel Hayes shall, for five (5) years from the date the order becomes final,

promptly notify the Commission of the discontinuance of his present business or employment and of any new affiliation or employment with any dealer or dealer association. Such notice shall include his new business address and a statement of the nature of the business or employment in which he is newly engaged, as well as a description of his duties and responsibilities in connection with the new business or employment.

Complaint

118 F.T.C.

IN THE MATTER OF

WYATT MARKETING CORPORATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3510. Complaint, July 27, 1994--Decision, July 27, 1994*

This consent order prohibits, among other things, a California-based company from distributing an infomercial, from making false claims regarding a book on the availability of government grants and loans, and from making or selling any commercial that misrepresents it as an independent program, rather than a paid advertisement. The respondent is required to have a disclosure statement for any commercial 15 minutes or longer, and to have substantiation for future claims regarding the availability of grants, loans or other benefits from any source, the terms or conditions of getting government loans or grants, and methods for starting or operating a business.

Appearances

For the Commission: *Michael J. Bloom and Donald G. D'Amato.*
For the respondent: *Glenn W. Peterman, McDonough, Holland & Allen, Sacramento, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Wyatt Marketing Corporation, Inc., a corporation, and James R. Wyatt, individually and as an officer and director of said corporation, (hereinafter, collectively, "respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Wyatt Marketing Corporation, Inc. (formerly doing business as James R. Wyatt & Associates, Inc. and Cornerstone Publishing) is a California corporation that has had its principal office or place of business at 4231 Pacific Street, Suite 4, Rocklin, California.

PAR. 2. Respondent James R. Wyatt, at all times pertinent herein, has been an officer and director of respondent Wyatt Marketing Corporation, Inc. Individually or in concert with others,

he has formulated, directed, and controlled the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business has been the same as that of the corporate respondent.

PAR. 3. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed various materials that are represented to feature information on obtaining government benefits to start a new business, to obtain money for college, or to save on taxes, including but not necessarily limited to a book entitled 101 Ways to Get Cash From the Government (hereinafter also referred to as the "Government Benefits Book").

PAR. 4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

COUNT I

PAR. 5. Respondents have disseminated or have caused to be disseminated advertisements for the Government Benefits Book, including but not necessarily limited to a 30-minute advertisement that appears in the form of a talk show entitled "Focus on Success" (hereinafter also referred to as the "Government Benefits Infomercial"), a complete transcript of which is attached hereto as Exhibit A. These advertisements contain the following statements:

| | |
|------------------|--|
| [James Wyatt] | ". . . there's a program called, through the United States Department of Agriculture, through what they call their Farmers Home Administration agency and they've got a program to where you can qualify for a house for 0 down and 1 percent interest, and I as a general contractor have built 3,000 of those homes and sold them to people back in America. Zero percent down and 1 percent interest. So it's not a fluke. As a matter of fact, this year, I think the government, in that particular agency, the Farmers Home Administration, has a \$5.7 billion program strictly for housing of people. You can buy a single family home as well as apartments." |
| [George Reading] | "So its not a fluke?" |
| [James Wyatt] | "No." |
| [George Reading] | "I heard you right - 0 percent down; 1 percent interest?" |
| [James Wyatt] | "For 32 years, 31 days." |

(Exhibit A)

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that the Farmers Home Administration had \$5.7 billion in loan money available for individuals for the purchase of single family homes and apartments.

PAR. 7. In truth and in fact, the Farmers Home Administration did not have \$5.7 billion in loan money available for individuals for the purchase of single family homes and apartments. During the time period that respondents disseminated or caused to be disseminated the Government Benefits Infomercial, the loan money available for individuals from the Farmers Home Administration for the purchase of single family homes and apartments totaled approximately \$1.3 billion per federal fiscal year. Therefore, the representation set forth in paragraph six was false and misleading.

COUNT II

PAR. 8. Respondents have disseminated or have caused to be disseminated advertisements for the Government Benefits Book, including but not necessarily limited to the Government Benefits Infomercial. These advertisements contain the following statements:

| | |
|------------------|--|
| [George Reading] | "It gets even better, doesn't it? Here's one that says 'How You May Be Entitled To A \$10,000 Refund.'" |
| [James Wyatt] | "Yep. Do you know how many people in America that overpay might be entitled to that? Might and I put might because not everybody is, but one out of every three taxpayers in the United States is overpaid in this Social Security Administration system. We give you the telephone number and address of the agency to call. They will send out and tell you, in fact, whether you're in fact owed money back. \$10,000 bucks. They will look it up--they tell you--it's simply done by a telephone call and simple signature on a form and they'll show you how to do it." |

(Exhibit A)

PAR. 9. Through the use of the statements contained in the advertisements referred to in paragraph eight, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that the

Government Benefits Book gives the reader a telephone number to call to find out whether she or he has overpaid into the Social Security System and to determine whether she or he is entitled to a refund from the Social Security Administration.

PAR. 10. In truth and in fact, the Government Benefits Book does not give the reader a telephone number to call to find out whether she or he has overpaid into the Social Security System and to determine whether she or he is entitled to a refund from the Social Security Administration. Therefore, the representation set forth in paragraph nine was false and misleading.

COUNT III

PAR. 11. Respondents have disseminated or have caused to be disseminated advertisements for the Government Benefits Book, including but not necessarily limited to the Government Benefits Infomercial. These advertisements contain the following statements:

| | |
|------------------|---|
| [George Reading] | "All right. 'Collect Social Security Before Age 65.'" |
| [James Wyatt] | "That's exactly right." |
| [George Reading] | "Full Benefits?" |
| [James Wyatt] | "That's right. Full benefits before age 65. You didn't know that, did you?" |
| [George Reading] | "No I didn't know that. I suspect a lot of people didn't know that." |
| [James Wyatt] | "No, most people in America don't know that." |
| [George Reading] | "How do you do that short of being disabled?" |
| [James Wyatt] | "You ask. You ask, George. I mean I know it sounds too good to be true, but we tell you the agency to call up and say this is what I'm going to do and they will even tell you back, George. They'll tell you how and when you can retire to make the type of income levels you want to." |

(Exhibit A)

PAR. 12. Through the use of the statements contained in the advertisements referred to in paragraph eleven, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that individuals could retire before age 65 and still collect full social security retirement benefits.

PAR. 13. In truth and in fact, individuals could not retire before age 65 and still collect full Social Security retirement benefits. Under

the Social Security Act, retirement insurance benefits are permanently reduced by 5/9 of 1 percent for each month before age 65 that an individual is entitled to such benefit. Therefore, the representation set forth in paragraph twelve was false and misleading.

COUNT IV

PAR. 14. Respondents have disseminated or have caused to be disseminated advertisements for the Government Benefits Book, including but not necessarily limited to the Government Benefits Infomercial. These advertisements contain the following statements:

| | |
|------------------|---|
| [George Reading] | "Pretty fascinating. 'How to Get Up To \$5 Million To Start A Business'." |
| [James Wyatt] | "Yes, that's right. It's true. It's for a person who wants to start a business or expand an existing business that they have." |
| [George Reading] | "What kind of money do you need to get into that?" |
| [James Wyatt] | "It doesn't cost you a dime. You go in and apply through what is called a business plan, George. Okay, you take a business plan into this government agency and they will approve your business plan and give you the money or say no you need have to clean it up, you're missing it over here and they even give you the consulting services for free." |
| [George Reading] | "How long does it take you?" |
| [James Wyatt] | "Okay, it takes 47 days. Interest rate is 3 percent to 7.5 percent." |
| [James Wyatt] | "And anybody here in the TV audience who has a good idea for business can go in and get that money." |

(Exhibit A)

PAR. 15. Through the use of the statements contained in the advertisements referred to in paragraph fourteen, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that there was a federal agency that would loan an individual with a good idea for a business up to \$5 million to start a business or expand an existing small business at terms of 3 percent to 7.5 percent interest.

PAR. 16. In truth and in fact, there was not a federal agency that would loan an individual with a good idea for a business up to \$5 million to start a business or expand an existing small business at terms of 3 percent to 7.5 percent interest. The United States Small

Business Administration, with few exceptions, only guarantees loans to small businesses. Those federal agencies that do loan money for business do so for very specific types of enterprises, such loans do not approach \$5 million, and, in many instances, the interest rates for these loans are not 3 percent to 7.5 percent. Therefore, the representation set forth in paragraph fifteen was false and misleading.

COUNT V

PAR. 17. Respondents have disseminated or have caused to be disseminated advertisements for the Government Benefits Book, including but not necessarily limited to the Government Benefits Infomercial. These advertisements contain the following statements:

[James Wyatt]

"In the second chapter we talk about educational services that are available. All the way from preschool, all the way to getting your doctorate degree or becoming even a medical doctor. You've got 4 different programs to choose from. One of them is called a grant where you can get up to \$11,000 a year to go to school per year and you never have to pay the money back at all. Then there's another one where there's a student loan at 3% interest. Then there's another one at 7% interest and even if you have payments you don't get a grant to go to school--you don't have to pay any payments at all until you've graduated and you have up to 10 years to repay the loan. So anyone who wants to go to school it's there. The problem is nobody came in and applied for the money, therefore, the budget was cut and then nobody came in and everybody was being told in the newspapers there's no college money so nobody even came in and applied for more money. So there's about 1.3 billion dollars of unused money just last year alone strictly because of media hype."

[George Reading]

"How can you know where you can qualify for a grant or a loan?"

[James Wyatt]

"You just got to go in and ask George. It's based upon need. It's based strictly upon need--how much is it going to cost you to go to school, how beneficial will your education be to society and it's just going and asking the questions. See the problem is George is nobody in America knows which agency to go to get it. That's what the book talks about. It's not a get rich quick book. What it is is a resource book. It tells you which agency to go to, then you go in and ask the

information. What you get in those agencies it is their responsibility to give you the money and that's what they do."

(Exhibit A)

PAR. 18. Through the use of the statements contained in the advertisements referred to in paragraph seventeen, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that the Government Benefits Book contains information concerning:

A. The availability of a federal government grant program for college educational purposes under which a student may or could obtain up to \$11,000 annually.

B. The availability of a government student loan with a 3 percent interest rate.

PAR. 19. In truth and in fact:

A. The Government Benefits Book does not contain information concerning the availability of a federal government grant program for college educational purposes under which a student may or could obtain up to \$11,000 annually. During the time period of the airing of the Government Benefits Infomercial, even those students with exceptional financial need could have only obtained just over \$6,000 in government grants for college educational purposes.

B. The Government Benefits Book does not contain information concerning the availability of a government student loan with a 3 percent interest rate. During the time period of the airing of the Government Benefits Infomercial, the lowest interest rate for a government student loan was 5 percent.

Therefore, the representations set forth in paragraph eighteen were false and misleading.

COUNT VI

PAR. 20. Respondents have disseminated or have caused to be disseminated advertisements for the Government Benefits Book, including but not necessarily limited to the Government Benefits Infomercial. These advertisements contain the following statements:

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[Question from
the audience]

"I am a part-time student and I work part-time also and I heard you mention something about getting a home for \$1. I'd really be interested in purchasing a home for \$1, but I can't come up with a down payment right now. Who would I get in touch with to find out about HUD -- is that what you call that?"

[James Wyatt]

"That's one agency. The Housing and Urban Development -- that's known as HUD. The book gives you seven ways to buy a house for nothing down. With programs sponsored by the United States government 0 down-1 percent interest. Urban Homesteading -- \$1 to totally buy the house. We got a variety of other programs that are in there that require nothing down. Now, see I know that people laugh about this, but I've built 3,000 houses for people in America where their total down payment was \$0 down and their interest payment was 1 percent. On a \$60,000 house -- principal, interest, taxes and insurance your monthly payments are 127 bucks. That's cheaper than rent and so anybody in America that sits back and says I can't afford a house is nonsense. What you can't afford to do is not to buy the book. I'm sorry but that's the truth."

(Exhibit A)

PAR. 21. Through the use of the statements contained in the advertisements referred to in paragraph twenty, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that the Government Benefits Book contains information on seven different federally sponsored programs that allow individuals to buy a house with \$0 down and at loan terms of 1 percent annual interest.

PAR. 22. In truth and in fact, the Government Benefits Book does not contain information on seven different federally sponsored programs that allow individuals to buy a house with \$0 down and at loan terms of 1 percent annual interest. The Government Benefits Book only contains information about a federal program available through the United States Department of Agriculture's Farmers Home Administration that allows families with moderate incomes to buy houses in rural areas of less than 10,000 people with \$0 down and at loan terms of 1 percent annual interest. Therefore, the representation set forth in paragraph twenty-one was false and misleading.

COUNT VII

PAR. 23. Respondents have disseminated or have caused to be disseminated advertisements for the Government Benefits Book, including but not necessarily limited to the Government Benefits Infomercial. These advertisements contain the following statements:

- [James Wyatt] "George, you won't believe me, your audience won't believe me. You can get almost \$5 million--almost \$5 million if you use all of the sources in that particular book (the Government Benefits Book). Let's be more realistic."
- [George Reading] "Let's be more realistic. What is the average cash return or cash take?"
- [James Wyatt] "The book is designed if people will buy the book and then use it, and that's the secret is using it, just like Mary did, about \$87,500."

(Exhibit A)

PAR. 24. Through the use of the statements contained in the advertisements referred to in paragraph twenty-three, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that consumers who made use of the Government Benefits Book would realize an average of \$87,500 in government grants and loans.

PAR. 25. In truth and in fact, consumers who made use of the Government Benefits Book would not realize an average of \$87,500 in government grants and loans. Therefore, the representation set forth in paragraph twenty-four was false and misleading.

COUNT VIII

PAR. 26. Through the advertising and dissemination of the Government Benefits Infomercial, respondents have represented, directly or by implication, that the Government Benefits Infomercial was an independent television program and was not paid advertising.

PAR. 27. In truth and in fact, the Government Benefits Infomercial was not an independent television program and was paid commercial advertising. Therefore, the representation set forth in paragraph twenty-six was false and misleading.

PAR. 28. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or

affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

TRANSCRIPT OF THE
JAMES R. WYATT INFOMERCIAL

"FOCUS ON SUCCESS"

George Reading, Host: Do you pay taxes? How many of you don't pay any taxes? How would you like to pay taxes to the government and get cash back? That's what this program is all about - 101 Ways To Get Cash From the Government.

Welcome to "Focus on Success"

Blind Speaker: Welcome to another edition of "Focus on Success." The program that takes your financial success seriously. Today's program will feature James Wyatt, author, publisher, entrepreneur who will show you 101 ways to get cash from the government cash for business, education, real estate and more. Here's our host George Reading.

George Reading: "101 Ways To Get Cash From the Government." I know it sounds too good to be true, doesn't it? Let's meet the man who says it is -- James Wyatt author, entrepreneur, publisher. Is that -- is that you.

James Wyatt: It's good to see you again, George.

George Reading: I can tell, I can feel people out there saying okay, come on James Wyatt, you're suggesting there's cash in the government just for the asking.

James Wyatt: Sure, I mean, we pay as taxpayers money into the system and that money is used back for its citizens, why can't we consider ourselves a citizen and go get some of it back.

George Reading: Okay, why does the government do this?

James Wyatt: Well, basically the government is involved in it for a variety of different reasons. I mean, this economy is based upon income being produced by businesses. So there's business loans available to people to start new businesses or expand their current businesses and the long and the short of it is George, is really the more money that can be generated by businesses, the more taxes are going to be created so the more jobs that are created the larger the government can get. So all I'm

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- saying is that if you want some of the money you've been paying all your life for taxes, go out and get it.
- George Reading: Well, okay, how do you do that? Is it hard to get?
- James Wyatt: No. It's not that difficult. The problem is there's so many agencies that have so much money trying to give it out to the public, we don't have one central government agency we can go to and say I'd like to start a business, I'd like to go on welfare, I'd like to get a house, I'd like to get some of my veteran's benefits, I'd like some employment services like to learn how to, in fact, become a doctor. Also, educational type benefits. There's no one central agency we can go to. We have to go to a variety of different agencies, and that's what creates a problem.
- George Reading: I can hear a lot of people now saying you have now Jim, yeah, you have to be a minority, to be a low income person in order to qualify.
- James Wyatt: George, that's not the case. In fact, those are called entitlement programs and they only in fact represent about 10% of the money the government gives back to people. So, yes, there are those types of programs, but that's not the rule of thumb.
- George Reading: Okay. I understand in your book that you have low interest rate housing loans that amount to a 1% interest loan.
- James Wyatt: Sure. That's how I started as a businessman.
- George Reading: You've got to be kidding.
- James Wyatt: No, I'm not George. The problem is that there's a variety of government agencies that provide housing to the people of the United States. We typically think of the Federal Housing Administration, the FHA, as a single source of funds, however, there's a program called, through the United States Department of Agriculture, through what they call their Farmers Home Administration agency and they've got a program to where you can qualify for a house for \$0 down and 1% interest, and I as a general contractor have built 3,000 of those homes and sold them to people back in America. 0 down and 1% interest. So it's not a fluke. As a matter of fact, this year I think the government, in that particular agency, the Farmers Home Administration, has a \$5.7 billion program strictly for housing of people. You can buy a single family home as well as apartments.
- George Reading: So it's not a fluke.
- James Wyatt: No.
- George Reading: I heard you right - 0% down; 1% interest.
- James Wyatt: For 32 years, 31 days.
- George Reading: All right, where do you get this information?

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James Wyatt: You have to go to the government agency and ask for it. The problem is...is the government itself is not a good public relations person. They aren't. They don't know how to disseminate information back to people. You know, it's so...(unclear).

George Reading: But couldn't anybody simply ask for this information?
James Wyatt: Well, you got to know which agency to go to. We see about them in the newspapers, we hear about them, we hear even about other people doing it. Let's take an example for housing, and there's lots more than housing in this book. You've heard about a 0 down - 1% interest for the first time in your life George. You have been in newscasting for how many years?

George Reading: More than I care to admit.
James Wyatt: But that's the first time you've heard about it. Now what happens, we have the FHA, the Federal Housing Administration, we got the Farmers Home Administration (FHA) so people call the FHA and say I want a 0 down - 1% interest rate and the FHA says someone is lying to you and hangs up the phone. You've got to call the U. S. Department of Agriculture Farmers Home Administration and they'll say yes we've got the program and I'll send you out information.

George Reading: So you got to know where to go.
James Wyatt: You got to know where to go and what questions to ask.
George Reading: Then you get back what?
James Wyatt: You get back information from the government that really shows you what to do.

George Reading: Well you're talking about what, pounds and pounds of information.

James Wyatt: No. No. I think what you're talking about is a variety of information that's available for people. I mean people don't have to buy my book to, in fact, learn this information. What I have done is that I have got some books over there which I saw you looking at. Let's look at the books the government send us. Okay.

George Reading: Pretty hard to avoid them. Look at the size of them.
James Wyatt: George. It's not 1, 2 or 3 little pamphlets you get from the government. You can see over here I brought the pamphlets with me. It's actually 265 books each year you have to research and it's not free. That subscription to that which you pay to the U. S. Superintendent of Printing is \$345 per year. Now there is 150,000 pages of information you've got to research to get to what we got here. Now this is a 100 page book that condenses what's in that information. It takes out all attorney talk and lawmaking talk and it puts into normal English

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- where someone can understand, how do you get the money.
- George Reading: Okay, okay. But Jim, we also know that laws and programs are changing all the time.
- James Wyatt: Absolutely.
- George Reading: Now how can one book like this keep up with all the information you need and keep you current on programs?
- James Wyatt: That's a good point. Now we get this subscription at our office.
- George Reading: All right.
- James Wyatt: One day, every day, somebody researches this for our company and tells us what changes have, in fact, taken place. So somebody has a question on this, all they have to do is just call our hotline and we will research and tell them in what way the new law has been changed. Now the thing that has become even more confusing is let's say there's a new law or change to the law and it says okay, we're changing the law that was developed in 1937 and it tells us right here in this book that we received today. Now what we have to do is take this information, go research the statute from 1937 to figure out what the law really in fact was. So you can either use a short circuit system which the book talks about or you can spend about 5 hours a day to research this so you can get the same information that comes in this book. Time is money.
- George Reading: Yes. Of course. Some of the headings in your book are absolutely fascinating.
- James Wyatt: Well, those are the headings that are given to us by the government.
- George Reading: Pretty fascinating. "How To Get Up To \$5 Million To Start A Business."
- James Wyatt: Yes, that's right. It's true. It's for a person who wants to start a business or expand an existing business that they have.
- George Reading: What kind of money do you need to get into that?
- James Wyatt: It doesn't cost you a dime. You go in and apply through what is called a business plan, George. Okay, you take a business plan in to this government agency and they will approve your business plan and give you the money and say no you need have to clean it up, you're missing it over here and they even give you the consulting services for free.
- George Reading: How long does it take you?
- James Wyatt: Okay, it takes 47 days. Interest rate is 3 percent to 7-1/2 percent.
- George Reading: Criteria? Complicated?

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- James Wyatt: Criteria is not. How many people are going to be employed, what is your product going to be, is it safe and sane and also will it employ jobs and will they be able to create _____ (unclear).
- George Reading: Give me the interest figure again.
- James Wyatt: 3 to 7%
- George Reading: On \$5 million?
- James Wyatt: And anybody here in the T.V. audience who has a good idea for business can go in and get that money.
- George Reading: How to get the SBA to guarantee your rent?
- James Wyatt: That's right. The SBA will come in and guarantee your landlord your rent that you're supposed to in fact pay.
- George Reading: Free college money for veterans?
- James Wyatt: Yeah. Now isn't that interesting?
- George Reading: It's very interesting.
- James Wyatt: We have been hearing how educational tuition and grants for students have been cut back. We hear this blitzed on the media and you know why, nobody comes in and applies for the money that's there.
- George Reading: And you personally got money back?
- James Wyatt: Yes. I have. I have received over \$180 million in my life.
- George Reading: You personally know anybody else who got money back?
- James Wyatt: Oh sure -- absolutely -- several people. As a matter of fact, the government gave away \$37.5 billion last year and I brought one of those people with me today.
- George Reading: All right. We'll take a minute and come right back and meet that person.
- [Commercial Break]: Stay tuned for book 101 Ways to Get Cash From Government]
- Visual text [Fact: the U.S. government has 110 billion dollars to lend or give away!] [Do you need money to start a business? Go to college? Buy a house? Invest in property?] [1-800-332-6200]
- Blind Speaker: Fact: the United States government has over 110 billion dollars to lend or give away this year, how much of that 110 billion will you get this year from Uncle Sam. If you need money to start a business, go to college, or a vocational school to buy a house, buy an investment property, or want to save money on your taxes this year, this man can help. Jim Wyatt, noted international entrepreneur, publisher and best selling author has written "101 Ways to Get Cash From the Government." This easy to understand book tells you where you can get money for a business, for college, for employment, real estate and social services. And there is a bonus chapter especially designed to show American veterans

their new benefits. Don't delay, order today by calling this toll free number. And if you order today, you'll receive a bonus cassette tape by Jim Wyatt, forty-nine, ninety-five plus three dollars shipping and handling is all it takes to get information that could return thousands of dollars to you. Call now, have your charge card number ready. Sorry no C.O.D orders. California and New York residents add sales tax, or you may send check or money order to this address.

George Reading: Okay, Jim, let's meet your guest.
James Wyatt: Good, let me introduce Mary Brown to you.
George Reading: Mary, thanks for joining us. Sit down. How did you two meet?
James Wyatt: I got to tell you the story. About two years ago I get this nice call from this nice young lady saying Jim we would like you to come to college and talk about real estate financing because I go out and lecture at schools. It happened to be that Mary Brown was at the end of that telephone line. When she graduated I asked her to go to work for me. That's how we met.
George Reading: How much cash, Mary, did you get back?
Mary Brown: I got a total of \$28,000 as a grant from the City of Crescent to help build an apartment complex there. So it's a 20-unit complex and I went in and asked for it -- and it was just sitting there. No one had even asked for it and they were going to have to send the money back to the state because nobody was using it and no one knew it was available.
James Wyatt: Isn't that incredible?
George Reading: Yeah.
Mary Brown: And after working with Jim I found out . . . he just exposed me to the idea that it was available, to go and look it up.
George Reading: Incredible, but complicated?
James Wyatt: No, not really.
George Reading: How long did it take you?
Mary Brown: Well, we got a commitment on it within 2 or 3 days. Well, in fact, the first time we went in and talked to the city manager he gave us a commitment at that time. He was anxious to give the money out. If he didn't give the money out, he would have lost it, and he would not have been able to help build up the city and get some future income.
George Reading: 2 or 3 days to get the commitment. How many days to get the money -- weeks, months, years?
Mary Brown: Oh, probably. No it only too, um . . . So we came up with the idea in April and then we were actually funded about 2 months later and of course, that was after we got our plans all drawn and so it was --

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James Wyatt: They weren't ready for the money. They could have gotten it sooner for they were ready for the money earlier.

Mary Brown: Yeah.

James Wyatt: How long has it been since you made \$28,000 in 2 days. How many people in America would like to make that?

George Reading: Never, never. All right. If you could tap all 101 ways to get cash from the government, Jim, how much cash could you get?

James Wyatt: George, you won't believe me, your audience won't believe me. You can get almost \$5 million -- almost \$5 million. If you use all of the sources in that particular book. Let's be more realistic.

George Reading: What is the average cash return or cash take?

James Wyatt: The book is designed if people will buy the book and then use it, and that's the secret is using it, just like Mary did, about \$87,500.

George Reading: \$87,500.

James Wyatt: That's a pretty good return on buying a book.

George Reading: Not a bad return for a book that costs less than \$50. The book--

James Wyatt: Okay.

George Reading: Some of the chapters are intriguing--

James Wyatt: Okay, its broken down alphabetically.

George Reading: Too good to be true. How to get up to \$400 per week for not working. Come on. They're going to make you laugh. Right?

James Wyatt: I know, but those are taken from the heading of the government literature. I mean, I didn't create them. Some of them I created.

George Reading: Give me an example. How do you get \$400 per week for not doing anything?

James Wyatt: There's several ways. There's several different ways. What about disability insurance, what about unemployment insurance?

George Reading: Well, I can't qualify for either one.

James Wyatt: Why not?

George Reading: Because I'm not disabled and I'm not unemployed.

James Wyatt: What happens if you are fired tomorrow?

George Reading: Okay - you take it from there.

James Wyatt: So you've got seven varieties, I mean, to get \$400 on a weekly basis by not working. But you know what happens?

George Reading: I never wanted to get fired before, but you are making it very enticing.

James Wyatt: No, I know and a lot of people can't live on \$400, but it's there available for you and I think most people

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know about those type of things. What's exciting about that particular chapter is let's say that you want to go overseas to work. The government has a source in the Bureau to where, in fact, they will hire you, ship you across to any country you want and pay you a salary to work there. If you want to change career and I know you don't want to do this, but if you want to change from newscasting and being an anchor person -- recognize let's now say you want to become a ditch digger, there's a transformation that takes place. Go in for some free counseling -- doesn't cost you one dime and they will do a career change for you free of charge, George. It's there, just nobody knows where to go to get it.

George Reading:

Quote "How To Buy A House For \$1."

James Wyatt:

\$1.

George Reading:

\$1.

James Wyatt:

Okay. I will tell you the program. It is a program run by HUD, Housing and Urban Development and called Urban Home Study and the program's been around since 1846. It's not a new program. \$1. The maximum you would pay for a house under that program is \$2,500 George and when I say \$1 or 25 -- that's not the down payment, you have bought it for that amount of money and there's 126 cities within the United States that run the program.

George Reading:

It gets even better, doesn't it? Here's one that says "How You May Be Entitled To A \$10,000 Refund."

James Wyatt:

Yep. Do you know how many people in America overpay might be entitled to that? Might and I put might because not everybody is, but one out of every three taxpayers in the United States is overpaid in this Social Security Administration system. We give you the telephone number and address of the agency to call. They will send out and tell you, in fact, whether you're in fact owed money back. \$10,000 bucks. They will look it up -- they tell you -- it's simply done by a telephone call and simple signature on a form and they'll show you how to do it.

George Reading:

All right. "Collect Social Security Before Age 65."

James Wyatt:

That's exactly right.

George Reading:

Full benefits.

James Wyatt:

That's right. Full benefits before age 65. You didn't know that, did you?

George Reading:

No I didn't know that. I suspect a lot of people didn't know that.

James Wyatt:

No, most people in America don't know that.

George Reading:

How do you do that short of being disabled?

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Complaint

James Wyatt: You ask. You ask, George. I mean I know it sounds too good to be true, but we tell you the agency to call up and say this is what I'm going to do and they will even tell you back, George. They'll tell you how and when you can retire to make the type of income levels you want to.

George Reading: Now I have been told that, for instance, that the charitable work and I'm sure others have too, that charitable work can't be used as a tax deduction. And, I notice here you have a chapter that says "Charitable Work As A Tax Deduction."

James Wyatt: That's in the chapter "How To Save Money With The IRS."

George Reading: Have I been misinformed?

James Wyatt: You have been totally misinformed.

George Reading: How do I do that?

James Wyatt: Do you ever do any broadcasting at all for charitable organizations?

George Reading: Absolutely.

James Wyatt: Okay. Why don't you send them a bill and then when you, when they've in fact, received the bill they pay you, and you give it back to them as a donation. Have you ever done that? George you have good CPA's, you have good attorneys around you. They did not tell you that information, did they?

George Reading: Well, not good enough.

James Wyatt: What you do when you get that charitable organization, you write it off on your income tax and, therefore, the government helps you pay less money.

George Reading: Well, that makes sense.

James Wyatt: Sure it does. Sure it does.

George Reading: Leases. "Leases That Save You Money."

James Wyatt: Yeah. With the 1986 Tax Reform Act there are some basic laws that have hit hard home and every American in the United States is paying taxes and we have a system in there that the IRS has, in fact, approved to where if you lease certain items you can totally write it off and have the government, in fact, pay it for you.

George Reading: This one intrigues me. "Free Medical Benefits For Life." Now that's a big question.

James Wyatt: Yeah.

George Reading: [To] Anybody who is growing older?

James Wyatt: No. What that is is kind of a bonus chapter, if you will. You'll notice that there's more than 101 ways to make money. What it is is that there's a bonus chapter that talks specifically about the veterans in the United States that have been in the service for greater than 191 days. 181 days, excuse me. They are entitled to free medical

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benefits for the rest of their lives, but nobody tells them about it.

George Reading:

Jim, hang tight.

James Wyatt:

Thank you. I get excited about it. I'm sorry.

George Reading:

In one minute we'll be back with questions from the audience.

[Another commercial for Book 101 Ways . . .]

Visual text

[Want to start a business? Get a higher paying job? Retire?] [Get a part of the government giveaway.] [Start a business Expand Current Business Money for college Get a better Job] [Get \$10,000 back save taxes]

Blind Speaker:

Do you want to start a business? Get a higher paying job, buy a house or investment property or retire this year. Well if you do, you need Jim Wyatt's best selling book "101 Ways to Get Cash From the Government." Jim Wyatt, international businessman, publisher and best selling author has just written this exciting new book that will show you how you can get a part of the 110 billion dollar government giveaway this year. He shows you step by step how to get money from the government to start a business where to get money to expend your current business, where to get money to go to college or to go to a vocational school, how the government will help you to get a better job. How you can get up to 10,000 dollars back from social security and how to save taxes this year. He also has included a special bonus chapter just for veterans describing their benefits from the newly formed U.S. Department of Veterans Affairs. If you are tired of paying taxes to the government and would like to learn how to get those tax dollars back, place your order today by calling this toll free number. Forty-nine, ninety-five plus three dollars shipping and handling will get you information that could change your life. Order now and you'll receive a free copy of Jim Wyatt's cassette tape on getting cash from the government. You may send a check or money order to this address. California and New York residents please add sales tax.

Questions From The Audience

George Reading:

Okay, I can tell from the faces there are questions.

Question:

I am a part-time student and I work part time also and I heard you mention something about getting a home for \$1. I'd be really interested in purchasing a home for \$1, but I can't come up with a down payment right now.

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- Who would I get in touch with to find out about HUD-- is that what you call that?
- James Wyatt: That's one agency. The Housing and Urban Development -- that's known as HUD. The book gives you 7 ways to buy a house for nothing down. With programs sponsored by the United States Government 0 down - 1% interest. Urban Homesteading -- \$1 to totally buy the house. We got a variety of other programs that are in there that require nothing down. Now, see I know that people laugh about this, but I've built 3,000 houses for people in America where their total down payment was \$0 down and their interest payment was 1%. On a \$60,000 house -- principal interest, taxes and insurance your monthly payments are 127 bucks. That's cheaper than rent and so anybody in America that sits back and says I can't afford a house is nonsense. What you can't afford to do is not to buy the book. I'm sorry but that's the truth.
- George Reading: Anybody who wants to start a business, expand a business?
- Question: Yes, I live in the Sacramento area and I'd like to move my business up into the Lake Tahoe region and I don't have any connections of banks or credit there. Is there something that can help me in the book.
- James Wyatt: Yeah. Okay. In the first chapter what we've done is we listed employment services. Priorities like businesses, education so it's alphabetically done. The first chapter has 21 different ways to get money to start a business. Whether you're going to be in the metropolitan area or a very very rural area. One of the most exciting things that's happened in my opinion, last year, with the government is in rural areas. They are now encouraging people to move to rural areas to produce jobs. So they got a \$500,000 grant program available that only became available two months ago and you get up to \$500,000 and you never have to pay the money back. If that's not encouragement to start a business, I don't know what is. 500,000 and you never have to make one payment for the money. So yes, plenty programs.
- Question: I am currently a senior in high school right now and college finances are going to be a big problem in the coming year--and you mentioned something about educational loans from the government?
- James Wyatt: In the second chapter we talk about educational services that are available. All the way from preschool, all the way to getting your doctorate degree or becoming even a medical doctor. You've got 4 different programs to choose from. One of them is

called a grant where you can get up to \$11,000 a year to go to school per year and you never have to pay the money back at all. Then there's another one where there's a student loan at 3% interest. Then there's another one at 7% interest and even if you have payments you don't get a grant to go to school -- you don't have to pay any payments at all until you've graduated and you have up to 10 years to repay the loan. So anyone who wants to go to school it's there. The problem is nobody came in and applied for the money, therefore, the budget was cut and then nobody came in and everybody was being told in the newspapers there's no college money so nobody even came in and applied for more money. So there's about 1.3 billion dollars of unused money just last year alone strictly because of media hype.

George Reading:

How can you know where you can qualify for a grant or a loan?

James Wyatt:

You just got to go in and ask, George, it's based upon need. It's based strictly upon need - how much is it going to cost you to go to school, how beneficial will your education be to society and it's just going and asking the questions. See the problem is, George, is nobody in America knows which agency to go to get it. That's what the book talks about. It's not a get rich quick book. What it is is a resource book. It tells you which agency to go to, then you go in and ask the information. What you get in those agencies it is their responsibility to give you the money and that's what they do.

George Reading:

It's not a "How To Book." It's an "Idea Book."

James Wyatt:

It's nothing more than a resource book that shows you 101 ways to get cash back from the government.

George Reading:

Okay, I saw a hand over here. Yes.

Question:

The government money that's not applied for -- is that accounted for in government spending? Is it in the budget?

James Wyatt:

That's a good question. Because sometimes nobody knows what happens to it. Okay? In all honesty we have to tell you that. We all heard it in government. If you don't use it, you lose it. So if a government agency, I know one state agency here in California that got \$159 million from the federal government to produce housing in California. They spent \$2 million of it and gave back \$157 million because nobody came in and applied for it. \$157 million of non interest money. You never have to pay back -- they just gave it to you.

George Reading:

Okay. Let's go up...

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James Wyatt: That's a tragedy.

George Reading: Let's go to the top row -- (unclear), here, I saw a question up here.

Question: I'm interested in expanding my business. Is there like a limit at all to any kind of loan I can get from the government in the money that I need to expand?

James Wyatt: Yeah. There is basically some maximum levels and there's some minimal levels. Generally and typically to expand a business the maximum loan you can receive is \$6 million. The minimum, however, is \$25,000 so never ask for \$25,000 or less because you'll get denied. That within itself is worth watching this program.

Question: Is there an agency you can contact to help you with hearing aid problems?

James Wyatt: There's several. There's two agencies off the top. First of all are you a veteran?

Questioner: Yes. Yes.

James Wyatt: Okay, then all you have to do is call the VA because you've got free medical benefits for the rest of your life and they'll buy it for you. If that's not good enough, are you 62 years of age or older?

Questioner: Yes. Yes.

James Wyatt: Then go to the Social Security Administration because they buy it for you as well. So that's two sources for a hearing aid.

George Reading: You don't have to pay it back.

James Wyatt: We don't actually talk about hearing aids. (in the book?)

George Reading: That's a gift, you don't have to pay it back?

James Wyatt: That's a gift.

George Reading: More questions?

Question: If you want to start a business, don't you have to prove to the government that your business plan will provide a profit and hire people?

James Wyatt: That's a great, great question and I'm glad somebody asked it. You know this money its not hard to get, but you need to show that there's a need. I mean that's only right. We're not just going to give this money away freely and you as taxpayers, I'm sure you don't want that to occur. So what you need to do your application is basically a business plan. Now most people in America do not know how to write a business plan. I consult for major corporations in the United States and they don't have a business plan so you know what they do, these government agencies, the four government agencies I talked about in the book, they all have people that will show you how to write it for free and you never even have to do it. They will, in fact, show you how to write the business plan and that's the

application, but I'm not talking about how to write a business plan, you know, to get government contracts, I'm talking about writing a business plan to get the working capital necessary to start a business.

George Reading: Jim Wyatt, thanks a lot for being our guest tonight.

James Wyatt: Well, thank you for having me back. I appreciate it.

George Reading: And thank you, you've been a great audience and thank you, you've been listening to another edition of focus on success.

[Commercial for "101 Ways to Get Cash From the Government"]

Visual text [Fact: Average 1977 income tax paid \$1647.91]
 [Fact: Average 1987 income tax paid \$3628.33]
 [Fact: 220% increase] [Fact?] [Get tax dollars back]
 [James R. Wyatt] [Want to start a business? Receive a scholarship? Get a high paying job? Retire?]

Blind Speaker: Fact: the IRS report that the average amount of income taxes paid by each working adult paid in 1977 was \$1,647 and ninety-one cents.

Fact: the IRS reports that the average amount of income taxes paid by each working adult in 1987 was \$3,629 and thirty-three cents, an increase of two hundred twenty per cent in ten years. Have your wages gone up two hundred twenty per cent in the last ten years to keep pace with these income tax increases. If you are paying taxes to the government and would like to know how to get some of that money back through the government's giant giveaway and loan programs or just feel you're not getting your money's worth. You need this man's book today. If you want to learn how to get money to start a business, expand your current business, get a government scholarship to go to college, get a high paying job directly from the government or if you're planning to retire this year or if you just want to save taxes next year. You need this book now. How much can you expect to get back? You can get up to \$87,500 in just ninety days by using this simple and easy to understand book. It comes with a ten day money back guarantee. Order your copy now by calling this toll free number. Please have your charge card number ready. California and New York residents must add state sales tax. Sorry no C.O.D. orders. Or you may send a check or money order to P.O. Box 2937 South Hampton, New York 11969. order now and you'll receive a free copy of Jim Wyatt's cassette tape about getting money from the government.

Visual text [The 180 million dollars Mr. Wyatt mentions in this program refers to the construction and development

funds he and his corporation have received since 1968. This figure does not include his volunteer services to state, counties and cities which have received additional government funding.]

[James Wyatt, producer; Tom Thompson, director; George Reading, host; Scott Eckern, community director; Bob O'Conner, commercial announcer, Ross du Clair, technical director; Dan Alexander, editor; David Evans, graphic designer; Bill Gary, floor designer; Dan O'Reily, Camera; Brent Hamilton, Camera; David Bunge, lighting director; Scott Neil, lighting; Matt Flynn, audio; Tyler Thompson, original music; Phillip Gross, gaffer; Guy Ortoleva, Project Coordinator]

[Special Thanks to: Sacramento House of Furs, New York Diamonds, Comm Arts/ Talent, Street of Dreams, Presidential Limousine.]

[Produced at the Alexander Media Services Broadcast Center. A WMC Production.]

[THE DIALOGUE BELOW OCCURS AS THE VISUAL TEXT ABOVE IS BEING SHOWN TO THE VIEWERS]

| | |
|-----------------|--|
| George Reading: | Collect Social Security before age sixty-five? |
| James Wyatt: | That's exactly right. |
| George Reading: | Full benefits? |
| James Wyatt: | Full benefits before sixty-five. You didn't know that did you? |
| George Reading: | No. I didn't know that. |
| James Wyatt: | Let's say that you want to go over seas to work. The government has a source and a bureau to where they will, in fact, hire you, ship you across to any country you want and pay you a salary to work there. If you want to change a career and I know you don't want to do this, but if you wanted to change from newscasting and being an anchorperson recognize let's say you want to become a ditch digger. There's a transformation that takes place, go in for some free counseling and it doesn't cost you one dime and they will do a career change for free of charge George. Its there, its just nobody knows where to get it. |
| George Reading: | Well, how to buy a house for a dollar? |
| James Wyatt: | A dollar. |
| George Reading: | A dollar. |
| James Wyatt: | Okay, I'll tell you the program, its a program run by HUD, Housing and Urban Development. Its called urban homesteading and the program has been around since 1846. Its not a new program. One dollar, the |

maximum you pay for a house under that program is twenty-five hundred dollars George, and when I say a dollar or twenty-five that's not the down payment, you have bought it for that amount of money and there are one hundred twenty-six cities within the United States that run the program.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Wyatt Marketing Corporation, Inc., a corporation ("respondent"), and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Wyatt Marketing Corporation, Inc. (formerly doing business as James R. Wyatt & Associates and Cornerstone Publishing) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its

principal place of business located at 4231 Pacific Street, Suite 4, in the City of Rocklin, State of California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITION

For purposes of this order, "*grant*" shall mean any money or item of value that is given or awarded without a concomitant obligation to repay or to provide goods or services.

I.

It is ordered, That respondent Wyatt Marketing corporation, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting, or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole the program-length television advertisement entitled "Focus On Success" for the book entitled 101 Ways to Get Cash From the Government.

II.

It is further ordered, That respondent Wyatt Marketing Corporation, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. The Farmers Home Administration has or had \$5.7 billion in loan money available for individuals for the purchase of single family homes and apartments;

B. The book entitled 101 Ways To Get Cash From the Government gives the reader a telephone number to call to find out whether she or he has overpaid into the Social Security System and to determine whether she or he is entitled to a refund from the Social Security Administration;

C. Individuals can or could retire before age 65 and still collect full Social Security retirement benefits;

D. There is a federal agency that will or would loan an individual with a good idea for a business up to \$5 million to start a business or expand an existing small business at terms of 3 percent to 7.5 percent interest;

E. There is or was a federal government grant program available for college educational purposes under which a student may or could obtain up to \$11,000 annually;

F. There is or was a government student loan available at 3 percent interest;

G. The book entitled 101 Ways To Get Cash From the Government contains information on seven different federally sponsored programs that allow individuals to buy a house with \$0 down and at loan terms of 1 percent annual interest; and

H. Consumers who make use of the book entitled 101 Ways To Get Cash From the Government realize or can realize an average of \$87,500 in government grants and loans.

III.

It is further ordered, That respondent Wyatt Marketing Corporation, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any direct or implied representation concerning:

- A. The availability of grants, loans or other benefits from any source for any purpose;
- B. Whether any book or other writing contains information about a particular subject or topic;
- C. The terms or conditions upon which any person, firm, agency, or institution will award a grant, loan or other benefit to any other person, firm, or organization;
- D. The terms or conditions of any government or private business opportunity, business assistance program, grant program, educational program, loan program, housing procurement or other procurement program; or
- E. Any method or technique for starting, operating, or financing any profession or business;

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence that substantiates the representation; provided, however, that whenever respondent represents that any book or other writing contains information about a particular subject or topic, subpart B. shall not be construed to require respondent to possess and rely upon evidence that such information in said book or other writing is true, but only that it is present in said book or other writing.

IV.

It is further ordered, That respondent Wyatt Marketing Corporation, Inc., a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating:

- A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement; and
- B. Any commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cable casting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner and for a length

of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID
ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

Provided that, for the purposes of this provision, the oral or visual presentation of the telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

V.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent or its successors and assigns shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, within five (5) business days of such request:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VI.

It is further ordered, That respondent shall:

A. Within thirty (30) days after service of this order, provide a copy of this order to each of respondent's current principals, officers, directors, and managers, and to all persons, agents and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of ten (10) years from the date of entry of this order, provide a copy of this order to each of respondent's principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with

respect to the subject matter of this order who are associated with the respondent or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

VII.

It is further ordered, That respondent Wyatt Marketing Corporation, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

VIII.

It is further ordered, That if the respondent is no longer the subject of the Eastern District of California's Wyatt Marketing Corporation, Inc. Chapter 7 bankruptcy proceeding (No. 90-26755-C-7), it shall within sixty (60) days after it has ceased to be the subject of such proceeding, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

CONCURRING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

Although I have voted to approve final issuance of the complaint and consent order in this matter, I have reservations about the proviso to one of the substantiation requirements set forth in Part III of the Order. That proviso is designed to accommodate the Commission's Mirror Image Doctrine, which provides as follows:

The Commission, as a matter of policy, ordinarily will not proceed against advertising claims which promote the sale of books or other publications: Provided, The advertising only purports to express the opinion of the author or to quote the contents of the publication; The advertising discloses the source of statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of opinions expressed about the publication. Whether the advice being offered by the publication will achieve, in fact, the results claimed for it in the advertising will not be controlling if appropriate disclosures have been made. This policy does not apply, however, if the publication, or its advertising, is used to promote the sale of some other product as part of a commercial scheme.

Advertising in Books, Enforcement Policy, 36 Fed. Reg. 13,414 (1971). The order proviso in Part III states as follows:

[W]henever respondent represents that any book or other writing contains information about a particular subject or topic, [the referenced substantiation provision] shall not be construed to require respondent to possess and rely upon evidence that such information in said book or other writing is true, but only that it is present in said book or other writing.

While the Mirror Image Doctrine is designed to accommodate the Commission's enforcement authority with the protections of the First Amendment, it is at heart a statement of the Commission's enforcement policy, *i.e.*, how the Commission intends to exercise its prosecutorial discretion in cases involving advertising of books and publications. Not all Commission cases involving advertising for books and publications have included a Mirror Image Doctrine proviso.¹ Including such a proviso in an order may raise enforcement difficulties. An inventive respondent could specifically design a deceptive scheme to bring its actions within the protection of a Mirror Image Doctrine order proviso. In addition, a court enforcing the order might construe the proviso more favorably for the defendant than the Commission considers proper.

Further, I am concerned about the particular language of the proviso in the order in this case. It does not require the respondents to make the disclosures required under the Mirror Image Doctrine, and it does not include the exemption from protection for publications used to promote the sale of other products. The ability of a respondent to circumvent the proviso would be limited if the proviso more closely tracked the Commission's Mirror Image Doctrine. Accordingly, in order to limit the possibility that our orders will protect deceptive speech that is not First Amendment-protected, I would prefer that, if safe harbors designed to accommodate the Mirror Image Doctrine are used in the future, they incorporate all of the Doctrine's clauses.²

¹ *E.g.*, Del Dotto Enterprises, FTC Dkt. No. 9257 (April 21, 1994) (consent order).

² *E.g.*, *FTC v. National Credit Savers, Inc.*, No. 91-A-1218-S (M.D. Ala. Dec. 21, 1992) (final judgment and consent order).