

Complaint

102 F.T.C.

IN THE MATTER OF

FOOTE, CONE & BELDING ADVERTISING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3116. Complaint, Sept. 30, 1983—Decision, Sept. 30, 1983*

This consent order requires a Chicago, Ill. advertising agency affiliated with Amana Refrigeration, Inc., among other things, to cease representing that only Amana microwave ovens passed independent laboratory testing conducted in 1980 and that Amana microwave ovens rated "best quality" in a 1980 consumer survey. The order prohibits misrepresentations concerning the purpose, content or conclusion of any test or survey and requires the agency to maintain accurate records which substantiate and/or contradict any claim made for products covered by this order. Further, the agency must have a reasonable basis for all future quality, safety or comparative performance representations made for microwave ovens.

Appearances

For the Commission: *Andrew Sacks* and *Joel Winston*.

For the respondent: *Elroy H. Wolff* and *Philip J. Carihfield, Sidley & Austin*, 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 Foote, Cone & Belding Advertising, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Foote, Cone, & Belding Advertising, 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 in Chicago, Illinois.

PAR. 2. Respondent is now and at all times relevant to this complaint has been an advertising agency of Amana Refrigeration, Inc.

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of advertising and promo-

tional material, including but not limited to the advertising referred to herein, to promote the sale of Amana microwave ovens.

PAR. 4. Respondent's dissemination of advertisements for Amana microwave ovens mentioned herein constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, and for the purpose of promoting sale and distribution of Amana microwave ovens, and other consumer products, respondent has prepared, disseminated and caused the dissemination of advertising in national magazines and newspapers distributed by mail and across state lines, and in radio broadcasts transmitted by radio stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines.

PAR. 6. Typical statements and representations in said advertisements, and promotional materials, prepared and disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements attached hereto as Exhibits A, B, C and D.

PAR. 7. Through the use of the statements and representations referred to in Paragraph Six and other representations contained in advertisements not specifically set forth herein, respondent has represented, and now represents directly or by implication, the following claims:

1. An independent laboratory tested Amana microwave ovens and ovens of five other manufacturers in four of the tests required for exemption from displaying a warning label. Only the Amana ovens passed all four tests.

2. A survey of microwave oven owners found that owners of nine other brands of microwave ovens rated Amana ovens "best quality."

PAR. 8. In truth and in fact the direct or implied representations found in Paragraph Seven are false, for the following reasons:

1. The independent laboratory tested ovens of six manufacturers in addition to Amana. Ovens of one other manufacturer—Panasonic—passed all of the tests.

2. The survey relied upon did not find that owners of nine other brands of microwave ovens rated Amana "best quality" more often than they rated their own brand "best quality". As many or more owners of all other brands for which the data were tabulated rated their own brand "best quality". The vast majority of owners of other brands did not rate Amana "best quality" in the survey. In addition, the data relied upon reported results for owners of only four other brands of microwave ovens.

PAR. 9. At the time respondent made the representations alleged in

Paragraph Seven, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 10. Through the use of the advertisements referred to in Paragraph Six, and other advertisements not specifically set forth herein, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representations set forth in Paragraph Seven at the time of the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations, and respondent knew or should have known that it did not possess and rely upon a reasonable basis at the time of dissemination. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 11. As the representations referred to above are false, and respondent knew or should have known that they were false at the time of their dissemination, such representations are deceptive, misleading, and unfair.

PAR. 12. The use by respondent of the aforesaid false, unfair, or deceptive statements, representations, acts, and practices, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements, representations, acts, and practices, have had the capacity and tendency both to mislead consumers into the erroneous and mistaken belief that said statements and representations are true and complete and to induce such persons to purchase Amana microwave ovens by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts or practices of respondent, herein alleged as aforesaid, were and are all to the prejudice and injury of the public and of Amana Refrigeration, Inc.'s competitors, and constituted and now constitute unfair or deceptive acts and practices in or affecting commerce and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended.

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EXHIBIT A

FCB
CHICAGO

CLIENT	AMANA REFRIGERATION INC.	DATE	11/14/80
PRODUCT	RADARANGE	NUMBER	AMC0B21
TITLE	"TORTURE TEST" AS PRODUCED	LENGTH (OR SPACE)	:25/:05 RADIO

0-1149

(SFX: CRASH OF STEEL BALL) That was a 5-pound steel ball dropped onto the door of the Amana Radarange. One of the safety tests established by the U. S. Government. Voluntary tests that microwave ovens have to pass to be exempt from displaying the safety warning label. An independent lab put 6 major brands of microwave ovens through 4 of the tests. (SFX: CRASH) Only Amana passed all 4. The Amana Radarange. Built better than it has to be. The Amana Way.

:05 DEALER TAG

LH/31A/1110.4

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EXHIBIT B



CLIENT	AMANA REFRIGERATION INC.	DATE	11.14/80
PRODUCT	RADARANGE	NUMBER	AMC0E22
TITLE	"TORTURE TEST" AS PRODUCED	LENGTH (OR SPACE)	:50/:10 RADIO

:P80-1149

(SFX: CRASH OF STEEL BALL) That was a 5-pound steel ball being dropped onto the door of the Amana Radarange. And that's just one of the safety tests established by the U. S. Government. Voluntary tests that microwave ovens have to pass to be exempt from displaying the safety warning label. An independent lab put 6 major brands of microwave ovens through 4 of the tests. They slammed the steel ball at the front of the oven doors. (SFX: CRASH) They opened the doors, and slammed the ball into the seal of the ovens. (SFX: CRASH) They slammed it into the seal of the doors. (SFX: CRASH) And with up to 125 pounds of force, they closed the doors onto a steel rod. (SFX: CRASH) Only Amana passed all 4 tests. Only the Amana Radarange is built tough enough to take it. It's built better than it has to be. (SFX: CRASH) That's the Amana Way.

LH/31B/1110.4

EXHIBIT C

ONLY ONE MICROWAVE OVEN IS BUILT BETTER THAN IT HAS TO BE.

The Amana Radarange microwave oven. For years we've been telling you it's built better. Here's one more way we can prove it.

Four times in the last five years, we submitted our "RR" series of Radarange ovens to a U.S. Government safety test program. Every time we've passed every test. We're still the only microwave oven manufacturer that has. So we're still the only one exempt from displaying the Government's safety-warning label.

We volunteered to take these tests. But not all manufacturers have.

We wanted to know how some of the other ovens compared to our Radarange oven. So we asked an independent lab to test them—at our expense.

The test lab pitted five other major brands against our Amana Radarange. And then conducted four of the Government's most abusive impact tests.

For the first test, they slammed a five-pound steel ball into the front of the doors.

For the second test, they opened the doors, and slammed the ball into the inside seal of the ovens.

For the third, they slammed it into the seal of the doors. And for the fourth test, they closed the doors, with up to 125 pounds of force, into a steel rod.

The results? Only Amana passed all four tests.

We know that, in reality, no microwave oven would ever encounter such abuse. Yet we build our Radarange oven tough enough to take it.

We build it with our patented knock-seal door. That way, even if the door and seal are severely damaged, the knock-seal will keep the microwave energy inside the oven, where it belongs.

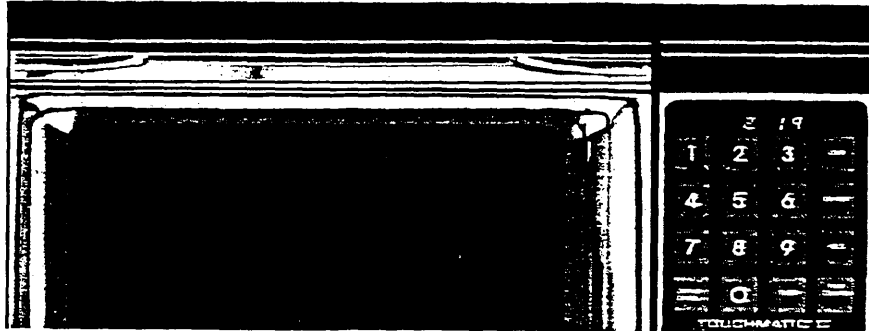
In short, we build the Amana Radarange better than it has to be. Because that's The Amana Way.

To see the Amana Radarange, see your Amana retailer.

Or for more information, write to:
Amana Refrigeration, Inc. *IT DOESN'T SAY Amana*
Dept. 576, Amana, Iowa 52204. *IT SAYS A Radarange*

THE AMANA® RADARANGE®

Every part of every product we make is backed by a century-old tradition of fine craftsmanship.



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EXHIBIT D

EVEN OWNERS OF THE NINE OTHER LEADING MICROWAVE OVENS RATED AMANA BEST QUALITY.

*Appliance Manufacturer** magazine recently asked microwave oven owners to list the "best quality" brand of microwave oven. You'll be interested to know that more oven owners rated Amana "best quality" than any other brand.

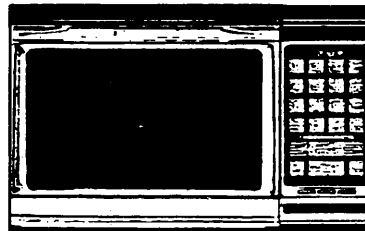
Among Amana owners, 97% said they received the quality they expected from their ovens. And that's the highest indicator of satisfaction in the survey.

Of course, this is just proof of what you already know: quality produces satisfied customers.

And quality is what The Amana Way is all about.

For more information, write to: Amana Refrigeration, Inc., Dept. 171, Amana, Iowa 52224.

IF IT DOESN'T SAY **Amana.**
IT'S NOT A *Radara*ge.
MICROWAVE OVEN



**Appliance Manufacturer*, 2001 F.T.C. consumer study.

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 Bureau of Consumer Protection 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 attorneys, 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, 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 Foote, Cone & Belding, Advertising, 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 401 N. Michigan Avenue, in the City of Chicago, State of Illinois.

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

I

It is ordered, That respondent Foote, Cone & Belding Advertising, Inc., 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 advertis-

ing, offering for sale, sale, or distribution of any Amana microwave oven or Amana combination microwave and convection oven for consumer or commercial use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

A. Representing, directly or by implication, that only Amana ovens passed independent testing conducted by an independent laboratory in 1980.

B. Representing, directly or by implication, that in a 1980 consumer survey, owners of nine other brands of microwave ovens rated Amana "best quality."

II

It is further ordered, That respondent, 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 advertising, offering for sale, sale, or distribution of any product specified in Part II(C) of this Order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any survey, opinion research, or test.

B. Failing to maintain records:

1. Of all materials that were relied upon in disseminating any representation covered by this order, insofar as the text of such representation is prepared, authorized, or approved by any person who is an officer or employee of respondent, or of any division, subdivision or subsidiary of respondent.

2. Of all test reports, studies, surveys, or demonstrations in its possession or control that contradict any representation made by respondent that is covered by this Order.

Such records shall be retained by respondent for three years from the date that the representations to which they pertain are last disseminated, and may be inspected by the staff of the Commission upon reasonable notice.

C. Part II of this Order shall apply to the following products for consumer use: all microwave ovens; all other ranges, cooktops, or ovens; all refrigerators, freezers, or combination refrigerator/freezers; all garbage compactors; all clothes washers and dryers; all air

conditioners; all heating equipment and heat pumps; and all dehumidifiers.

III

A. *It is further ordered*, That respondent, 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 advertising, offering for sale, sale, or distribution of any microwave oven, or combination microwave and convection oven, for consumer use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from representing, directly or by implication, the quality and/or safety of any such product, or from comparing any such product as to quality and/or safety to any product or products of one or more competitors, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of reliable and competent evidence that substantiates such representation.

B. To the extent the evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" for purposes of Part III(A) only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

Provided, however, That in circumstances where the scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area was not directly or indirectly prepared, controlled, or conducted by respondent, it shall be an affirmative defense to an alleged violation of Part III of this Order for Respondent to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that it had a reasonable basis in accordance with Part III of this Order. Such expert judgment shall be in writing signed by a person qualified by education or experience to render the opinion. Such opinion shall describe the contents of such evidence upon which the opinion is based.

Provided further, That nothing in this Order shall be deemed to deny or limit respondent with respect to any right, defense, or other affirmative defense to which respondent otherwise may be entitled by law in a compliance action or any other action.

IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent such as 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 arising out of the Order.

V

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its operating divisions.

VI

It is further ordered, That respondent shall, within sixty (60) days after this Order takes effect, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VII

It is further ordered, That this Order shall take effect on the day that an order of the Commission to cease and desist in *Amana Refrigeration, Inc.*, Docket 9162 [102 F.T.C. 1262 (1983)], has become final and effective, and this Order shall be effective only for such period of time as the Order in Docket 9162 is effective.

IN THE MATTER OF

BAYLEYSUIT, INC.

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

Docket C-3117. Complaint, Sept. 30, 1983—Decision, Sept. 30, 1983

This consent order requires the Fortuna, Calif. manufacturer of the "Bayley exposure suit," among other things, to publish advertisements, send notices, and use its best efforts to locate and notify users of the suits that the bladder hose assembly used to inflate the flotation pillow requires a safety modification. The manufacturer must send to each BayleySuit user who requests it, a retrofit kit, together with understandable instructions to permit easy repair of the suit. If, by July 15, 1983, 80% of BayleySuit users have not requested a retrofit kit, the manufacturer must search dealer records, ship registries and listings, and the rolls of fishermen's unions to obtain the names and addresses of retail purchasers, so they can be notified by letter of the safety hazard and provided with a repair kit request card. Further, the order prohibits false representations concerning the buoyancy or safety of the Bayley exposure suit or any other product.

Appearances

For the Commission: *Dennis D. McFeely.*

For the respondent: *Richard D. Warren, Landels, Ripley & Diamond, San Francisco, Calif.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BayleySuit, Inc. has violated Section 5 of the Federal Trade Commission Act and that an action is in the public interest, therefore issues this complaint and alleges:

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

Bayley exposure suit means a suit manufactured before June, 1980 by BayleySuit, Inc., with a flotation pillow attached, made of flexible buoyant material completely enclosing the body (except for the face) and designed for emergency use to increase the chance of survival in cold water.

User means any business or individual who owns or possesses a Bayley exposure suit for any purpose other than resale.

Flotation pillow means an inflatable bladder attached to the upper

back of a Bayley exposure suit so that, when inflated, the suit wearer's head and shoulders are elevated out of the water.

Bladder hose assembly means a two-piece tube used to orally inflate the flotation pillow.

2. Respondent BayleySuit, Inc. is a California corporation with its principal office and place of business at 900 S. Fortuna Boulevard, Fortuna, California.

3. Respondent is, and has been, engaged in the sale of substantial quantities of Bayley exposure suits.

4. In the course and conduct of its business, respondent has caused the exposure suits to be transported from its place of business in Fortuna, California to users and retailers located in various other States of the United States. Respondent maintains and at all times relevant herein has maintained a substantial course of trade in those products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. For the purpose of inducing the purchase of Bayley exposure suits, respondent has made or has caused to be made, in advertising and promotional materials, certain statements and representations about the Bayley exposure suits of which the following are typical:

YOU WANT THE BEST, SAFEST PROTECTION AVAILABLE, RIGHT?
INSURE YOUR SAFETY WITH QUALITY
MORE BUOYANCY
FLOTATION BLADDER (MORE FREEBOARD)

6. Through the use of these and other similar statements and representations, and by offering Bayley exposure suits for sale as a product fit for the purpose of improving the chance of survival in cold water, respondent has represented directly or by implication that Bayley exposure suits will consistently and safely support the head and shoulders out of the water, thereby substantially diminishing the likelihood of drowning.

7. In truth and in fact the Bayley exposure suits would not consistently and safely support the head and shoulders out of the water. Due to the design of the bladder hose assembly, the flotation pillow which provides the support for the head and shoulders would not consistently remain inflated in actual use, substantially increasing the likelihood of drowning. Therefore, these statements and representations were false, misleading, and deceptive.

8. Respondent's false statements and representations have had the capacity and tendency to mislead potential users into the mistaken belief that the statements and representations were true and to induce the purchase of such products by virtue of the said mistaken belief. Respondent has therefore engaged in unfair and deceptive acts

or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Seattle 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 attorneys, 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, 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 BayleySuit, 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 900 S. Fortuna Blvd., in the City of Fortuna, 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

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

Bayley exposure suit shall mean a suit manufactured before June 1, 1980 by BayleySuit, Inc., with a flotation pillow attached, made of flexible buoyant material completely enclosing the body (except for

the face) and designed for emergency use to increase the chance of survival in cold water.

User means any business or individual who owns or possesses a Bayley exposure suit for any purpose other than resale.

Flotation pillow means an inflatable bladder attached to the upper back of a Bayley exposure suit so that, when inflated, the suit wearer's head and shoulders are elevated out of the water.

I.

It is ordered, That respondent BayleySuit, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, division, or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any Bayley exposure suit or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from representing, directly or by implication, that the product will ensure buoyancy or is safe to use unless such is the case.

II.

It is further ordered, That respondent, its successors and assigns shall:

A. Publish advertisements, send notices, and use its best efforts to locate and notify users that Bayley exposure suits need a safety modification of the bladder hose assembly on the flotation pillow;

B. Mail to each Bayley exposure suit user who requests it, a retrofit kit, accompanied by easily understandable modification instructions, sufficient to modify the bladder hose assembly in a manner approved by the U.S. Coast Guard;

C. If requests for modification kits have not been received by July 15, 1983 from the users of at least eighty percent of Bayley exposure suits:

1. Respondent shall use its best efforts to obtain directly from past and present dealers the names and addresses of all Bayley exposure suit retail purchasers. Respondent may obtain these names from dealers in whatever sequence and manner it chooses, but it will continue the process until the names and addresses of at least eighty percent of the above-described suit retail purchasers are obtained. This process shall be completed no later than November 30, 1983; and

2. After July 15, 1983, respondent shall, within 15 days of identification of any retail purchaser, send Attachments A and B by first class

mail to that retail purchaser at his or her last known address. "IMPORTANT SAFETY NOTICE" shall be conspicuously placed on the front of the envelope;

D. Within 10 days of the return of each mailing of Attachments A and B marked by the Post Office as undeliverable, respondent will search for the current address of the addressee of each returned mailing. This search shall include contacting relevant ship registries and listings, and fishermen's unions;

E. Within 10 days of locating a new address through the search required by II.D, remit Attachments A and B in the manner required by II.C.2 of this Order to each retail purchaser for whom a new address is found.

III.

It is further ordered, That respondent maintain complete records of the nature of its compliance with this Order including:

1. The names, addresses, and dates of mailing of all notices required by this Order, and
2. The names, addresses, and dates of mailing of all modification kits required to be sent by this Order.

IV.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the respondent such as dissolution, merger, 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 arising out of the Order.

V.

It is further ordered, That within 60 days after service upon it of this Order, respondent shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this Order.

Decision and Order

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ATTACHMENT A

[COMPANY LETTERHEAD]

** VERY IMPORTANT **

SAFETY HAZARD NOTICE

Dear BayleySuit Customer:

According to our records, you purchased a Bayley Exposure Suit made between August 1977 and June 1980.

We wish to inform you that a *safety hazard* may exist in some models of our exposure suits manufactured before June 1980. BayleySuit has received reports that in some suits made before June 1980, the bladder hose assembly, which inflates the suit's flotation pillow, has separated. This separation would prevent inflation of the flotation pillow, which when inflated helps keep the head and shoulders above water.

We have developed a free modification kit to fix this problem and eliminate the safety hazard. To see if your suit needs this modification, look inside the suit for a white label that looks like this:

Exposure Suit
BayleySuit, Inc.
900 S. Fortuna Blvd.
Fortuna, CA 95540

Model: 7-01-04
Serial: 1-23-45
Date: 1-15-78

If the date shows that your suit was made before June 1980, please fill out and mail in the enclosed card or call us collect at (707) 725-3391. We will send you a *free*, easy to use kit for modifying the bladder hose.

While examining your suit for the manufacturing date, we recommend that you use this opportunity to give your suit an overall examination.

1. Work all zippers and re-wax them with the paraffin provided. Store the suit with the front entry zip *open*, so your suit will be easier to put on.
2. Check for water damage, mildew, etc. Has the suit been stored in a dry place? Dry thoroughly, inside and out, before storage.
3. Inflate the flotation pillow to 3/4 capacity. Be sure you know how to use it.
4. Give the suit a general inspection to assure it is in good working order.
5. Try the suit on . . . Do a practice drill. Be sure you are familiar with the suit.

These simple checks will ensure that your suit is safe and useful.

We sincerely appreciate your cooperation, and look forward to serving you in the future. If you have any questions or concerns, do not hesitate to contact us.

Sincerely,

BAYLEYSUIT, INC.
Susan Forbes
President

Enclosures

ATTACHMENT B

Customer Response Card

December, 1982

I have received your information on the modification kit available for my Bayley Exposure Suit. Please send the kit to the address below.

Name _____

Address _____

Exposure Suit Serial # _____

Date of Manufacture _____

F/V or Company Sold to: _____

of Kits needed _____

BayleySuit, Inc.

P.O. BOX 487

FORTUNA, CALIFORNIA 95540

Complaint

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IN THE MATTER OF

WASHINGTON, D.C., DERMATOLOGICAL SOCIETY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3118. Complaint, Oct. 5, 1983—Decision, Oct. 5, 1983*

This consent order requires a Washington, D.C. medical society, among other things, to cease inhibiting competition by restricting or advising member dermatologists against the truthful advertising of their fees and services; and by declaring such activities unethical. The society must remove from its Principals of Professional Conduct, constitution and bylaws, any provision which is inconsistent with the prohibitions contained in the order; and publish revised versions of these documents. The order also requires that the society take no formal action against a person charged with violating an ethical standard without first providing that person with reasonable notice of the allegations and a hearing, as well as written findings and conclusions concerning the allegations. Further, for a period of 5 years, the society must provide each new member with a copy of the complaint and order in this matter.

*Appearances*For the Commission: *Jill M. Frumin.*For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Washington, D.C., Dermatological Society is a corporation formed pursuant to the laws of District of Columbia with its mailing address at George Washington University Medical School, c/o Department of Dermatology, 2150 Pennsylvania Avenue, N.W., Washington, D.C.

PAR. 2. Respondent is a professional association of physicians who limit their practice to dermatology, and who are Diplomates of the American Board of Dermatology. Respondent has approximately one

hundred (100) members, constituting a substantial majority of dermatologic physicians in the greater Washington metropolitan area.

PAR. 3. Members of respondent are engaged in the business of providing dermatologic health care services for a fee. Except to the extent that competition has been restrained as herein alleged, members of respondent have been and are now in competition among themselves and with other dermatologists.

PAR. 4. Respondent engages in substantial activities which further its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. In the conduct of their business, members of respondent receive and treat patients from other states and counties, receive substantial sums of money from the federal government and from private insurers for rendering dermatologic services, which monies flow across state lines, and prescribe medicines which are shipped in interstate commerce. The acts or practices described below are in interstate commerce, or affect the interstate activities of respondent's members, third-party payers, other third parties, and some patients of respondent's members, and are in or affect commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

PAR. 6. Respondent has acted as a combination of at least some of its members or has conspired with at least some of its members to foreclose, frustrate, and eliminate competition among dermatologic physicians in the greater Washington metropolitan area by:

A. Prohibiting its members from truthfully advertising their prices, fees, or charges, and otherwise restricting truthful advertising by its members; and

B. Attempting to coerce individual members or prospective members into ceasing to advertise their services truthfully, to disseminate truthful information about their fees and services, and otherwise to solicit patients' business.

PAR. 7. Respondent has engaged in various acts or practices in furtherance of this combination or conspiracy, including, among other things:

A. Enacting ethical restrictions that prohibit its members from truthfully advertising any financial matters, and otherwise restricting truthful advertising by its members. By virtue of such ethical restraints, members are prohibited from truthfully advertising, among other things, their prices, fees, or charges, types or methods of treatment, professional training and experience, and special expertise; and

B. Threatening to exclude from membership any physician who is associated with a health care delivery organization that advertises the identity, fees, or services of an affiliated physician.

PAR. 8. Through the combination or conspiracy and the acts or practices described above, members of respondent have agreed not to advertise their services or otherwise solicit patients' business, and certain individual members of respondent may have been coerced into abandoning advertising their services or otherwise soliciting patients' business. Such advertising and solicitation enables physicians to compete on the basis of price and quality, and enables individual patients to choose among dermatologic physicians on the basis of price or quality. Consequently:

A. Competition among dermatologic physicians for patients is being foreclosed, frustrated, and eliminated; and

B. Consumers are being deprived of the benefits of competition among dermatologic physicians. In particular, patients are being deprived of truthful information about dermatologic physicians' fees and services, including, among other things: physicians' prices, fees, or charges, types or methods of treatment, professional training and experience, and special expertise.

PAR. 9. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition and unfair acts or practices which violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such combination or conspiracy is continuing and will continue absent the entry against respondent of appropriate relief.

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 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 the Federal Trade Commission Act; and

The respondent 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 com-

plaint, 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 Washington, D.C., Dermatological Society is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at George Washington University Medical School, c/o Department of Dermatology, 2150 Pennsylvania Avenue, N.W., in the City of Washington, D.C.

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

ORDER

I.

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

A. *DCDS* means respondent Washington, D.C., Dermatological Society, its delegates, trustees, councils, committees, Board of Directors, officers, representatives, agents, employees, successors, and assigns.

II.

It is ordered, That DCDS shall cease and desist from, directly or indirectly, or through any corporate or other device:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising or publishing by any person of the prices, terms, or conditions of sale of dermatologic physicians' services, or of information about dermatologic physicians' facilities or equipment that are offered for sale or made available by dermatologic physicians or by any organization with which dermatologic physicians are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfer-

ing with, or advising against the solicitation, through advertising or by any other means, of patients, patronage, or contracts to supply dermatologic physicians' services, by any dermatologic physician or by any organization with which dermatologic physicians are affiliated; and

C. Inducing, urging, encouraging, or assisting any dermatologic physician, group of dermatologic physicians, or any other non-governmental organization to take any of the actions prohibited by this part.

Nothing contained in this part shall prohibit respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that DCDS reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

III.

It is further ordered, That DCDS shall cease and desist from taking any formal action against a person alleged to have violated any ethical standard promulgated in conformity with this Order without first providing such person with:

- A. Reasonable written notice of the allegations against him or her;
- B. A hearing wherein such person or a person retained by him or her may seek to rebut such allegations; and
- C. The written findings or conclusions of respondent with respect to such allegations.

IV.

It is further ordered, That DCDS shall:

- A. For a period of five (5) years, provide each new member of DCDS with a copy of the complaint and this Order at the time the member is accepted into membership;
- B. Within sixty (60) days after the Order becomes final, publish and distribute a copy of the complaint and this Order to each of its members;
- C. Within ninety (90) days after this Order becomes final, remove from respondent's Principles of Professional Conduct, its constitution and bylaws, and any other existing policy statements or guidelines of respondent, any provision, interpretation, or policy statement which

is inconsistent with Part II of this Order, and within one hundred and twenty (120) days after this Order becomes final, publish and distribute a copy of the revised versions of such documents, statements, or guidelines to each of its members;

D. Within one hundred twenty (120) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order;

E. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Part II of this Order, including but not limited to any advice or interpretation rendered with respect to advertising or solicitation involving any of its members; and

F. Within one year after this Order becomes final, and annually thereafter for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Part II of this Order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any of its members.

V.

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

Interlocutory Order

102 F.T.C.

IN THE MATTER OF
ITT CONTINENTAL BAKING COMPANY

Docket 7880. Interlocutory Order, Oct. 12, 1983

ORDER SETTING ASIDE ORDER REQUIRING FILING OF SPECIAL REPORT

By a petition filed on June 13, 1983, respondent ITT Continental Baking Company ("ITT Continental") requests that the Commission reopen this proceeding and set aside or in the alternative modify the November 26, 1974 Order Requiring Filing of Special Report, which requires ITT Continental to give sixty days prior notice before making any acquisition in the baking industry. See *ITT Continental Baking Co.*, 84 F.T.C. 1349 (1974). Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comment. No comments were received.

Upon consideration of ITT Continental's request and supporting materials, and other relevant information, the Commission finds that the public interest and changed conditions of law warrant reopening of the proceeding and setting aside of the order.

Since the Order to File Special Report was issued, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, was passed. ITT Continental must now notify the Commission and the Assistant Attorney General in charge of the Antitrust Division of any acquisitions in the baking industry that are required to be reported by the statute and implementing rules. In view of this overlap between the Hart-Scott-Rodino premerger reporting requirements and the reporting requirements of the Order, the Commission believes that the Order is no longer necessary in order for the Commission to have the opportunity to scrutinize respondent's acquisitions in the baking industry that are subject to the Hart-Scott-Rodino premerger reporting requirements. As to other acquisitions, the Commission believes the costs of continuing to require reporting under the Order outweigh the benefits of the prior notice because such acquisitions, generally those that do not meet the Hart-Scott-Rodino dollar threshold, do not appear sufficiently likely to raise competitive concern.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that the Order Requiring Filing of Special Report be set aside as of the effective date of this order.

IN THE MATTER OF
DILLON COMPANIES, INC.

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

Docket C-3119. Complaint, Oct. 13, 1983—Decision, Oct. 13, 1983

This consent order requires a Hutchinson, Kansas operator of retail grocery stores, among other things, to cease engaging in any concerted action to impede the collection or dissemination of comparative price information. For a period of 5 years, the company is prohibited from requiring price checkers to purchase items to be priced, as a condition of allowing them to price check; denying price checkers the same access to its stores as is provided to customers; or coercing any price checker, publisher or broadcaster to refrain from collecting or reporting comparative price information. Additionally, respondent must offer to reimburse TeleCable up to \$1,000 for the broadcast of a comparative grocery price information program. Should the station elect to broadcast such a program, respondent must post signs and place newspaper ads notifying the public that such a program is being broadcast.

Appearances

For the Commission: *Patricia A. Bremer.*

For the respondent: *Norman Diamond, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Dillon Companies, Inc., has violated Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint charging as follows:

1. Dillon Companies, Inc., (hereafter "respondent") is a Kansas corporation with its principal offices at 700 E. 30th Avenue, Hutchinson, Kansas.
2. At all times relevant to this complaint, respondent has been engaged in the operation of retail grocery stores in various areas in the United States including the city of Springfield, Missouri, and Greene or Christian counties, Missouri (hereafter "Springfield").
3. At all times relevant to this complaint, respondent has engaged

in activities in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Except to the extent that competition has been restrained as herein alleged, in the course and conduct of its business respondent has been and is now in substantial competition in or affecting commerce with corporations, firms, or individuals engaged in the operation of retail grocery stores in Springfield.

5. Vector Enterprises, Inc., ("Vector") is engaged in the business of gathering and selling comparative retail grocery price information in various cities throughout the United States. In each city, Vector visits grocery stores weekly and collects price information on a sample of 80 or more grocery products in four categories: meat, produce, grocery and non-food. This activity is sometimes referred to as "price checking." Vector processes the price data and sells it to cable television stations, which typically broadcast the comparative prices of the stores on each of the items checked as well as weighted market basket comparisons on each of the four grocery categories and the total of all categories.

6. On or about July 15, 1980, Vector began collecting comparative price information on a weekly basis at about five retail grocery stores, including the largest chains, in Springfield, and Vector began selling this comparative retail grocery price information to TeleCable, a cable television station in Springfield. TeleCable broadcast Vector's information 24 hours a day. For more than one year, Vector collected and TeleCable broadcast comparative price information for a number of retail grocery stores in Springfield, including one or more stores operated by respondent.

7. Prior to October 14, 1981, the Vector price check compared the prices of five Springfield grocers including respondent. Some time shortly before October 14, 1981, respondent and other operators of retail grocery stores in Springfield whose prices were also included in the Vector survey agreed that they would act in concert to impede Vector's ability to gather comparative grocery prices. On or about that date, pursuant to the agreement, respondent and other operators of retail grocery stores in Springfield simultaneously took concerted action that effectively prevented Vector from collecting comparative grocery price information in their stores. Respondent refused to permit Vector to collect price information in its stores. The other stores either did likewise or they required Vector to purchase each grocery item it desired to price check. The weekly cost of purchasing the groceries would have been substantially higher than the price at which Vector had agreed to sell the grocery price information to TeleCable.

8. As of October 14, 1981, as a direct result of the agreement among

respondent and its competitors, Vector was able to price check at only one of the five Springfield grocery retailers that had been included in the survey. Thereafter TeleCable broadcast the prices for just that one store. On or about December 31, 1981, TeleCable stopped broadcasting Vector's price reporting program and terminated its agreement with Vector because Vector was no longer able to provide comparative price information for the largest retail grocery chains in Springfield.

9. Through the acts and practices described above, respondent and others have agreed, combined or conspired to obstruct the collection and dissemination of comparative grocery price information, with the following actual or potential effects, among others:

a. Price competition among Springfield grocery retailers has been restrained;

b. Consumers in Springfield have been deprived of retail grocery price information that can be used in the selection of a grocery store;

c. Competition in the collection and dissemination of retail grocery price information has been hindered and restrained;

d. Competition in the development of new forms of retail grocery price information has been hindered and restrained; and

e. The free forces of competition have been prevented from determining the amount of comparative retail grocery price information that will be available to consumers in the marketplace.

10. Respondent and others have agreed, combined or conspired to engage, and they have actually engaged, in conduct that constitutes a restraint on price competition. Respondent thereby has unreasonably restrained trade in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended; and respondent's conduct as alleged herein constitutes an unfair method of competition or an unfair act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended.

11. Respondent and others have agreed, combined or conspired to boycott, and they have actually boycotted, firms that collect or disseminate comparative grocery price information. Respondent thereby has unreasonably restrained trade in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended; and respondent's conduct as alleged herein constitutes an unfair method of competition or an unfair act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended.

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 Bureau of Competition 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 attorneys, 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, 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 Dillon Companies, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 700 E. 30th Avenue, in the City of Hutchinson, State of Kansas.
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

I.

For the purpose of this Order, the following definitions shall apply:

A. *Dillon* means Dillon Companies, Inc., its retail grocery divisions and subsidiaries, its officers, representatives, agents, employees, successors and assigns.

B. *Price check* or *price checking* means the collecting, from information available to customers, of retail prices of items offered for sale by any retail grocery store (SIC 5411), which is done neither by nor on behalf of a person engaged in the sale of groceries, and which information is used in price reporting.

C. *Price checker* means any person engaged in price checking.

D. *Price reporting or price report* means the dissemination to the public of price checking information through any medium by any person not engaged in the sale of groceries.

E. *Springfield* means the counties of Christian and Greene, Missouri.

F. *Customer* means any individual who enters a retail grocery store for the purpose of grocery shopping, whether or not that individual actually makes a purchase.

G. *Person* means individuals, corporations, partnerships, unincorporated associations, and any other business entity.

H. *Geographic area* means: (1) a Standard Metropolitan Statistical Area as defined by the Bureau of the Census, U.S. Department of Commerce, as of October 1, 1982; or (2) a county.

I. *Supermarket* means any retail grocery store (SIC 5411) with annual sales of more than one million dollars (\$1,000,000.00).

J. *Springfield Division* means (i) Washington County, Arkansas; Crawford County, Kansas; Mayes and Ottawa Counties, Oklahoma; and Boone, Callaway, Camden, Cass, Cole, Greene, Henry, Jasper, Miller, Moniteau and Morgan Counties, Missouri; and (ii) any other geographic area in which the Dillon retail division based in Greene County, Missouri, operated a supermarket on or after October 14, 1981.

II.

It is further ordered, That:

A. Dillon shall forthwith cease and desist from taking any action in concert with any other person engaged in the sale of grocery products which has the purpose or effect of restricting, impeding, interfering with or preventing price checking or price reporting.

B. Except as provided in paragraph II.C., for five (5) years following the date on which this Order becomes final, Dillon shall cease and desist from taking or threatening to take any unilateral action in its Springfield Division that would:

1. Require price checkers to purchase items to be price checked as a condition of allowing them to price check; or

2. Deny price checkers the same access to Dillon's supermarkets as is provided to customers; or

3. Coerce, or attempt to coerce, any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting.

C. 1. Nothing in paragraph II.B. shall prevent Dillon from adopting

reasonable, non-discriminatory rules governing the number of price checkers in its supermarkets at any one time for the purpose of preventing disruption of Dillon's normal business operations.

2. Nothing in subparagraph II.B.3. shall prevent Dillon from publicly commenting upon or objecting to any price report in which its prices are compared to those of any other grocery retailer.

3. Whenever Dillon believes that conditions exist that justify the exclusion of a price checker, it may submit to the Federal Trade Commission a sworn statement setting forth with particularity the facts that Dillon believes meet such conditions. For purposes of this Order, the only conditions justifying the exclusion of a price checker are that another supermarket operator with whose prices Dillon's prices are compared in a price report has knowingly tampered with or manipulated the results of such price report for its own competitive gain either (a) by the use of information wrongfully obtained and not available to all supermarket operators whose prices are being compared, or (b) by inducing any price reporter or price checker to cause false information to be published or broadcast. Following the Federal Trade Commission's actual receipt of such statement, Dillon may exclude the price checkers from its supermarkets in the geographic area(s) covered by the affected price report for so long as the conditions set forth in Dillon's statement shall exist. In any civil penalty action against Dillon for a violation of subparagraph II.B. 2. occurring after notice to the Federal Trade Commission was given by Dillon as provided in this subparagraph, Dillon shall have the burden of proving, by a preponderance of the evidence, that the conditions justifying the exclusion of a price checker as set forth in this subparagraph have been met. In meeting its burden, Dillon may offer evidence only for the purpose of proving the facts set forth in its statement to the Federal Trade Commission. Nothing in this subparagraph shall be construed to be an exception to the prohibitions of paragraph II.A. of this Order.

III.

It is further ordered, That, upon the resumption of price reporting by TeleCable of Springfield similar in quality and coverage to that broadcast by it prior to October 14, 1981, and upon receipt by Dillon of written request for payment from TeleCable, Dillon shall reimburse TeleCable for its actual cost of obtaining a price reporting program up to the amount of two hundred fifty dollars (\$250.00) per week. Dillon's obligation under this Part (III) shall terminate either when it has reimbursed TeleCable in the total amount of one thousand dollars (\$1,000.00) or three (3) years following the date on which

this Order becomes final, whichever occurs first. Dillon shall not reimburse TeleCable for costs incurred by TeleCable during any week for which TeleCable's costs are reimbursed by any other person.

IV.

It is further ordered, That, within seven (7) days following the date on which this Order becomes final, Dillon shall send a letter, which has been approved in advance by the Federal Trade Commission, together with a copy of this Order, to TeleCable of Springfield, informing TeleCable of Dillon's obligations under Parts II and V of this Order, TeleCable's rights under Part III, and the notices that Dillon must receive from TeleCable before certain Order provisions become binding upon Dillon.

V.

It is further ordered, That, if at any time during the two years following the date on which this Order becomes final, the President of the Dillon Springfield Division is notified in writing by TeleCable of Springfield that price reporting that includes any of Dillon's supermarkets has resumed in Springfield:

A. For a period of sixty (60) days following the receipt of such notice, Dillon shall post signs no smaller than 30 inches by 40 inches in a front window in each of Dillon's supermarkets in Springfield, stating:

GROCERY PRICE SURVEY

A price survey comparing prices of selected grocery items at Dillon's and other Springfield grocery supermarkets is being broadcast over cable television. This comparative price survey can be seen on channel _____ and is broadcast from _____ to _____.

B. For a period of sixty (60) days following the receipt of such notice, whenever Dillon places food advertisements in the *Springfield Daily News* of one-half page or larger, Dillon shall publish an announcement as a part thereof in the same language provided in paragraph V.A. This announcement shall be no smaller than 3 inches high by 3 inches wide and shall be printed in conspicuous type. In each week in which Dillon does not place a one-half page or larger food advertisement in the *Springfield Daily News*, Dillon shall place this announcement as a display advertisement in the Lifestyle/Food Section of the *Springfield Daily News*.

