

Complaint

118 F.T.C.

IN THE MATTER OF

BPI ENVIRONMENTAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3535. Complaint, Oct. 17, 1994--Decision, Oct. 17, 1994*

This consent order prohibits, among other things, a Massachusetts-based corporation from making unsubstantiated degradability claims for its plastic grocery bags or any of its plastic products in the future. The order also requires the respondent to possess competent and reliable evidence to substantiate claims regarding any environmental benefit of its plastic products.

*Appearances*For the Commission: *Gary S. Cooper.*For the respondent: *Dennis N. Caulfield*, President, North Dighton, MA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that BPI Environmental, Inc., successor to Beresford Packaging, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent BPI Environmental, Inc. ("BPI") is a Delaware corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts.

Beresford Packaging, Inc. ("Beresford") was a Massachusetts corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts.

On or about August 2, 1990, Beresford was merged into BPI, at which time the separate corporate existence of Beresford ceased and BPI became the surviving corporation. BPI, as the successor in merger to Beresford, is the legal successor to Beresford and is responsible for the acts or practices of Beresford alleged herein.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed throughout the United States plastic grocery bags or sacks containing cornstarch additives under such trade names as "BIO-SAC," and plastic grocery bags or sacks containing ultra-violet radiation enhancing additives under such trade names as "PHOTO-SAC."

PAR. 3. The acts or practices of respondent alleged in this complaint constitute the maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, through the sale of its plastic grocery bags or sacks to third party purchasers, has caused plastic grocery bags or sacks containing product labeling, including, but not necessarily limited to the attached Exhibit A, to be distributed to consumers throughout the United States. In the course and conduct of its business, and for the purpose of promoting the sale or distribution of its plastic grocery bags or sacks, respondent has also disseminated or caused to be disseminated to purchasers of its plastic grocery bags or sacks various advertisements and promotional materials, including, but not necessarily limited to the attached Exhibit B.

PAR. 5. The product labeling, referred to in paragraph four above, an example of which is attached hereto as Exhibit A, contains, among others, the following statements or claims concerning respondent's BIO-SAC plastic grocery sack:

- a. "BIO-DEGRADABLE" [In large, bold typeface]
- b. "TOTALLY BIO-DEGRADABLE"
- c. "DECOMPOSES WITHOUT SUNLIGHT"
- d. "ENVIRONMENTALLY SAFE IN LANDFILLS AND INCINERATION"

PAR. 6. The advertisements or promotional materials, referred to in paragraph four above, an example of which is attached hereto as Exhibit B, contain, among others, the following statements or claims concerning respondent's BIO-SAC plastic grocery sack:

- a. "BIO-SAC IS SAFE FOR THE ENVIRONMENT" [In large typeface]
- b. "Cornstarch additives in the sack are attacked by micro-organisms which ultimately results in complete degradation of the plastic."
- c. "BIO-SAC will completely disappear when buried in landfills in 3 to 6 years"
- d. "BIO-SAC decomposes in the environment without sunlight, naturally"

PAR. 7. Through the use of the statements and claims referred to in paragraphs five and six above, and others not specifically set forth herein, respondent has represented, directly or by implication, that compared to untreated plastic grocery sacks, respondent's BIO-SAC plastic grocery sacks offer a significant environmental benefit when consumers dispose of them as trash.

PAR. 8. Through the use of the statements and claims referred to in paragraph six above, and others not specifically set forth herein, respondent has represented, directly or by implication, that respondent's BIO-SAC plastic grocery sacks will completely break down, decompose, and return to nature within 3 to 6 years when buried in landfills.

PAR. 9. The product labeling referred to in paragraph four above, contains, among others, the following statements or claims concerning respondent's PHOTO-SAC plastic grocery sack:

- a. "DEGRADABLE"
- b. "LANDFILL-SAFE"

PAR. 10. Through the use of the statements and claims referred to in paragraph nine above, and others not specifically set forth herein, respondent has represented, directly or by implication, that:

- a. Compared to untreated plastic grocery sacks, respondent's PHOTO-SAC plastic grocery sacks offer a significant environmental benefit when consumers dispose of them as trash.
- b. Respondent's PHOTO-SAC plastic grocery sacks will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

PAR. 11. Through the use of the statements and claims and the representations referred to in paragraphs five, six, seven, eight, nine and ten above, and others not specifically set forth herein, respondent has represented, directly or by implication, that at the time the representations set forth in paragraphs seven, eight and ten above were made respondent possessed and relied upon a reasonable basis for such representations.

PAR. 12. In truth and in fact, at the time the representations set forth in paragraphs seven, eight, and ten above were made, respon-

dent did not possess and rely upon a reasonable basis for such representations. Therefore, the representation set forth in paragraph eleven above was, and is, false and misleading.

PAR. 13. Respondent's dissemination of the false and misleading representations as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said false and misleading representations, constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Section 5(a) of the Federal Trade Commission Act.

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EXHIBIT A

EXHIBIT A

LABELING ON BIO-SAC PLASTIC SACK



beresford packaging inc.

155 myles standish blvd.  
taunton, massachusetts 02780

Tel. (508) 824-8636  
FAX (508) 822-6872  
IN MASS. (800) 641-8900  
OUTSIDE MASS. (800) 628-8206

We care about  
our environment

• TOTALLY BIO-DEGRADABLE • DECOMPOSES  
WITHOUT SUNLIGHT • NON TOXIC • ENVIRONMENTALLY  
SAFE IN LANDFILLS AND INCINERATION.

BIO-DEGRADABLE  
BIO-DEGRADABLE  
BIO-DEGRADABLE  
BIO-DEGRADABLE



ADM is a registered trademark of ADM. ADM is a registered trademark of ADM. ADM is a registered trademark of ADM.



Complaint

## EXHIBIT B

EXHIBIT B  
PROMOTIONAL LITERATURE

## BIO-SAC™ IS SAFE FOR THE ENVIRONMENT.

Cornstarch additives in the sack are attacked by microorganisms which ultimately results in complete degradation of the plastic. Therefore:

**BIO-SAC™** will completely disappear when buried in landfills in 3 to 6 years.

**BIO-SAC™** decomposes in the environment without sunlight, naturally.

**BIO-SAC™** is printed with only water based inks.

**BIO-SAC™** leaves no toxic or harsh chemicals to harm the environment.

**BIO-SAC™** is incinerator safe.

**BIO-SAC™** is recyclable.

**BIO-SAC™** is non-leaching in landfills.

**BIO-SAC™** is available only from:

Beresford Packaging Inc.  
155 Myles Standish Blvd.  
Taunton, Massachusetts 02780  
Tel. (508) 824-8636 FAX (508) 822-6872

## 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 complaint which the Boston 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,

The respondent 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 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 determined that it had reason to believe that the respondent has violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, and having duly considered the recommendations of its staff to modify the consent agreement pursuant to the comments received and the supplemental letter agreement executed by the respondent's counsel, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent BPI Environmental, Inc. ("BPI") is a Delaware corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts. Beresford Packaging, Inc. ("Beresford") was a Massachusetts corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts. On or about August 2, 1990, Beresford was merged into BPI, at which time the separate corporate existence of Beresford ceased and BPI became the surviving

corporation. BPI, as the successor in merger to Beresford, is the legal successor to Beresford.

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

## ORDER

### DEFINITION

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

*“BPI Environmental plastic product”* means any product or product packaging composed of plastic, in whole or in part, including but not limited to plastic grocery bags or sacks, plastic T-shirt bags or sacks, plastic produce bags or sacks, and plastic bakery bags or sacks, that is offered for sale, sold, or distributed by respondent, its successors and assigns, or that is distributed to the public by any other person, corporation or third party who has purchased said plastic product from respondent, its successors and assigns, under the “BIO-SAC” or “PHOTO-SAC” brand names or any other brand name of respondent, its successors and assigns; and also means any plastic product that is sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

### I.

*It is ordered,* That respondent BPI Environmental, Inc., a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any BPI Environmental plastic product, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by word or depiction:

(1) That any such plastic product is “degradable,” “biodegradable,” or “photodegradable”; or,

(2) Through the use of such terms as “degradable,” “biodegradable,” “photodegradable,” or any other substantially similar term or expression, that the degradability of any such plastic product offers any environmental benefits when disposed of as trash in a sanitary landfill, or when incinerated,

unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substantiates such representation. For purposes of this order, competent and reliable scientific evidence shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

## II.

*It is further ordered,* That respondent BPI Environmental, Inc., a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any BPI Environmental plastic product, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by word or depiction, that any such product offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

## III.

*It is further ordered,* That, for a period of three (3) years from the date that any representation covered by this order is last disseminated, respondent shall maintain and upon request make available to the Commission for inspection and copying:

A. All materials that were relied upon to substantiate such representation; and

B. All test reports, studies, surveys, demonstrations or other evidence in respondent's possession or control, that contradict, qualify, or call into question such representation or the basis relied upon for such representation.

#### IV.

*It is further ordered,* That respondent shall distribute a copy of this order within sixty (60) days after service of this order upon them to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling or the preparation or placement of advertisements or other such sales or promotional materials covered by this order.

#### V.

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

#### VI.

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

Commissioner Varney not participating.

Complaint

118 F.T.C.

IN THE MATTER OF

ADOBE SYSTEMS INCORPORATED, 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-3536. Complaint, Oct. 18, 1994--Decision, Oct. 18, 1994*

This consent order permits the consummation of the acquisition of Aldus Corporation by Adobe Systems Incorporated and requires, among other things, the two software firms to divest Aldus Corporation's FreeHand professional-illustration computer software and name to Altsys Corporation within six months. In addition, for ten years, the order requires the respondents to obtain Commission approval before acquiring any stock or other interest in any firm engaged in the development or sale of professional-illustration software for the Macintosh or Power Macintosh.

#### *Appearances*

For the Commission: *Mary Lou Steptoe and Mark Menna.*

For the respondents: *Wayne D. Collins, Sherman & Sterling, New York, N.Y. and Harvey I. Saferstein, Irell & Manella, Los Angeles, CA.*

#### 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 (Commission), having reason to believe that respondent Adobe Systems Incorporated, a corporation, has agreed to acquire the Aldus Corporation, a corporation, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

## I. RESPONDENTS

1. Respondent Adobe Systems Incorporated (“Adobe”) is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal place of business at 1585 Charleston Road, Mountain View, California. Adobe, which had sales of approximately \$313.5 million in 1993, develops and markets computer software. Adobe develops and markets, among other graphics software, Illustrator, a professional illustration program.

2. Respondent Aldus Corporation (“Aldus”) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal place of business at 411 First Avenue South, Seattle, Washington. Aldus, which had sales of approximately \$206.5 million in 1993, is also a producer of computer software, with the majority of its revenue derived from graphics products. Aldus markets FreeHand, a professional illustration program, under license from Altsys Corporation, which initially developed the program and continues to develop it in consultation with Aldus.

## II. JURISDICTION

3. Adobe and Aldus are, and at all time relevant herein have been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

## III. THE ACQUISITION

4. Adobe and Aldus entered into an agreement on or about March 15, 1994, pursuant to which Adobe intends to acquire essentially all of the stock of Aldus in exchange for Adobe stock valued at the time at approximately \$525 million. On or about July 14, 1994, Adobe and Aldus agreed to revise their March 15 agreement, reducing the value of the proposed acquisition to approximately \$455 million.

## IV. MARKET STRUCTURE

5. One relevant line of the commerce in which to analyze the effects of the proposed acquisition is the development and sale of professional illustration software for use on Apple Macintosh and Power Macintosh computers. Illustrator and FreeHand are the only two products in that market, with combined 1993 worldwide sales of approximately \$60 million and combined 1993 U.S. sales of \$32 million, of which approximately 70 percent was attributed to sales of Illustrator and approximately 30 percent was attributable to sales of FreeHand.

6. Illustrator and FreeHand compete for sales to graphics arts professionals and are the only illustration programs which offer features and performance characteristics enabling graphics professionals efficiently and reliably to create and print high-quality illustrations.

7. Even if the relevant market is broadened to include the development and sale of all illustration software for use on Apple Macintosh and Power Macintosh computers, or is broadened even further to include the development and sale of illustration software for use on IBM-compatible computers with the Windows operating environment, the relevant market is highly concentrated and Adobe and Aldus have a combined share of more than 35% of sales. The products are differentiated and a significant share of sales in the broader markets is accounted for by customers who regard Illustrator and FreeHand as their first and second choices.

8. The relevant geographic market in which to consider the proposed acquisition is either the United States or worldwide. There are no significant impediments to the sale of imported illustration programs in the United States; however, most illustration software is published in the United States.

9. Entry into the market for professional illustration software for use on Apple Macintosh and Power Macintosh computers would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects. Developing a professional illustration program is difficult and time consuming. Marketing a technically comparable or even an improved illustration program would be difficult and time consuming because of network externalities associated with Illustrator's and FreeHand's extensive installed user bases. Repositioning of other programs to compete

with Illustrator and FreeHand would also be difficult, time consuming and unlikely.

10. Adobe and Aldus have competed vigorously against each other with respect to price and development of new versions of Illustrator and FreeHand.

#### V. EFFECTS OF THE ACQUISITION

11. The proposed acquisition, if consummated, may substantially lessen competition or tend to create a monopoly in the relevant markets in the following ways, among others:

- a. It will increase the already high concentration in the relevant markets;
- b. It will eliminate Aldus as a substantial independent competitive force in the relevant markets;
- c. It will eliminate actual, direct and substantial competition between Adobe and Aldus;
- d. It will eliminate competition between the two closest substitutes, Illustrator and FreeHand, among differentiated products in the relevant markets;
- e. It will allow the merged firm unilaterally to exercise market power;
- f. It will allow the merged firm to raise prices, either directly or through reduced discounting, promotions, or service, on either Illustrator or FreeHand or on both products;
- g. It will allow the merged firm to reduce innovation by delaying or reducing product development; and
- h. It will increase the likelihood of coordinated interaction.

#### VI. VIOLATIONS CHARGED

12. The acquisition agreement described in paragraph four of this complaint constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

13. The proposed acquisition of Aldus by Adobe, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Varney not participating.

## DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by respondent Adobe Systems Incorporated of the stock of respondent Aldus Corporation, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with 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 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 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 Adobe Systems Incorporated 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 1585 Charleston Road, Mountain View, California.
2. Respondent Aldus Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 411 First Avenue South, Seattle, Washington.

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

## ORDER

### I.

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

A. “*Adobe*” means Adobe Systems Incorporated, its predecessors, divisions, subsidiaries, groups and affiliates that it controls, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. “*Aldus*” means Aldus Corporation, its predecessors, divisions, subsidiaries, groups and affiliates that it controls, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. “*Respondents*” means Adobe and Aldus.

D. “*Altsys*” means Altsys Corporation, a Texas corporation located at 269 West Renner Parkway, Richardson, Texas.

E. “*Professional Illustration Software*” means a complete path-based illustration program native to Apple Macintosh or Power Macintosh computers, targeted to meet the needs of professional customers whose function is to create graphics for internal and external clients to be used in publications printed on a printing press, and excludes Computer Aided Design (CAD) and 3D programs.

F. “*FreeHand*” means the Professional Illustration Software program marketed and sold by Aldus under the name “Aldus FreeHand” pursuant to a Software License Agreement with Altsys dated as of July 20, 1987, as amended (the “License”); Aldus source code incorporated in FreeHand (for use in FreeHand); the name “FreeHand” (but not the name “Aldus”); the FreeHand customer names and addresses together with FreeHand specific information in the Aldus database (but not the underlying database application software); and all marketing, advertising, training and technical support information and materials for FreeHand.

G. “*Illustrator*” means the Professional Illustration Software program marketed and sold by Adobe under the name “Illustrator.”

H. “*Altsys Agreement*” means the July 11, 1994, agreement between Aldus and Altsys.

I. “*Acquisition*” means the stock acquisition of Aldus by Adobe.

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

## II.

*It is further ordered,* That, pending divestiture of FreeHand, respondents shall take such action as is necessary to maintain the viability and marketability of FreeHand and shall not cause or permit the destruction, removal from the market, wasting, deterioration or impairment of FreeHand. Pending divestiture of FreeHand, employees of respondents involved in the development, marketing, or sale of Illustrator or FreeHand shall not be involved in the development, marketing or sale of the other product; and employees of respondents involved in the development, marketing or sale of Illustrator or FreeHand shall not receive or have access to or the use of any “material confidential information” not in the public domain, with respect to the other product except as such information would be available to those employees in the normal course of business if the acquisition had not taken place. (“Material confidential information,” as used herein, means competitively sensitive or proprietary information not independently known from sources other than those employees involved in the development, marketing, or sale of FreeHand or Illustrator.)

## III.

*It is further ordered,* That within six (6) months after the acquisition is consummated respondents shall absolutely and in good faith divest FreeHand to Altsys in accordance with the Altsys agreement. Adobe and Aldus shall comply with all the terms of the Altsys agreement, except that the License shall be terminated no later than six (6) months after the acquisition. The purpose of the divestiture is to ensure the continuation of FreeHand as an ongoing viable Professional Illustration Software program, to maintain FreeHand as an independent competitor in the Professional Illustration Software business, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission’s complaint.

## IV.

*It is further ordered,* That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of paragraphs II and III of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with those provisions. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of this order.

## V.

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

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or noncorporate, then engaged in the development or sale of Professional Illustration Software, provided, however, that an acquisition of such stock, share capital, equity or other interest will be exempt from the requirements of this paragraph if it is solely for the purpose of investment and respondents will hold no more than one percent of the shares of any class of security traded on a national securities exchange or authorized to be quoted in an interdealer quotation system of a national securities association registered with the United States Securities and Exchange Commission; or

B. Acquire any Professional Illustration Software or acquire or enter into any exclusive license to Professional Illustration Software; provided, however, that such an acquisition will be exempt from the requirements of this paragraph if the purchase price is less than \$2,000,000 (two million dollars).

## VI.

*It is further ordered,* That, for a period of ten (10) years from the date this order becomes final, unless respondents are required to seek

prior approval from the Commission pursuant to paragraph V, respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, acquire any Professional Illustration Software or any exclusive license to Professional Illustration Software;

Said 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"). Respondents shall provide to the Commission at least ten days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"), both the Notification and supplemental information either in respondents' possession or reasonably available to respondents. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of each respondent and of the firm respondents desire to acquire who negotiated the acquisition agreement; and any management or strategic plans discussing the proposed acquisition. If, within the first waiting period, representatives of the Commission make a written request for additional information, respondents shall not consummate the acquisition until twenty days after submitting such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

#### VII.

One year from the date this order becomes final, annually for the next nine (9) years, and at other times as the Commission may require, respondents shall file with the Commission verified written reports setting forth in detail the manner and form in which they have complied and are complying with paragraphs V and VI of this order.

#### VIII.

*It is further ordered*, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to

respondents, respondents shall permit any duly authorized representatives of the Commission:

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

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

#### IX.

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

Commissioner Varney not participating.

## IN THE MATTER OF

## BOULDER RIDGE CABLE TV, ET AL.

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

*Docket C-3537. Complaint, Oct. 19, 1994--Decision, Oct. 19, 1994*

This consent order prohibits, among other things, two California-based cable companies and their officers from enforcing any rights they may have under certain paragraphs of an agreement not to compete, entered into as part of Boulder Ridge's acquisition of Three Palms, Ltd., and prohibits the respondents from entering into similar agreements not to compete with the seller or buyer of a cable television system or cable television service in any geographic area in the future.

*Appearances*

For the Commission: *Ronald B. Rowe, Jill M. Frumin and Mary Lou Steptoe.*

For the respondents: *Burt Braverman, Cole, Raywid & Braverman, Washington, D.C. and Ray Jacobsen, Howrey & Simon, Washington, D.C.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents Boulder Ridge Cable TV, a corporation, and Dean Hazen, individually and as an officer of said corporation, Weststar Communications, Inc., a corporation, and Rodney A. Hansen, individually, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, 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 in that respect as follows:

## I. RESPONDENTS

PARAGRAPH 1. Respondent Boulder Ridge Cable TV (hereinafter "Boulder Ridge") is a corporation organized, existing and doing

business under and by virtue of the laws of the State of California, with its principal office and place of business at 590 Kelly Ave., Half Moon Bay, California. During 1986, 1987, 1988, and 1989, respondent Boulder Ridge, doing business as Desert Cable TV, owned and operated a cable television system in Indian Wells Valley in the State of California.

PAR. 2. Respondent Dean Hazen is the president and majority shareholder of Boulder Ridge, and was the sole shareholder of Boulder Ridge at the time of the acts and practices referred to in paragraphs eight through twelve. His business address is 590 Kelly Ave., Half Moon Bay, California. Respondent Dean Hazen formulates, directs, and controls the acts and practices of respondent Boulder Ridge.

PAR. 3. Respondents Boulder Ridge and Dean Hazen are collectively and individually referred to herein as "Boulder Ridge Entities."

PAR. 4. Respondent Weststar Communications, Inc. (hereinafter "Weststar"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 2200 Sunrise Blvd., Suite 250, Rancho Cordova, California. Respondent Weststar indirectly owned a substantial interest in Three Palms, Ltd., (hereinafter "Three Palms").

PAR. 5. Respondent Rodney A. Hansen is a shareholder of Weststar and was a partner in Three Palms, Ltd., a dissolved California partnership. His business address is 8217 Hegseth Court, Fair Oaks, California. During 1986, 1987, and 1988, Three Palms or its predecessors owned and operated a cable television system in Indian Wells Valley in the State of California. Respondent Rodney A. Hansen, through his ownership interests in various corporations and partnerships, formulated, directed and controlled the acts and practices of Three Palms.

PAR. 6. Respondents Weststar and Rodney A. Hansen are collectively and individually referred to herein as "Three Palms Entities."

PAR. 7. At all times relevant herein, each of the respondents or their predecessors maintains or has maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

## II. THE NON-COMPETITION AGREEMENT

PAR. 8. On November 16, 1988, respondents entered into an asset purchase agreement in which Boulder Ridge agreed to acquire the assets of Three Palms.

PAR. 9. As Schedule Z to the asset purchase agreement referred to in paragraph eight, respondents entered into a NON-COMPETITION AND NON-DISCLOSURE AGREEMENT, dated November 22, 1988. In paragraphs 3 and 4 of the latter agreement, respondents agreed that: (a) respondents Boulder Ridge Entities would not "own, manage, operate, control, or engage or participate in the ownership, management, operation, or control of, or be connected as a stockholder, officer, director, agent, employee, consultant, partner, joint venturer, or otherwise with any business or organization, any part of which engages in the business of operating a cable television system, subscription television system, multipoint distribution system, direct broadcast system, private operational fixed microwave service, or any similar system or service (or obtaining or holding any authorizations or franchises for any of the foregoing)," located within fifteen (15) miles of the legal boundaries of a community in which respondents Three Palms Entities currently, or at any time in the future, own or operate a cable television system; and (b) respondents Three Palms Entities would not "own, manage, operate, control, or engage or participate in the ownership, management, operation, or control of, or be connected as a stockholder, officer, director, agent, employee, consultant, partner, joint venturer, or otherwise with any business or organization, any part of which engages in the business of operating a cable television system, subscription television system, multipoint distribution system, direct broadcast system, private operational fixed microwave service, or any similar system or service (or obtaining or holding any authorizations or franchises for any of the foregoing)," located within fifteen (15) miles of the legal boundaries of a community in which respondents Boulder Ridge Entities currently, or at any time in the future, own or operate a cable television system.

PAR. 10. On November 22, 1988, Boulder Ridge Entities owned and operated cable television systems on the Island of Oahu in the State of Hawaii and in eight counties in the State of California. On that date, Three Palm Entities owned and operated cable television systems in twenty-two (22) locations in the State of California.

PAR. 11. The purpose, capacity, tendency, or effect of the agreement described in paragraph nine has been, and continues to be, to restrain competition unreasonably and to injure competition and consumers in the following ways, among others:

- A. Preventing the respondents from competing for cable television subscribers;
- B. Restricting the supply and quality of cable television service and of alternate sources of home-video entertainment; and
- C. Maintaining monopoly pricing for cable television service.

### III. VIOLATIONS CHARGED

PAR. 12. The acts or practices of respondents constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. These acts or practices are continuing and will continue or recur in the absence of the relief requested.

### DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said act, and that a complaint should issue stating

its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, 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 Boulder Ridge Cable TV (hereafter "Boulder Ridge") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 590 Kelly Ave., Half Moon Bay, California.

2. Respondent Dean Hazen is the president and majority shareholder of Boulder Ridge, and was the sole shareholder of Boulder Ridge at the time of the acts and practices being investigated. His business address is 590 Kelly Ave., Half Moon Bay, California.

3. Respondent Weststar Communications, Inc. (hereafter "Weststar") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 2200 Sunrise Blvd., Suite 250, Rancho Cordova, California.

4. Respondent Rodney A. Hansen is a shareholder of Weststar and was a partner in Three Palms, Ltd., a dissolved California partnership. His business address is 8217 Hegseth Court, Fair Oaks, California.

5. 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.

As used in this order, the following definitions shall apply:

(A) "*Boulder Ridge*" means (1) Boulder Ridge Cable TV, and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, employees, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that

Boulder Ridge Cable TV, controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(B) "*Dean Hazen*" means Dean Hazen, individually, and all partnerships, joint ventures, and corporations that Dean Hazen controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(C) "*Three Palms, Ltd.*," means (1) Three Palms, Ltd, and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, employees, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Three Palms, Ltd., controlled, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(D) "*Weststar Communications, Inc.*" means (1) Weststar Communications, Inc., and its predecessors, successors and assigns, subsidiaries, divisions, and their respective directors, officers, employees, agents, and representatives; and (2), partnerships, joint ventures, groups and affiliates that Weststar Communications, Inc., controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(E) "*Rodney A. Hansen*" means Rodney A. Hansen, individually, and all partnerships, joint ventures, and corporations that Rodney A. Hansen controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(F) "*Respondents*" means Boulder Ridge Cable TV, Dean Hazen, Weststar Communications, Inc., and Rodney A. Hansen.

(G) "*Cable Television Service*" means the delivery to the home of various entertainment and informational programming via a cable television system.

(H) "*Cable Television System*" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service, which includes video programming and which is provided to multiple subscribers within a community. The term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or (b) a facility that serves only subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility or facilities uses a public right-of-way.

(I) "*NON-COMPETITION AGREEMENT*" means the "*NON-COMPETITION AND NON-DISCLOSURE AGREEMENT*" signed by respondents and Three Palms, Ltd., on November 22, 1988.

(J) "*Agreeing not to compete*" means agreeing directly or indirectly not to own, manage, operate, control (or engage or participate in the ownership, management, operation, or control of) a cable television system, subscription television system, multipoint distribution system, direct broadcast system, private operational fixed microwave service, or any similar multi-channel video distribution system or service (or obtaining or holding any authorizations or franchises for any of the foregoing) in competition with another person.

## II.

*It is ordered*, That respondents, in connection with the purchase, sale, or operation of any cable television system or cable television service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from enforcing any rights they may have under paragraphs three and four of the *NON-COMPETITION AGREEMENT*.

## III.

*It is further ordered*, That respondents, in the acquisition or sale of any cable television system or cable television service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from agreeing not to compete with the seller or buyer of such cable television system or cable television service in any geographic area. Provided, however, that this paragraph shall not apply to any agreement made in connection with the lawful acquisition or sale of a cable television system or cable television service in which the seller agrees not to compete with the buyer or buyers, or the buyer agrees not to compete with the seller or sellers, in a geographic area that is reasonably related to:

(A) The cable television system or cable television service that is being acquired or sold;

(B) A proximately located system or service of the buyer with which the cable television system or cable television service that is being acquired will be jointly operated; or

(C) A proximately located system or service of the seller with which the cable television system or cable television service that is being sold previously was jointly operated.

#### IV.

*It is further ordered,* That, within sixty (60) days after the date this order becomes final, and annually thereafter for a period of three (3) years on the anniversary date this order becomes final, and at such other times as the Commission or its staff may request, each respondent shall file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with this order.

#### V.

*It is further ordered,* That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on five days notice to any respondent, made to its principal office, such respondent shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

(B) Without restraint or interference from respondent, an opportunity to interview officers or employees of respondent, who may have counsel present, regarding any matters contained in this order.

## VI.

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

Commissioner Varney not participating.

## IN THE MATTER OF

## HEALTHTRUST, INC. - THE HOSPITAL COMPANY

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-3538. Complaint, Oct. 20, 1994--Decision, Oct. 20, 1994*

This consent order requires, among other things, a Tennessee-based corporation, that provides acute care hospital services, to divest Holy Cross Hospital of Salt Lake City to a Commission approved acquirer; to complete the divestiture within six months of the date of the order; and to consent to the appointment of a trustee, if the divestiture is not completed within six months. In addition, the consent order requires the respondent, for ten years, to obtain prior Commission approval before purchasing any acute care hospital or any hospital, medical or surgical diagnostic or treatment service or facility in the Utah counties of Weber, Davis, and Salt Lake.

*Appearances*

For the Commission: *Mark J. Horoschak, Philip M. Eisenstat and Rendell Davis.*

For the respondent: *Phil Proger, Jones, Day, Reavis & Pogue, Washington, D.C. and G. Scott Rayson, Waller, Lansden, Dortch & Davis, Nashville, TN.*

## 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 respondent Healthtrust, Inc. - The Hospital Company ("Healthtrust"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement whereby Healthtrust will acquire certain assets from Holy Cross Health System Corporation; that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its

complaint, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. 21(b), and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

#### DEFINITIONS

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

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

b. "*Acute care inpatient hospital services*" means 24-hour inpatient health care, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities.

#### THE PARTIES TO THE PROPOSED ACQUISITION

PAR. 2. Healthtrust, Inc. - The Hospital Company ("Healthtrust") is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 4525 Harding Road, Nashville, Tennessee. Healthtrust and/or its subsidiaries own and operate six acute care hospitals in Utah, including Lakeview Hospital in Bountiful, Pioneer Valley Hospital in West Valley City, and Mountain View Hospital in Payson.

PAR. 3. Holy Cross Health System Corporation ("Holy Cross") is a corporation organized, existing, and doing business under and by virtue of the laws of Indiana, with its principal place of business at 3606 East Jefferson Blvd., South Bend, Indiana. Holy Cross Health Services of Utah, a wholly-owned subsidiary of Holy Cross, owns three acute care hospitals in Utah: St. Benedict's Hospital in Ogden, Holy Cross Hospital in Salt Lake City, and Holy Cross-Jordan Valley Hospital in West Jordan.

## JURISDICTION

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

## THE PROPOSED ACQUISITION

PAR. 5. On or about December 3, 1993, Healthtrust and Holy Cross entered into an agreement whereby Healthtrust will acquire from Holy Cross substantially all the assets of Holy Cross hospitals in Utah and related Holy Cross assets in Utah. The total value of the Holy Cross assets to be acquired by Healthtrust is approximately \$125 million.

## NATURE OF TRADE AND COMMERCE

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

PAR. 7. For the purposes of this complaint, the relevant sections of the country are the Salt Lake City area, encompassing Salt Lake County and southern Davis County; and the Salt Lake City - Ogden Metropolitan Statistical Area, an area encompassing three contiguous counties in northern Utah: Weber County, Davis County, and Salt Lake County.

## MARKET STRUCTURE

PAR. 8. The relevant markets -- *i.e.* the relevant line of commerce in the relevant sections of the country -- are highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or by four-firm concentration ratios.

## ENTRY CONDITIONS

PAR. 9. Entry into the relevant markets is difficult. In particular, substantial lead times are required to establish a new acute care hospital in the relevant sections of the country.

## COMPETITION

PAR. 10. In the relevant markets, Healthtrust and Holy Cross acute care hospitals are actual and potential competitors.

## EFFECT

PAR. 11. The effect of the aforesaid acquisition may be substantially to lessen competition in the relevant markets in the following ways, among others:

- (a) It would eliminate actual and potential competition between Healthtrust's and Holy Cross' hospitals in the relevant markets;
- (b) It would significantly increase the already high level of concentration in the relevant markets;
- (c) It would eliminate Holy Cross' hospitals from the relevant markets as a substantial independent competitive force;
- (d) It may increase the possibility of collusion or interdependent coordination by the remaining firms in the relevant markets; and
- (e) It may deny patients, physicians, third-party payers, and other consumers of hospital services in the relevant markets the benefits of free and open competition based on price, quality, and service.

## VIOLATIONS CHARGED

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

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

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation into the proposed acquisition by Healthtrust, Inc. - The Hospital Company of assets of Holy Cross Health System Corporation, 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 a violation of Section 7 of the Clayton Act, as amended, 15 U. S. C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 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 (and having duly considered the comments received), now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Healthtrust, Inc. - The Hospital Company 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 at 4525 Harding Road, in the City of Nashville in the State of Tennessee.

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.

