

IN THE MATTER OF

HOWARD S. BERG

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

Docket C-3812. Complaint, June 8, 1998--Decision, June 8, 1998

This consent order requires, among other things, the Texas-based advertiser and distributor, who participated in the production of program-length television commercials promoting Howard Berg's Mega Reading, to possess substantiation for claims regarding the benefits, performance or efficacy of any product or program he advertises, promotes, sells or distributes in the future.

Appearances

For the Commission: *Russell Damtoft, Mary Tortorice, Charluta Pagar, Theresa McGrew, and C. Steven Baker.*

For the respondent: *Wallace Collins, Stein & Stein, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Howard S. Berg, individually ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Howard S. Berg has advertised, offered for sale, sold, and distributed products to the public, including Howard Berg's Mega Reading. Individually or in concert with others, he participated in the acts or practices alleged in this complaint. He resides at 1001 Greenbriar Lane, Mc Kinney, TX.

2. Respondent participated with Tru-Vantage International, L.L.C. and Kevin Trudeau in the production of a program-length television commercial which runs for 30 minutes or less and fits within normal television broadcasting time slots. The television commercial was and is broadcast on network, independent and cable television stations throughout the United States. During the television commercial, respondent acted as the guest and promoted Howard Berg's Mega Reading.

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.

4. Respondent has created, and disseminated advertisements for Howard Berg's Mega Reading, including but not necessarily limited to the attached Exhibit A. This advertisement contains the following statements:

Berg: I teach children not just how to read faster but to comprehend, retain and stay focused. . . . So, Mega Reading is a complete accelerated learning system that doesn't just teach you to read quickly.

Trudeau: Right.

Berg: On a skimming level.

Trudeau: Right.

Berg: But to comprehend, apply and use it. Even under test situations.

Berg: I'm working with companies like Pfizer, Mobil Oil, that have high tech reading. And they used it because it was easy to retain complicated information. *****

Trudeau: So, even the detailed complicated material, people can read quickly and grasp it and comprehend it and recall it.

Berg: Over long periods of time.

Berg: They hired me to train their editors not only in how to speed read but how to make books easier to comprehend, because my program teaches people how to understand text. *****

Trudeau: Right.

Berg: Not just blur through it.

Trudeau: Folks, if you want more information on Howard's program, Mega Reading program, it's a home study course that you can go through at your leisure and it will virtually release your own super reading speed, mega reading. You'll be able to read almost as fast as Howard. Virtually quadruple, five, ten times your reading speed right now. *****

Berg: I have a letter here from a girl who has brain damage. *****

Trudeau: Right.

Berg: Brain damage. She was in a car accident and half her brain stopped functioning. It was electrically dead.

Trudeau: Right.

Berg: And she writes. It says that on a coffee break in my word shop, she went three to 600 words per minute. This is someone with severe brain damage. So yes, it works for anyone. And you can't get worse than that.

Berg: At the end of the workshop, every child and parent had at least doubled except for one. *****

Trudeau: Uh-huh.

Berg: That child was reading at five seconds a page and I quizzed her.

Trudeau: Five seconds.

Berg: Five seconds a page. And the vice principal was there.

Trudeau: And they're reading it?

Berg: Comprehending it and retaining it.

Berg: Anybody. In fact, I had a blind student in Huntsville, Alabama. *****

Trudeau: Yeah.

Berg: I swear to you it's true.

Trudeau: Wait a minute. You can't read if you can't see.

Berg: She was reading in Braille.

Trudeau: Oh, okay.

Berg: And she took the program to learn the memory skills. Because a lot of people when they hear speed reading, they think fast reading. With Mega Reading it's not just fast reading, it's fast learning. Remember what Tommy said, it's a complete accelerated learning program. And what I teach them is storing, retrieving, recalling, focusing.

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that Howard Berg's Mega Reading is successful in teaching anyone, including adults, children and disabled individuals, to significantly increase their reading speed while substantially comprehending and retaining the material.

6. In truth and in fact Howard Berg's Mega Reading is not successful in teaching anyone, including adults, children and disabled individuals, to significantly increase their reading speed while substantially comprehending and retaining the material. Therefore, the representation set forth in paragraph five was, and is, false or misleading.

7. Through the means described in paragraph four, respondent has represented, expressly or by implication, that he possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made.

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

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.

By the Commission.¹

¹ Prior to leaving the Commission, former Commissioner Azcuenaga registered a vote in the affirmative for this complaint.

HOWARD S. BERG

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Complaint

EXHIBIT A

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FEDERAL TRADE COMMISSION

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FTC MATTER NO.: 942-3278

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TITLE: HOWARD BERG'S MEGA READING
TELEVISION INFOMERCIAL

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PAGES: 1 THROUGH 31

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TRUDEAU COMPLAINT EXHIBIT L
TRU-VANTAGE COMPLAINT EXHIBIT A
BERG COMPLAINT EXHIBIT A

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EXHIBIT A

1 MR. TRUDEAU: Thanks for watching. I'm Kevin Trudeau,
2 and this is another edition of Vantage Point. How would you like
3 to read 25,000 words a minute? How about reading an entire book
4 just like this in about twenty minutes instead of ten hours?
5 Imagine reading a newspaper or magazine in a fraction of the time
6 it would normally take. Well, my guest today can do just that as
7 well as comprehend and remember everything. Howard Berg is the
8 world's fastest reader. He's in the Guinness Book of World
9 Records. He's the founder of the Berg Reading Institute and
10 author of Mega Reading. He's been featured on virtually
11 thousands of radio and television shows as well as written about
12 in literally hundreds of newspapers and magazines all around the
13 world. Howard, thanks for being my guest today.

14 MR. BERG: Well, it's great to be here, Kevin.

15 MR. TRUDEAU: OK, you take a book like this, and how
16 long would it take you to read it?

17 MR. BERG: Well, top speed, five or six minutes.

18 MR. TRUDEAU: Five or six minutes.

19 MR. BERG: I've been tested. I was on "Regis and
20 Kathie Lee," and they gave me a book about that size.

21 MR. TRUDEAU: This would be a great book to read, by the
22 way, for somebody, obviously Warren Buffet is the world's
23 greatest investor.

24 MR. BERG: Yes, and they had me read a book, and they
25 told me I was going to talk about the book but they changed the

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EXHIBIT A

4₂

1 game when I got there. Instead, they had the author come on as a
2 surprise to test me and see me if I had really learned the book.
3 And I got every question right, by not just reading it, but
4 retaining and comprehending and focusing.

5 MR. TRUDEAU: Now this was on "Regis and Kathie Lee,"
6 and the book was about, how long a book was it?

7 MR. BERG: Between 240 and 300 pages.

8 MR. TRUDEAU: And how long did it take you to read that
9 book?

10 MR. BERG: I read it like four times, so it took twenty
11 minutes. I was memorizing, I wasn't reading, I was memorizing it
12 for a test.

13 MR. TRUDEAU: Wait a minute, let me make sure I got
14 this straight. You took a book, it took you twenty minutes to
15 read it four times, to memorize it. Now, here's the question.
16 Obviously, you're the world's fastest reader. You're in the
17 Guinness Book of World Records. Is this something that everybody
18 can do, or is it just a gift that you have?

19 MR. BERG: Let me tell you, someone else asked me that
20 question. I was in Canada, and Dini Petty who's a national talk
21 show host in Canada said the same thing. She said, "Howard, it
22 sounds too good to be true that anyone could do it." I said,
23 "Dini, how about you pick a few audience members, and you and
24 them come to my workshop in Toronto, and we'll see what happens."
25 So Dini and her audience showed up. One of them was a student.

EXHIBIT A

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1 one of them was a professional. Dini forgot her glasses, so
2 someone had to run back and get them. It's good to have your own
3 talk show. And at the end of the workshop, Dini had slightly
4 doubled, and the two other people were close to quadrupling their
5 reading speed.

6 MR. TRUDEAU: That workshop is just a couple hours.

7 MR. BERG: Less than four hours. And they went on
8 national television in Canada. And Dini went on the air and
9 says, "Howard's really onto something. I think everyone in
10 Canada should be using this." And then off the air, she came up
11 to me, and she said, "I have a son, and I wanted to know if the
12 next time you're in Toronto, could my son please come to your
13 workshop, because I think every child should be getting these
14 skills. Because I know how much they helped me."

15 MR. TRUDEAU: So now your course actually releases a
16 person's natural ability to speed read.

17 MR. BERG: And it's easy, it's fun, and it's
18 systematic.

19 MR. TRUDEAU: We're going to test you right now. I
20 have over here, by the way, stacks of books, and we're going to
21 test Howard. The first book I have is by Jerry Spence, How To
22 Argue And Win Every Time, Jerry Spence. I love this guy, by the
23 way, he's fantastic. And I'm going to give you a little portion
24 of this book, Howard, and I want you to read it. We're going to
25 time Howard and see how fast it's going to take him. Then I'm

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EXHIBIT A

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1 going to quiz him. This is an easy one, we'll start off as an
2 easy one. It's just about the author. A great book, it's about
3 the author. OK, now hold on, here's the page, put your finger in
4 there, don't open it yet. OK, now hold on because I'm going to
5 time you with my stopwatch. OK, ready?

6 MR. BERG: Yes

7 MR. TRUDEAU: Go.

8 MR. BERG: Good

9 MR. TRUDEAU: About --- little over four seconds.

10 MR. BERG: I haven't warmed up yet.

11 MR. TRUDEAU: Four seconds?. OK, now give me the book.

12 MR. BERG: OK

13 MR. TRUDEAU: Now you've read that?

14 MR. BERG: Yes, I have.

15 MR. TRUDEAU: OK. Well, I'm going to test you on a
16 couple questions on this thing.

17 MR. BERG: No problem.

18 MR. TRUDEAU: All right. First thing -- now, by the
19 way, I went through these books that I'm going to be giving
20 Howard and it took me eight hours yesterday. Because I went to
21 the book store, bought a whole bunch of books, and I said I'm
22 just going to buy random books and we're going to test you.
23 Okay.

24 Now, it talks about in here the different people that
25 he was the defense attorney for.

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EXHIBIT A

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1 MR. BERG: Yes, it did.

2 MR. TRUDEAU: Give me a couple of the people.

3 MR. BERG: There were two. There was Randy Weaver

4 MR. TRUDEAU: Right.

5 MR. BERG: And Imelda Marcos.

6 MR. TRUDEAU: Correct. Where does he live?

7 MR. BERG: Jackson Hole, Wyoming.

8 MR. TRUDEAU: Correct. And he has a wife. What's his

9 wife's name?

10 MR. BERG: Emma Jean.

11 MR. TRUDEAU: Correct. Emma Jean.

12 MR. BERG: Yes.

13 MR. TRUDEAU: All right. Hold on, we're going to --

14 MR. BERG: A little slow.

15 MR. TRUDEAU: Well, a little slow. Okay. We're going

16 to make it a little bit tougher now. Here's an other book.

17 Here's another book. Math Magic by Scott Flansburg. Scott is a

18 good friend of mine. We're going to have Scott on the show.

19 He's the human calculator.

20 Now, this book teaches you how to do math calculations

21 in your head. Now, this is going to be a good test, folks. Now

22 -- because imagine this. What -- the techniques -- the

23 technology that Howard has -- Howard has that he teaches people

24 is how to read books and obviously knowledge is power but only if

25 you can remember to and use it.

EXHIBIT A

1 MR. BERG: And apply it.

2 MR. TRUDEAU: And apply it. Okay. So, I'm going to
3 give you a chapter. This is the entire chapter seven.

4 MR. BERG: Okay.

5 MR. TRUDEAU: I'm going to time you.

6 MR. BERG: Okay.

7 MR. TRUDEAU: Let's get this cleared out here. And
8 this is on multiplication tricks.

9 MR. BERG: Okay.

10 MR. TRUDEAU: You're going to read this. And then I'm
11 going to test your multiplication skills because this is going to
12 teach you how to do multiplication in your head.

13 MR. BERG: Do I get to use a calculator?

14 MR. TRUDEAU: No calculator.

15 MR. BERG: Okay.

16 MR. TRUDEAU: Okay. All right, hold on. Hold on, I'm
17 going to time you. I'll say go. Ready, set, go.

18 (Whereupon, there was a brief pause while Mr. Berg was
19 reading the book.)

20 MR. BERG: Okay.

21 MR. TRUDEAU: Twenty four seconds. Twenty four and a
22 half seconds.

23 MR. BERG: There was a lot of pages.

24 MR. TRUDEAU: A lot of pages. Now, you're telling me
25 you read that?

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EXHIBIT A

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1 MR. BERG: I learned it.

2 MR. TRUDEAU: You learned it?

3 MR. BERG: Yes, and so could you. That's the whole
4 point.

5 MR. TRUDEAU: All right. Well, let me test you on
6 this. This is on multiplication -- it's on multiplication
7 skills. Okay?

8 MR. BERG: Okay.

9 MR. TRUDEAU: Let me give you a couple of
10 multiplication tables here. Okay. 45 times 45?

11 MR. BERG: That would be 2,025.

12 MR. TRUDEAU: You just did that in your head?

13 MR. BERG: That's right. It teaches you how to do it.
14 That's the whole point.

15 MR. TRUDEAU: You don't have a calculator here by the
16 way? Can we -- Paul, make sure we get that -- I want to make
17 sure someone gives me a thumbs up if that's the right answer.
18 Let me give you another one here.

19 MR. BERG: It's right. Okay.

20 MR. TRUDEAU: 75 times 75?

21 MR. BERG: 5,625.

22 MR. TRUDEAU: I want Paul to make sure -- give me like
23 some -- we got a thumbs up there? He's right.

24 MR. BERG: Of course I'm right.

25 MR. TRUDEAU: And you learned that just now?

EXHIBIT A

8

1 MR. BERG: That's the whole point, Kevin. It's
2 something everyone should be doing. You know, the United States
3 has been rated in 49th position in literacy by the United
4 Nations. I think all our viewers should be concerned. They just
5 had a front page story in USA Today about how our education
6 system is failing to teach the students.

7 MR. TRUDEAU: Uh-huh.

8 MR. BERG: Time Magazine talked about the educational
9 crisis. Even the teachers unions are becoming concerned.
10 Governor Bush has just made the most highest priority in his
11 second term of office is teaching reading skills, because 25
12 percent of the children in Texas don't know how to read. This is
13 what it's about.

14 I teach children not just how to read faster but to
15 comprehend, retain and stay focused. Because face it, how many
16 times have you or the people at home take a test or gone to an
17 important meeting and got tense. You got frightened. You got
18 worried. And all that information that you stored and worked so
19 hard at learning was forgotten.

20 So, Mega Reading is a complete accelerated learning
21 system that doesn't just teach you to read quickly.

22 MR. TRUDEAU: Right.

23 MR. BERG: On a skimming level.

24 MR. TRUDEAU: Right.

25 MR. BERG: But to comprehend, apply and use it. Even

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EXHIBIT A

1 under test situations.

2 MR. TRUDEAU: And it just takes a few short hours to
3 learn. Correct?

4 MR. BERG: Couple of hours. That's it.

5 MR. TRUDEAU: Now, let me ask you a question. There's
6 been speed reading courses been around for years.

7 MR. BERG: That's true.

8 MR. TRUDEAU: Evelyn Wood is probably the most common
9 and I'm sure there's dozens of other speed reading courses.

10 MR. BERG: Yes, and some of them are quite good.

11 MR. TRUDEAU: But the biggest challenge most people
12 found is, number one, it took days, weeks, months of practice and
13 training.

14 MR. BERG: Absolutely. Hours a day.

15 MR. TRUDEAU: Right.

16 MR. BERG: With days, weeks and months. It's not just
17 days, weeks, and months, but hours a days each of those days.

18 MR. TRUDEAU: So, how is yours different than those in
19 that respect?

20 MR. BERG: First of all, the program takes less than
21 four hours to learn.

22 MR. TRUDEAU: That's it?

23 MR. BERG: That's it.

24 MR. TRUDEAU: One time?

25 MR. BERG: One time.

EXHIBIT A

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1 MR. TRUDEAU: Like learning how to ride a bike.

2 MR. BERG: And you never forget how once you know how.
3 Once you release it, it's there.

4 MR. TRUDEAU: You're releasing someone's ability. So,
5 it's radically different than these other courses.

6 MR. BERG: Can you cross the street and look at the
7 traffic and know where you're going? Look at all the information
8 that your brain has to process in an instant. That's same brain
9 should be reading a book just as effortlessly and that's what I
10 teach.

11 MR. TRUDEAU: Well, now -- so, these other courses that
12 have been out there, your program is a revolutionary -- it's
13 totally different.

14 MR. BERG: Let me tell you a story, Kevin.

15 MR. TRUDEAU: Yeah.

16 MR. BERG: The former president of Evelyn Wood, the
17 chairman of Evelyn Wood is Maurice Thompson, Jr. I have a letter
18 from him.

19 MR. TRUDEAU: Right.

20 MR. BERG: Tommy asked me to train him and his family
21 last September. The former president of Evelyn Wood asked me to
22 train his family. Now, this is the man who knows speed reading.

23 MR. TRUDEAU: Right.

24 MR. BERG: His son quadrupled -- I think he went from
25 two to 400 words a minute in less than four hours. And he

EXHIBIT A

11

1 mentioned how his grades immediately shot up from the previous
2 term. And would you like to read the comment he has on the
3 bottom. I'm really proud of this. This is the former president
4 of Evelyn Wood.

5 MR. TRUDEAU: It says, I feel you have moved one step
6 beyond speed reading --

7 MR. BERG: That's right.

8 MR. TRUDEAU: -- to speed learning. Bringing the
9 discipline to the 21st first century.

10 MR. BERG: Exactly. Now, I'm proud of that.

11 MR. TRUDEAU: So, what you're actually have is really a
12 revolutionary break through in what you've developed.

13 MR. BERG: Totally different. Now, other programs were
14 mechanical. That's why they took so long. They required
15 repetition. Like learning to type or playing an instrument, to
16 work.

17 MR. TRUDEAU: Right.

18 MR. BERG: And a lot of people found they loss their
19 speeds almost as quickly as they gained them.

20 MR. TRUDEAU: Right.

21 MR. BERG: I read 80 to 90 pages a minute at my top
22 speed. But I don't read 80 to 90 pages a minute every time I
23 open a book. Sometimes I want to relax. Sometimes I'm a little
24 tired, I want to read in bed.

25 MR. TRUDEAU: Right.

EXHIBIT A

12

1 MR. BERG: So, I have that option. With the other
2 programs because it was conditioned, it was all or nothing. If
3 you slowed down, that was the end of your speed. And most people
4 told me they only got a very superficial understanding, like a
5 skim.

6 I'm working with companies like Pfizer (Phonetic),
7 Mobil Oil, that have high tech reading. And they used it because
8 it was easy to retain complicated information.

9 MR. TRUDEAU: So, even the detailed complicated
10 material, people can read quickly and grasp it and comprehend it
11 and recall it.

12 MR. BERG: Over long periods of time.

13 MR. TRUDEAU: Now, how about students? Means straight
14 As with less study time?

15 MR. BERG: Not only do they get straight As with less
16 study time, but think about this, Kevin, they get better self
17 esteem. They begin to feel confident. Now, you spend over
18 15,000 hours when you go to school.

19 MR. TRUDEAU: Right.

20 MR. BERG: Think about that. And out of all of those
21 hours and the people at home think about it, too, how many of
22 those hours did they spend teaching you how to learn?

23 MR. TRUDEAU: Right.

24 MR. BERG: They call it an education system and they
25 never even teach you how to learn.

EXHIBIT A

13

1 MR. TRUDEAU: And people obviously in business because
2 you work with virtually dozens of major corporations and Fortune
3 500 companies.

4 MR. BERG: All over the country.

5 MR. TRUDEAU: So, people can make more money because
6 there's so much material to learn today, so much reading that
7 people have to grasp.

8 MR. BERG: I have an interesting letter here from
9 Pfeiffer. Pfeiffer is the leading publisher in the world on
10 human resource training materials.

11 MR. TRUDEAU: Okay.

12 MR. BERG: Every corporate trainer has heard of these
13 people.

14 MR. TRUDEAU: Right.

15 MR. BERG: They hired me to train their editors not
16 only in how to speed read but how to make books easier to
17 comprehend, because my program teaches people how to understand
18 text.

19 MR. TRUDEAU: Right.

20 MR. BERG: Not just blur through it.

21 MR. TRUDEAU: Right.

22 MR. BERG: And the head editor -- the managing editor
23 says here that this program that I gave him gave him a distinct
24 advantage to their publishing program.

25 MR. TRUDEAU: Hmm.

EXHIBIT A

14

1 MR. BERG: That's the managing editor of the world's
2 largest human resource publisher. Here's a letter from the York
3 Prep School. The head master is Ronnie Stewart. He's an Oxford
4 graduate. This man knows education.

5 MR. TRUDEAU: Right.

6 MR. BERG: You don't get better than Oxford. And
7 here's what it says. "Howard, just a note to let you know how
8 positive the feedback was of your lectures to the 11th and 12th
9 grades. So positive in fact, that whenever it's convenient for
10 you, I would love -- I like that word -- I would love for you to
11 come and do the ninth and tenth grades on a similar basis." And
12 we've already booked them.

13 ON SCREEN: For more info call: 1-800-233-9666. This
14 is a paid commercial program for Tru-Vantage International.

15 MR. TRUDEAU: That's great. Folks, if you want more
16 information on Howard's program, Mega Reading program, it's a
17 home study course that you can go through at your leisure and it
18 will virtually release your own super reading speed, mega
19 reading. You'll be able to read almost as fast as Howard.
20 Virtually quadruple, five, ten times your reading speed right
21 now. Call the number on your screen. And I've worked out a
22 special arrangement with Howard. He'll give you an over 50
23 percent discount off the regular price of the program. So, call
24 right now to get some more information on it.

25 Now, let's -- let's continue with the testing here

EXHIBIT A

15

1 got another book. How to Win Friends and Influence People by
2 Dale Carnegie. Great book. Everybody should read this book.
3 Now, let's see. I went through this last night and I got chapter
4 six. I want you to read the entire chapter six and give us a
5 quick synopsis of the chapter.

6 Okay. Now, I'm going to time you again. And folks,
7 the important thing is what Howard is saying is every single
8 person -- now, you've taught how many -- what thousands and
9 thousands of people?

10 MR. BERG: Thousands. Can I say something?

11 MR. TRUDEAU: Yeah.

12 MR. BERG: I have a letter here from a girl who has
13 brain damage.

14 MR. TRUDEAU: Right.

15 MR. BERG: Brain damage. She was in a car accident and
16 half her brain stopped functioning. It was electrically dead.

17 MR. TRUDEAU: Right.

18 MR. BERG: And she writes. It says that on a coffee
19 break in my word shop, she went three to 600 words per minute.
20 This is someone with severe brain damage. So yes, it works for
21 anyone. And you can't get worse than that.

22 MR. TRUDEAU: At what age, by the way? How old?

23 MR. BERG: The youngest student I ever had was eight.
24 I was in Toronto. I was doing a live workshop and the vice
25 principle of a school was there with his wife. His name was Ted.

EXHIBIT A

1 Ted said, "Howard, we would really love for you to come to our
2 elementary school. My wife and I just quadrupled."

3 MR. TRUDEAU: Right.

4 MR. BERG: And we think you can do this for our kids.
5 I said, how old are they? He said third, fourth grade. I said,
6 it's kind of young. Normally, in that age group I teach the
7 memory and learning skills. And I've done that all over the
8 country because a lot of kids aren't reading yet at that age.

9 MR. TRUDEAU: Right.

10 MR. BERG: He said, our students are reading and
11 reading well. Let's try it. I said, fine. And the parents
12 came. How many things did parents do today with their families?

13 MR. TRUDEAU: Right, right, right.

14 MR. BERG: Okay. At the end of the workshop, every
15 child and parent had at least doubled except for one.

16 MR. TRUDEAU: Uh-huh.

17 MR. BERG: That child was reading at five seconds a
18 page and I quizzed her.

19 MR. TRUDEAU: Five seconds.

20 MR. BERG: Five seconds a page. And the vice principal
21 was there.

22 MR. TRUDEAU: And they're reading it?

23 MR. BERG: Comprehending it and retaining it.

24 MR. TRUDEAU: All right. Well, we're going to test you
25 right now. Okay, this is chapter six.

EXHIBIT A

17

1 MR. BERG: Okay.

2 MR. TRUDEAU: Dale Carnegie's How to Win Friends.
3 Ready?

4 MR. BERG: Yes.

5 MR. TRUDEAU: Go.

6 (Whereupon, there was a brief pause while Mr. Berg was
7 reading the book.)

8 MR. TRUDEAU: This is amazing. You're reading it?
9 Okay, give it back. That was about 16 seconds.

10 MR. BERG: Right.

11 MR. TRUDEAU: Okay. Now, tell us -- just give me a
12 quick synopsis of that chapter.

13 MR. BERG: Well, the concept was make people feel
14 important and do it sincerely. And by the way, Kevin, you're
15 doing an excellent job with this show and I really mean that.

16 MR. TRUDEAU: Thank you very much. Okay, wait --
17 you're -- the name of that chapter by the way was, How To Get
18 People To Like You.

19 MR. BERG: By the way, one of my favorite uses of speed
20 reading is learning new skills such as I just showed you.

21 MR. TRUDEAU: Right.

22 MR. BERG: Learning how to use a computer or do better
23 with relationships. So, this -- (inaudible) -- anything.

24 MR. TRUDEAU: To learning anything. Tell us a little
25 about that chapter.

EXHIBIT A

f8

1 MR. BERG: Okay, it starts off he's in a post office
2 and he see's a postal employee that he's familiar with and the
3 guy looks very very depressed and down. And he starts talking to
4 the guy and finds out the guy feels that nobody really
5 appreciates what he's doing.

6 MR. TRUDEAU: Uh-huh.

7 MR. BERG: And so, he starts telling the guy how
8 important he is and how much he appreciates him. And the guy
9 just perks up and he says that's what it's all about. You want
10 people to like you. Let them know how important they are and it
11 improves their self esteem. And they relate that to you as the
12 cause.

13 MR. TRUDEAU: Uh-huh. Now, what -- there was a
14 principle discussed in this.

15 MR. BERG: Yes, the principle was make people feel
16 important and be sincere.

17 MR. TRUDEAU: Make people feel important and -- now,
18 you just said almost verbatim. It says make people feel
19 important and do it sincerely.

20 MR. BERG: Well, you may not get every word. You know,
21 when you're going a page and a half a second, you might miss an L
22 Y. Okay.

23 MR. TRUDEAU: And actually, -- wait a minute. Wait, we
24 got to do another book now.

25 MR. BERG: Okay.

EXHIBIT A

19

1 MR. TRUDEAU: This book by the way, this is my book.
2 This is my book, Kevin Trudeau's, Mega Memory. Everybody should
3 read this book. Everybody go out and get this book. It's my
4 book Mega Memory. Now, it's the first -- you know we sold three
5 and a half million copies of my Mega Memory program.

6 MR. BERG: That's a lot.

7 MR. TRUDEAU: Yeah, and this is a great book. Just
8 says published by William Morrow. It's in all the Book stores.
9 Call, you can get it.

10 MR. BERG: Now, make the call.

11 MR. TRUDEAU: Now, make the call now. Now, I want you
12 to read just chapter one.

13 MR. BERG: Okay.

14 MR. TRUDEAU: On how to use this book, and then give us
15 a quick synopsis on this. Not that we don't trust you. Go.

16 (Whereupon, there was a brief pause while Mr. Berg was
17 reading the book.)

18 MR. BERG: Okay, that's 11 pages.

19 MR. TRUDEAU: About 16 seconds.

20 MR. BERG: Okay. And I'm getting closer to my speed.

21 MR. TRUDEAU: And you read this? You read this?

22 MR. BERG: Yes. It's first -- it sets the ground
23 rules.

24 MR. TRUDEAU: And anybody who gets this course from us
25 can do what you just did?

EXHIBIT A

20

1 MR. BERG: Thousands of people are doing what I just
2 did.

3 MR. TRUDEAU: All right, tell me about the book. I
4 know all about it because I just wrote it.

5 MR. BERG: Okay. I guess you would know. This is like
6 Regis and Kathy Lee all over.

7 MR. TRUDEAU: Yeah, the author. Exactly. Okay.

8 MR. BERG: Well, it starts off talking about what you
9 should do to develop your mega memory, about setting up a
10 specific time and place to do it, avoiding certain foods, how
11 much time you should be doing, how to prepare yourself. And
12 that's essentially what the first chapter is about. Getting set.

13 MR. TRUDEAU: Now, there was four things I mentioned.
14 The four steps you go through.

15 MR. BERG: Yes, there were. Let me think. First there
16 was unconscious incompetence, where you don't know what you're
17 doing.

18 MR. TRUDEAU: Right.

19 MR. BERG: You don't even know you don't know what
20 you're doing.

21 MR. TRUDEAU: Right.

22 MR. BERG: The second one was conscious incompetence,
23 where you know you don't know what you're doing.

24 MR. TRUDEAU: Right, right.

25 MR. BERG: Okay. And the third one -- the third one

EXHIBIT A

21

1 was conscious competence, where you know what you're doing
2 but you have to think about it. Sort of like when you're riding
3 a bike and you know you have to think how to stay on the bike.

4 MR. TRUDEAU: Right.

5 MR. BERG: And the fourth step was unconscious
6 competence, where it's at released skill and you're doing
7 instinctively. You don't have to think about it.

8 MR. TRUDEAU: That's the point I want to talk about.
9 Because your course gets people very quickly to that unconscious
10 competence level where it happens automatically.

11 MR. BERG: In hours. In hours.

12 MR. TRUDEAU: So, it's like learning how to ride a bike
13 or learning how to swim. You don't have to practice and practice
14 and practice. You're just releasing the skill.

15 MR. BERG: No. I have a story about that.

16 MR. TRUDEAU: Hold on for one second because I want to
17 tell people how to get this program.

18 MR. BERG: Okay. Okay.

19 MR. TRUDEAU: If people do want more information on
20 Howard's program The Mega Reading Home Study Course -- folks,
21 this works for everybody. Thousands of people have gone through
22 it. I highly endorse and recommend this program. Howard is the
23 world's fastest reader. There is nothing out there like it
24 anywhere in the world. It'll work for anyone about eight to ten
25 years and up. If you have a student in your life, you need to

EXHIBIT A

22

1 get it for them. If you're in business, if you read papers, if
2 you like to read novels --

3 MR. BERG: The Sunday paper.

4 MR. TRUDEAU: You'll learn this information, you'll
5 read it quickly and you'll be able to recall it. Call the number
6 on your screen. And again, we worked out a special arrangement
7 with Howard. You will get a 50 percent discount while we're on
8 the show. You can call right now and get more information on
9 this program. So, call the number.

10 MR. BERG: You mentioned how you don't have to
11 practice.

12 MR. TRUDEAU: Right.

13 MR. BERG: I have an interesting story. One of my
14 students called me and was really excited. A grandmother and she
15 learned how to do this at my live program and then she didn't use
16 for like six weeks.

17 MR. TRUDEAU: Right.

18 MR. BERG: And with any speed reading program if you
19 don't use it for six weeks, you can kiss it goodbye. It's over.

20 MR. TRUDEAU: Right.

21 MR. BERG: Her grandson came to her. He had a book
22 report and he needed her to help him. She read the book in 15
23 minutes. He got an A. She said, Howard, I don't know he did it.
24 I haven't use the program in six weeks. I opened the book and
25 like that it came right back to me. I said that's what it's

EXHIBIT A

23

1 about. You already have the ability. I'm just showing you how
2 to release it.

3 MR. TRUDEAU: Well, we're going -- we're going to test
4 you again. I keep testing you because this is really impressive
5 to me. All right, I got another book here. And I went to the
6 book store and picked these up. Rush Limbaugh, See I Told You
7 So. I like Rush by the way. We advertise a lot on his show.
8 Rush is a great guy.

9 MR. BERG: Um-hum.

10 MR. TRUDEAU: I have a personally autographed copy of
11 this book by the way.

12 MR. BERG: Do you?

13 MR. TRUDEAU: Yes, Rush sent to me. Okay. I want you
14 to read a chapter here. Let me see if I can find the chapter
15 about Rush. We went to Rush. Okay.

16 MR. BERG: Don't rush.

17 MR. TRUDEAU: Don't rush, don't rush. Now, by the way,
18 when I'm finding this chapter -- because I read things last
19 night. Okay?

20 MR. BERG: Yeah.

21 MR. TRUDEAU: Anybody can do this I mentioned?

22 MR. BERG: Anybody.

23 MR. TRUDEAU: And the age -- how old was the oldest
24 person that went through this?

25 MR. BERG: I had a woman at 88 years old and she's in

EXHIBIT A

24

1 Pasadena. And she took the program and I told them where I was
2 staying. The next day in my hotel I get a phone call and I say
3 oh, what's wrong. I said nobody calls me. Everybody learns it.

4 MR. TRUDEAU: Right.

5 MR. BERG: I say what's the problem. She says no
6 problem. I just called to tell you -- her name was Ruth. She
7 says, Howard, I went home after taking your program. I'm 83
8 years old and I read two 300 page books in under three hours.
9 I'm 83 years old.

10 MR. TRUDEAU: Wow.

11 MR. BERG: Do you know how happy I am? She says, I
12 don't know how much more time I have left, but there's so many
13 things I want to do and learn and you've just given me the tools
14 for doing it.

15 MR. TRUDEAU: You know, there are so many books out
16 there with so much material that -- newspapers, publications for
17 business people, you know, magazines, publications they have to
18 read, books and all these manuals. Learning computers. Thick
19 manuals.

20 MR. BERG: Thick manuals.

21 MR. TRUDEAU: You know, you were telling me that you
22 learned computers in one night.

23 MR. BERG: That's absolutely true. I bought at K-Pro
24 II (phonetic). Never saw or used a computer before. The first
25 night I hooked up everything.

EXHIBIT A

25

1 MR. TRUDEAU: Right.

2 MR. BERG: I learned Wordstar, DataStar, and Formstar
3 and published an article the next day. And that's the truth.
4 And I'll tell you a little funny story.

5 MR. TRUDEAU: And anybody can do this, right?

6 MR. BERG: Anybody can do it. And what happened was
7 the margins weren't perfect and I thought something was wrong.
8 And then someone said, do you know it takes 80 hours normally to
9 do what you did in three. And I said I guess I should feel a
10 little bit better then.

11 MR. TRUDEAU: Now, by the way, before -- well, I want
12 to do this test. I am going to have one more test. Okay. We
13 got one more. This is the chapter. Put your finger in there.
14 I'm going to get my little trusty -- this is for amazing on the
15 time. Ready?

16 MR. BERG: Yep.

17 MR. TRUDEAU: Go.

18 (Whereupon, there was a brief pause while Mr. Berg was
19 reading the book.)

20 MR. BERG: The pages are sticking. Okay. Well, that
21 slowed me down a bit.

22 MR. TRUDEAU: Okay, yeah. Still about 17 seconds.

23 MR. BERG: Okay, I apologize for that.

24 MR. TRUDEAU: Okay. All right. It's Rush's book.

25 Now, what was the gist of that book?

EXHIBIT A

26

1 MR. BERG: The gist was that government's too big.
2 We've got to make it smaller and vote conservative republican.
3 Okay. But he really has a lot of points. He talks about welfare
4 and how about 27 or 28 cents out of every dollar gets to the
5 reciprocate because the rest of that is being spent on
6 administration. And that's an example how government waste is
7 not helping us.

8 MR. TRUDEAU: And that's -- when you were on Regis and
9 Kathy Lee, you had the author come in. You read the book.

10 MR. BERG: (Inaudible).

11 MR. TRUDEAU: And he gave you very tough questions.

12 MR. BERG: I still remember one of them. He asked me
13 what did he say about -- let's see. He asked me several
14 questions. He asked me what did he say about the Pirates of
15 Penzance. It was a trick question. The book was called Going to
16 Movies and it was a vignette. Every two pages was another movie.
17 So, it wasn't a story. It was hundreds of little movie
18 vignettes.

19 MR. TRUDEAU: Right.

20 MR. BERG: And I said, Craig, that's a trick question.
21 Because it wasn't -- there was chapter in there about a different
22 movie and the Pirates of Penzance was used as an example of how
23 if the director had used the techniques of Pirates of Penzance
24 intent instead of the techniques he had chosen, his movie would
25 have been a better picture. I said, so you're actually trying to

EXHIBIT A

27

1 trick me because that wasn't even what the chapter was about.

2 MR. TRUDEAU: So, anybody can do this?

3 MR. BERG: Anybody. In fact, I had a blind student in
4 Huntsville, Alabama.

5 MR. TRUDEAU: Yeah.

6 MR. BERG: I swear to you it's true.

7 MR. TRUDEAU: Wait a minute. You can't read if you
8 can't see.

9 MR. BERG: She was reading in Braille.

10 MR. TRUDEAU: Oh, okay.

11 MR. BERG: And she took the program to learn the memory
12 skills. Because a lot of people when they hear speed reading,
13 they think fast reading. With Mega Reading it's not just fast
14 reading, it's fast learning. Remember what Tommy said, it's a
15 complete accelerated learning program. And what I teach them is
16 storing, retrieving, recalling, focusing.

17 Here's an important skill. Knowing what to look for.
18 How many times have you studied for a test -- people at home.
19 You study for a test, you take the test and none of the questions
20 you studied are asked. Everything else they ask. You go to an
21 important meeting and everything you thought was important was
22 not asked.

23 Well, if you don't know what to look for, you're going
24 to miss it. And I teach how to figure out what to look for.

25 MR. TRUDEAU: Now, you're not -- I was just --

EXHIBIT A

28

1 interesting to note because obviously there are so many books out
2 there, like Wealth Without Risk by Charles Givens (phonetic)
3 which is a phenomenal book, How to Attract Anyone Anytime by
4 Susan Raven (phonetic), Les Brown (phonetic), Live Your Dreams.
5 There are so many phenomenals out -- Mary K. Ash (phonetic) and
6 we can't do all of these.

7 MR. BERG: No.

8 MR. TRUDEAU: (Inaudible).

9 MR. BERG: I could.

10 MR. TRUDEAU: Yeah.

11 Well that's -- this is the amazing thing. How about
12 learning David Letterman's top ten list.

13 MR. BERG: I did a show America's Talking about a year
14 ago. They had me read 18 700 page books in an hour and a half
15 and they quizzed me on them and I got every question right.

16 MR. TRUDEAU: Well, like -- I got Larry King's book. I
17 got Bill Gates' book. I got Colin Powell. I got -- now, the
18 Internet for Dummies, if people want to learn how to run the
19 Internet. I got -- here's magazines.

20 MR. BERG: By the way, Forbes Magazine just did an
21 article on this.

22 MR. TRUDEAU: No kidding.

23 MR. BERG: Forbes said this is a wonderful program for
24 business people.

25 MR. TRUDEAU: I got the New York Times. I got all this

EXHIBIT A

29

1 -- now, how about biology. I mean look at -- folks, look at
2 these books. And I'm putting these all in front me just to show
3 you the point here. Calculus. Now, you're telling me -- this is
4 what kids have to go through in school.

5 MR. BERG: Right.

6 MR. TRUDEAU: Look at this book. They have read this.
7 You're telling me -- I know this is a mess here. But if a person
8 calls and gets your program, they'll be able to go through these
9 books. Now, let's be honest here. I got all these books here.
10 See if you can get a wide shot of this. I got Howard Stern's
11 book. I was invited to Howard Stern's birthday party.

12 MR. BERG: I read his book Private Parts in six minutes
13 on Comedy Central and then he tested me on the book and I got it
14 right.

15 MR. TRUDEAU: Howard did?

16 MR. BERG: Right.

17 MR. TRUDEAU: Howard did?

18 MR. BERG: I was on John Stewart's (phonetic) show and
19 Howard was the guest. He had just written Private Parts. It's
20 as thick as this book.

21 MR. TRUDEAU: Right.

22 MR. BERG: It took me I think six and a half minutes to
23 read and then he quizzed me and I got all the questions right.

24 MR. TRUDEAU: Okay. If somebody buys your program and
25 goes through like everything that's on the desk right here, the

EXHIBIT A

30

1 New York Times, all these books, how long would it take them to
2 do that? First it takes them a few hours to learn the technique.
3 Right?

4 MR. BERG: I would -- it just takes about three --
5 three, four hours to learn the technique.

6 MR. TRUDEAU: Normally it would take, what, a week?
7 Two, three weeks? A hundred hours to learn all this stuff -- to
8 go through all this stuff?

9 MR. BERG: I would say for the average person that
10 would be being kind.

11 MR. TRUDEAU: So, maybe 150 to 200 hours?

12 MR. BERG: I'd say several months for some of the
13 science books for certain people.

14 MR. TRUDEAU: That's right because that's all
15 scientific.

16 MR. BERG: It's not just light reading there.

17 MR. TRUDEAU: A person calls and gets your program, how
18 long?

19 MR. BERG: I'd say you could do that easily in at least
20 a month tops. Two weeks to a month depending upon your
21 background.

22 MR. TRUDEAU: Folks, you heard this. You can call
23 right now, get Howard's program. It takes just a few short
24 hours. It's easy. It's fun. Anybody can do it. You'll be the
25 greatest conversationalist. Kids get straight As with less study

Complaint

125 F.T.C.

EXHIBIT A

31

1 time. You'll make more money in business because you'll be able
2 to remember all the information. Call the number on your screen.
3 You'll get a 50 percent discount to boot. This is Kevin Trudeau,
4 thanks for watching. This has been another edition of Vantage
5 Point.

6 ON SCREEN: For more information or to order Howard
7 Berg's Mega Reading call: 1-800-283-9666.
8 Tru-Vantage International, 7300 Lehigh Avenue, Niles, IL 60714
9 (847)647-0300.

10 The proceeding has been a paid advertisement for Tru-
11 Vantage International.

12 (Whereupon, the taping was concluded.)
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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 violations of the Federal Trade Commission Act; and

The respondent, his 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 having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Howard S. Berg resides at 1001 Greenbriar Lane, McKinney, TX.
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.

ORDER
DEFINITIONS

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

1. "*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.
2. Unless otherwise specified, "*respondent*" shall mean Howard S. Berg, individually and his agents, representatives and employees.
3. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Howard Berg's Mega Reading or any substantially similar product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product is successful in teaching anyone, including adults, children and disabled individuals, to increase their reading speed above 800 words per minute while substantially comprehending and retaining the material. For purposes of this Part, "substantially similar product" shall mean any product that is substantially similar in components, techniques, composition and properties.

II.

It is further ordered, That respondent, 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 program purported to significantly increase one's reading speed in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate

must be competent and reliable scientific evidence, that substantiates the representation.

III.

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

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IV.

It is further ordered, That respondent Howard S. Berg, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

V.

It is further ordered, That respondent Howard S. Berg shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

VI.

This order will terminate on June 8, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.¹

¹ Prior to leaving the Commission, former Commissioner Azcuenaga registered a vote in the affirmative for this Decision & Order.

IN THE MATTER OF

DEGUSSA AKTIENGESELLSCHAFT, 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-3813. Complaint, June 10, 1998--Decision, June 10, 1998*

This consent order allows, among other things, the New Jersey-based subsidiary of Degussa Aktiengesellschaft to acquire E.I. du Pont de Nemours & Co.'s Gibbons Plant in Alberta, Canada, and prohibits the respondents from acquiring more than one percent of the stock, equity or other interest in DuPont's plants in Tennessee and Ontario, Canada, without the Commission's prior approval. In addition, the consent order requires the respondents to limit to one percent their acquisition of the stock, equity or interest in any assets used in the manufacture, distribution or sale of hydrogen peroxide in North America, without prior notification to the Commission.

Appearances

For the Commission: *Robert Tovsky, Joseph Krauss and William Baer.*

For the respondents: *Richard Steuer, Kaye, Scholer, Fierman, Hays & Handler, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Degussa Aktiengesellschaft ("Degussa A.G."), through its wholly-owned subsidiary, Degussa Corporation ("Degussa"), entered into a letter of intent to acquire hydrogen peroxide production assets of E. I. du Pont de Nemours & Co. ("DuPont"), and that the acquisition, if consummated, would have resulted in a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

A. THE RESPONDENTS

1. Respondent Degussa A.G. is a corporation organized, existing, and doing business under and by virtue of the laws of

Germany with its principal executive offices located at Weissfrauenstrasse 9, D-60287 Frankfurt am Main, Germany.

2. Degussa A.G. had worldwide sales exceeding \$8.7 billion in 1997. Degussa A.G. engages in the development and manufacture of chemicals, pharmaceutical specialties, and precious metals.

3. Respondent Degussa is a wholly-owned subsidiary of Degussa A.G. with its principal executive offices located at 65 Challenger Road, Ridgefield Park, New Jersey.

4. Degussa has manufacturing and distribution facilities situated throughout the United States, Canada, and Mexico, and produces widely diverse products in the markets for chemicals, pigments, metals, and dental materials. One of its major products is hydrogen peroxide. In 1996, Degussa had sales in excess of \$2.3 billion, to which sales of hydrogen peroxide contributed \$65 million.

5. DuPont is a publicly-traded corporation with reported revenues in 1996 of \$43.8 billion and net income of \$3.6 billion. DuPont is one of the largest chemical companies in the world, operating about 175 manufacturing and processing facilities in approximately 70 countries. DuPont is engaged in diverse businesses including chemicals, fibers, films, polymers, petroleum, agricultural products, biotechnology, and pharmaceuticals. In 1996, DuPont posted sales of hydrogen peroxide of \$156 million in North America.

6. At all times relevant herein, respondents Degussa A.G. and Degussa have been and are now engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and are corporations whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

B. THE PROPOSED ACQUISITIONS

7. On July 30, 1997, Degussa A.G., through its wholly-owned subsidiary, Degussa, and DuPont signed a Letter of Intent setting out the principal elements of a proposed transaction, whereby Degussa would acquire the assets of DuPont's worldwide hydrogen peroxide business, including its North American production facilities in Memphis, Tennessee; Maitland, Ontario; and Gibbons, Alberta, in exchange for \$325 million.

8. After being advised by Commission staff of potential competitive issues and concerns in connection with the proposed acquisition of all of DuPont's North American hydrogen peroxide

production, Degussa and DuPont modified their original proposal, to an acquisition by Degussa only of DuPont's Gibbons, Alberta hydrogen peroxide plant, in exchange for approximately \$147 million.

C. RELEVANT MARKET

9. The relevant line of commerce in which to analyze the effects of Degussa's proposed acquisition of DuPont's hydrogen peroxide production assets is the manufacture, marketing and sale of hydrogen peroxide.

10. Hydrogen peroxide is an inorganic chemical that is used in disparate applications as an oxidizing agent to encourage different chemical reactions. The paper and pulp industry is by far the most significant consumer of hydrogen peroxide in North America, where hydrogen peroxide is used in the pulp bleaching process. Other significant users include textile manufacturers, which also use hydrogen peroxide as a bleach; chemical manufacturers, which use hydrogen peroxide to initiate reactions that yield organic peroxides; and mining companies, which use hydrogen peroxide to detoxify waste by-products from mining operations.

11. A small but significant and non-transitory price increase would not affect the current level of consumption in any of the significant end-use applications.

12. The relevant geographic market in which to analyze the effects of Degussa's proposed acquisition of DuPont's hydrogen peroxide production assets is North America. Hydrogen peroxide is a volatile substance that must be transported in an aqueous solution. As a result, between thirty and seventy percent of all volumes shipped are composed of water. Thus, transportation costs make transoceanic shipment commercially impractical and impede imports from rising above a *de minimis* level.

D. MARKET STRUCTURE

13. The North American market for hydrogen peroxide is highly concentrated. Seven manufacturers currently possess all of the North American production capacity. Moreover, the North American manufacturers are also the major hydrogen peroxide manufacturers in the world. The proposed acquisition, as originally proposed, would rest control over approximately eighty-one percent of production capacity with the three largest manufacturers, Degussa, Solvay

Interox and FMC Corporation, and increase the Herfindahl-Hirschmann Index by 575 points, from 1969 to 2544. The proposed acquisition, as modified, would result in virtually no change in market concentration.

14. Degussa has a single hydrogen peroxide manufacturing facility in Mobile, Alabama, and distribution centers located throughout the United States and Canada. Degussa's Mobile facility affords Degussa a North American capacity share in excess of eleven percent.

15. DuPont has one hydrogen peroxide production facility in the United States and two facilities in Canada, in the provinces of Ontario and Alberta, which together constitute nearly twenty-six percent of the North American hydrogen peroxide production capacity.

E. CONDITIONS OF ENTRY

16. *De novo* entry or fringe expansion into the relevant market would require a substantial sunk investment and a significant period of time, such that new entry would be neither timely, likely, nor sufficient.

17. The minimum viable scale of a hydrogen peroxide production facility, which is necessary to ensure a reasonable rate of return and to deter or counteract potential anticompetitive effects, likely precludes new entry. The prevailing hydrogen peroxide technology demands large-scale production, relative to market size, in order to operate efficiently. This technology has but a single use -- *i.e.*, the production of hydrogen peroxide. It can not economically be shifted toward another use. Therefore, all returns on investment must be derived from hydrogen peroxide sales. Because economic entry would require that a new producer capture a significant market share from existing producers, and because the costs of such entry would be sunk, such entry is inherently risky. Furthermore, current overcapacity, as well as announced expansions by existing producers, serve as additional deterrents to new entry.

18. Small-scale on-site production technology may at some indeterminate time facilitate small-scale production by large consumers of hydrogen peroxide. However, today such technology remains higher cost than large-scale hydrogen peroxide production and commercially suspect. Most consumers, moreover, view hydrogen peroxide production as a business separate and apart from

their own and are resistant to incurring either the risk or the costs associated with on-site production. For these reasons, the price of hydrogen peroxide would need to rise substantially from existing levels before on-site production would become economical. In any event, few customers have sufficient demand to support efficiently even a small-scale on-site production facility. This technology, therefore, fails to provide an adequate deterrent against potential anticompetitive behavior.

F. EFFECTS OF THE PROPOSED ACQUISITION

19. The proposed acquisition, as originally proposed and if consummated, would likely have led to a substantial lessening of competition in the North American hydrogen peroxide market by enabling the firms remaining in the market after the acquisition to engage more successfully and more completely in coordinated interaction, in the following ways, among others:

- a. The original proposed acquisition would increase concentration substantially in a market that already is highly concentrated;
- b. Hydrogen peroxide is a highly homogeneous product that is purchased primarily on the basis of price;
- c. Reliable pricing information is available due to the use of delivered pricing, the practice of advance announcement of price increases, and customer arrangements including meet-or-release clauses;
- d. There is a past history of express collusion among hydrogen peroxide producers in Europe from the early 1960s through the late 1970s, including producers that after the acquisition would be the leading producers in North America;
- e. Industry practices may serve to facilitate interdependence and coordination in a concentrated market, including sales of hydrogen peroxide between producers that may have the effect of avoiding competitive conflict;
- f. Over several years, producers have maintained large differentials in pricing among different end-uses for a product that is essentially indistinguishable in its performance characteristics;
- g. Partly as a result of the originally proposed DuPont acquisition, Degussa would have been unlikely to pursue or proceed as quickly with planned internal expansions; and

- h. Documents project higher hydrogen peroxide prices as a result of the originally proposed acquisition.

G. VIOLATIONS CHARGED

20. The acquisition of DuPont's hydrogen peroxide production assets by Degussa, if consummated as originally proposed, would have violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Degussa Corporation, a wholly-owned subsidiary of Degussa Aktiengesellschaft (collectively "Degussa") of the North American hydrogen peroxide assets of E.I. duPont de Nemours & Co. ("DuPont"), and respondents having been furnished with a copy of a draft of complaint which, if issued by the Commission, would charge respondents with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; 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 the 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 Acts, 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 Degussa Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 65 Challenger Road, Ridgefield Park, New Jersey.

2. Respondent Degussa Aktiengesellschaft is a corporation organized, existing, and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Weissfrauenstrasse 9, D-60287 Frankfurt am Main, Germany.

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:

1. "*Respondents*" or "*Degussa*" means Degussa Corporation and Degussa Aktiengesellschaft, their directors, officers, employees, agents and representatives, predecessors, successors, and assigns; their subsidiaries, divisions, groups and affiliates controlled by Degussa Corporation and Degussa Aktiengesellschaft, and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

B. "*DuPont*" means E.I. DuPont de Nemours & Co., 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 1007 Market Street, Wilmington, Delaware.

C. "*Commission*" means the Federal Trade Commission.

D. "*Retained Plants*" means the DuPont hydrogen peroxide plants in Memphis, Tennessee, and Maitland, Ontario, Canada, which Degussa does not propose to acquire from DuPont.

E. "*Gibbons Plant*" means the DuPont Hydrogen Peroxide plant in Gibbons, Alberta, Canada which Degussa proposes to acquire from DuPont.

II.

It is further ordered, That for a period of ten (10) years from the date this order becomes final, Degussa shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than 1% of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, that owns, controls or otherwise has an interest in the Retained Plants; or

B. Acquire the Retained Plants or any assets of the Retained Plants (excluding the non-exclusive technology licenses that Degussa proposes to acquire in connection with the acquisition of the Gibbons Plant from DuPont).

III.

It is further ordered, That for a period of ten (10) years from the date this order becomes final, Degussa shall not, without prior notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than 1% (or, for investment purposes, 5%), of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, that owns, controls or otherwise has an interest in any assets used or previously used (and still suitable for use) in the manufacture, distribution or sale of hydrogen peroxide in North America; or

B. Acquire, in any calendar year, assets, valued at over \$15 million, used or previously used (and still suitable for use) in the manufacture, distribution or sale of hydrogen peroxide in North America; provided, however, that nothing herein shall prohibit Degussa, without prior notification to the Commission, from building new or expanding existing hydrogen peroxide manufacturing capacity.

Said prior notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the

