

IN THE MATTER OF
CALIFORNIA MEDICAL ASSOCIATION

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

Docket C-2967. Complaint, April 17, 1979 — Decision, April 17, 1979

This consent order, among other things, requires a San Francisco, Calif. medical association to cease publishing, promulgating, or participating in the development and use of relative value studies that set forth comparative numerical values and have the effect of establishing prices for medical and surgical services. The order further requires respondent to withdraw previously disseminated relative value studies; and send copies of the complaint and order to association members and others, together with a request for the return of all relative value studies they have in their possession.

Appearances

For the Commission: *Alfred Lindeman and John M. Porter.*

For the respondent: *Howard Hassard, Hassard, Bonnington, Rogers & Huber, San Francisco, Calif.*

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 California Medical Association has violated the provisions of 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 its complaint stating its charges as follows:

PARAGRAPH 1. Respondent, California Medical Association ("CMA"), is an unincorporated association 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 located at 731 Market St., San Francisco, California.

PAR. 2. CMA has approximately 25,000 members. Membership in CMA is open to doctors of medicine licensed to practice medicine in the State of California, persons within the State of California who have retired from the practice of medicine, persons distinguished for their services or attainments as doctors of medicine or in the field of public health, or for research or other scientific work contributing to medicine, and persons within certain other special and limited classes established by CMA.

Many members of CMA are licensed physicians engaged in the private practice of medicine and surgery and derive substantial portions of their professional income from fees for medical and surgical procedures charged directly to patients or to insurers.

PAR. 3. The acts and practices of CMA are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Since 1956, CMA has, on various occasions, prepared, published, and circulated to its members and others "relative value studies" which set forth in non-monetary units comparative numerical values for procedures performed and services rendered by physicians and other health care providers. Each value is convertible into a monetary fee by the application of a dollar conversion factor to the basic unit. Said "relative value studies" include detailed instructions for the computation and use of conversion factors to determine physicians' fees. Said "relative value studies" have been widely disseminated and used as the basis of fee schedules by physicians and other health care providers both within and outside the state of California.

PAR. 5. The preparation, publication, and circulation by CMA of relative value studies have the effect of establishing, maintaining, or otherwise influencing the fees which physicians and other health care providers charge for their professional services and are 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 San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent

has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent California Medical Association is an unincorporated association organized, existing and doing business under and by virtue of the laws of the State of California, with its principal offices located at 731 Market St., San Francisco, 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

I

A. The term "relative value study" means any list of compilation of medical procedures and/or services which sets forth comparative numerical values for such procedures performed and/or services rendered by physicians and other health care providers, without regard to whether those values are expressed in monetary or non-monetary terms.

B. The term "CMA" means the California Medical Association.

C. The term "component" means a county or district medical society chartered by CMA.

D. The term "conversion factor" means any monetary value multiplier used or intended to be used to convert non-monetary values in a relative value study to monetary fees.

E. The term "third party" means any organization which is or may be required by contract or statute to pay or reimburse the whole or any part of any financial obligation for health care incurred by any recipient of such care.

F. The term "historical data" means complete and unprocessed responses obtained from surveying fees charged for procedures performed and/or services rendered by physicians or other health care providers, accurate tabulated summaries of such responses, or accurate statistical representations of such responses such as arithmetic means, medians or percentiles.

G. The term "effective date of this order" means the date of service of this order.

II

It is ordered, That CMA, its successors, or assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, shall:

A. Cease and desist from directly or indirectly initiating, originating, developing, publishing, or circulating the whole or any part of any proposed or existing relative value study;

B. Cease and desist from directly or indirectly suggesting or instructing that conversion factors may be computed and applied to the relative value units contained in any relative value study.

C. Cease and desist from directly or indirectly advising in favor of or against the use of, or contributing to, the whole or any part of any proposed or existing relative value study. It shall not be considered a violation of this paragraph, however, for CMA to furnish testimony, information or advice to any government body, committee, or instrumentality, or to furnish to any third party such information as may be requested, relating to the use by such government entity or third party of the whole or part of any relative value study for purposes of establishing payment, compensation or reimbursement levels to be made to physicians or other health care providers by such government entity or third party; provided that any information furnished by CMA which may bear directly or indirectly on compensation levels for procedures performed and/or services rendered by physicians or other health care providers shall be limited to historical data, as defined herein, and shall be completely described as to methodology.

D. Permanently cancel, repeal, abrogate, and withdraw any and all relative value studies which it has heretofore developed, published, circulated, or disseminated; *provided, however*, that nothing contained in this order shall prohibit CMA from initiating, originating, developing, publishing, circulating, adopting, contributing to, recommending, suggesting, or advising in favor of or against the use of any list or compilation of standardized terminology describing procedures performed and/or services rendered by physicians and other health care providers, so long as such list or compilation does not directly or indirectly set forth absolute or comparative numerical values for any such procedures or services.

E. Within thirty (30) days after the effective date of this order, distribute by first class mail a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown in

519

Decision and Order

Appendix "A" to this order, to each of its members, to each state medical association known to CMA to have received from it the 1974 edition of the California Relative Value Studies, and to each of its components, third-party payers and others listed in Appendix "B" to this order, notifying such members, associations, components, third-party payers and others to return to CMA all copies of CMA relative value studies in their possession. Except for printing and mailing costs, CMA is not obligated to incur any expense under this paragraph.

III

It is further ordered, That CMA notify the Commission at least thirty (30) days prior to any proposed change in its organization which might affect compliance obligations under this order, such as, but not limited to, dissolution, the emergence of a successor association or corporation, and the creation and/or dissolution of subsidiaries.

IV

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

V

Nothing in this order shall be construed to exempt CMA from complying with the antitrust laws or the Federal Trade Commission Act. The fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

APPENDIX A

(CMA LETTERHEAD)

TO: Recipients of CMA Relative Value Studies

As you may be aware, the FTC has been investigating various components of health care, including relative value study activities of CMA. The Association no longer desires to continue such activities and has discontinued them. It has entered into an agreement with the Federal Trade Commission to formalize the discontinuance of its relative value studies.

This agreement resulted in the issuance by the Federal Trade Commission on _____ of a complaint and the entry of a consent order which requires, in essence, that CMA:

Decision and Order

93 F.T.C.

- (a) stop publishing and participating in the development of relative value studies;
- (b) withdraw the relative value studies it has already published;
- (c) stop suggesting and instructing that conversion factors may be computed and applied to units contained in relative value studies;
- (d) distribute a copy of the complaint and consent order to CMA relative value study recipients; and
- (e) notify recipients of CMA's relative value studies to return them to CMA.

The complaint alleges basically that CMA's relative value studies have the effect of influencing fees charged by physicians. The consent agreement with the FTC states that it is for settlement purposes only and does not constitute an admission by the CMA of the charges in the complaint or that the law has been violated.

In accordance with the provisions of the FTC's order, you are to cease using and to return all copies of any CMA relative value study in your possession.

The proper mailing address:

California Medical Association
731 Market Street
San Francisco, California 94103

Copies of the FTC's complaint and order are enclosed.

Sincerely,

President

Enclosures

APPENDIX "B"

Commissioner
Medical Services Administration
Social and Rehabilitation Service
Department of Health, Education, and
Welfare
330 C Street, S.W.
Washington, DC 20201

Commissioner of Social Security
Department of Health, Education, and
Welfare
6401 Security Boulevard
Baltimore, MD 21235

National Association of Blue Shield
Plans
211 East Chicago Avenue
Chicago, IL 60611

Deputy Assistant Secretary for
Health Resources and Programs
Department of Defense
Washington, DC 20301

Directorate
OCHAMPUS
Department of Defense
Washington, DC 20301

OCHAMPUS
Department of Defense
Denver, CO 80240

519

Decision and Order

Health Application Systems 1633 Bayshore Highway Burlingame, CA 94010	Blue Cross of Southern California Box 27747 4777 Sunset Boulevard Los Angeles, CA 90027
Blue Cross and Blue Shield of Alabama 930 S. 20th Street Birmingham, AL 35298	Blue Cross of Northern California 1950 Franklin Street Oakland, CA 94659
Blue Cross of Arizona, Inc. 321 W. Indian School Road Box 13466 Phoenix, AZ 85002	Blue Shield of California 2 North Point San Francisco, CA 94113
Arizona Blue Shield Medical Service 321 W. Indian School Road Box 13466 Phoenix, AZ 85002	Colorado Hospital Service - BC 244 University Boulevard Denver, CO 80206
Arkansas Blue Cross and Blue Shield, Inc. 601 Gaines Street Box 2181 Little Rock, AR 72203	Colorado Medical Service, Inc. - BS 244 University Boulevard Denver, CO 80206
Connecticut Medical Service, Inc. 221 Whitney Avenue New Haven, CT 06509	Connecticut Blue Cross, Inc. Box 504 370 Bassett Road North Haven, CT 06473
Blue Cross and Blue Shield of Dela- ware, Inc. 201 W. 14th Street Box 1991 Wilmington, DE 19899	Hawaii Medical Service Association 1504 Kapiolani Boulevard Box 860 Honolulu, HI 96808 - BS
Group Hospitalization, Inc. - BC 550 12th Street, S.W. Washington, DC 20024	Blue Cross of Idaho, Inc. 1501 Federal Way Box 7408 Boise, ID 83707
Medical Service of the District of Co- lumbia - BS 550 12th Street, S.W. Washington, DC 20024	North Idaho District Medical Service Bureau, Inc. - BS 1602 21st Avenue Box 1106 Lewiston, ID 83501
Blue Cross of Florida, Inc. 532 Riverside Avenue Box 1798 Jacksonville, FL 32201	Illinois Hospital and Health - BC Ser- vice, Inc. 227 N. Wyman Street Rockford, IL 61101

Decision and Order

93 F.T.C.

Blue Shield of Florida, Inc. 532 Riverside Avenue Box 1798 Jacksonville, FL 32201	Hospital Service Corporation - BC 233 North Michigan Avenue Box 1364 Chicago, IL 60601
Blue Cross of Georgia/Atlanta Inc. 1010 West Peachtree St., N.W. Box 4445 Atlanta, GA 30302	Illinois Medical Service - BS 233 North Michigan Avenue Chicago, IL 60601
Blue Cross of Georgia/Columbus Inc. 2357 Warm Springs Road Box 1520 Columbus, GA 31902	Blue Cross of Indiana 120 W. Market Street Indianapolis, IN 46204
Blue Shield of Georgia/Atlanta Inc. 1010 West Peachtree St., N.W. Box 4445 Atlanta, GA 30302	Mutual Medical Insurance Inc. - BS 120 W. Market Street Indianapolis, IN 46204
Blue Shield of Georgia/Columbus Inc. 2357 Warm Springs Road Box 1520 Columbus, GA 31902	Blue Cross of Iowa Liberty Building Sixth Street & Grand Avenue Des. Moines, IA 50307
Blue Shield of Iowa Liberty Building Des Moines, IA 50307	Blue Cross of Michigan 600 Lafayette E. Detroit, MI 48226
Kansas Hospital Service Association, Inc. 1133 Topeka Avenue Box 239 Topeka, KS 66601	Blue Shield of Michigan 600 Lafayette E. Detroit, MI 48226
Kansas Blue Shield 1133 Topeka Avenue Box 239 Topeka, KS 66601	Blue Cross and Blue Shield of Minneso- ta 3535 Blue Cross Road Box 3560 St. Paul, MN 55165
Blue Cross Hospital Plan Inc. 3101 Bardstown Road Louisville, KY 40205	Blue Cross and Blue Shield of Minneso- ta 2344 Nicollet Avenue Minneapolis, MN 55404
Kentucky Physicians' Mutual, Inc. 3101 Bardstown Road Louisville, KY 40205	Blue Cross and Blue Shield of Missis- sippi, Inc. 530 E. Woodrow Wilson Drive Box 1043 Jackson, MS 39205
Blue Cross of Louisiana 10225 Florida Boulevard Box 15699 Baton Rouge, LA 70815	Blue Cross of Kansas City 3637 Broadway Box 169 Kansas City, MO 64141

519

Decision and Order

Hospital Service Association of New Orleans - BC 2026 St. Charles Avenue New Orleans, LA 70130	Blue Cross Hospital Service, Inc. of Missouri 1430 Olive Street St. Louis, MO 63103
Maine Blue Cross and Blue Shield 110 Free Street Portland, ME 04101	Blue Shield of Kansas City 3637 Broadway Box 169 Kansas City, MO 64141
Blue Cross of Maryland 700 E. Joppa Road Box 9836 Towson, MD 21204	St. Louis Blue Shield 5775 Campus Parkway Hazelwood, MO 63042
Blue Shield of Maryland, Inc. 700 E. Joppa Road Towson, MD 21204	Blue Cross of Montana 3360 10th Avenue S. Great Falls, MT 59405
Blue Cross of Massachusetts 133 Federal Street Boston, MA 02106	Montana Physicians' Service - BS 404 Fuller Avenue Box 1677 Helena, MT 59601
Blue Cross and Blue Shield of South Carolina I-20 East at Alpine Road Columbia, SC 29219	Blue Cross of Virginia 2015 Staples Mill Road Box 27401 Richmond, VA 23279
Blue Cross of Western Iowa and South Dakota Third & Pierce Streets Box 1677 Sioux City, IO 51102	Blue Cross of Southwestern Virginia 1212 Third Street, S.W. Box 2770 Roanoke, VA 24001
South Dakota Medical Service, Inc. 711 N. Lake Avenue Sioux Falls, SD 57104	Blue Shield of Virginia 2015 Staples Mill Road Box 27401 Richmond, VA 23279
Blue Cross-Blue Shield of Tennessee 801 Pine Street Chattanooga, TN 37402	Blue Shield of Southwestern Virginia 1212 Third Street, S.W. Box 2770 Roanoke, VA 24001
Kitsap Physicians' Service 820 Pacific Avenue Box 339 Bremerton, WA 98310	Associated Hospitals, Inc. 401 Federal Street Box 131 Bluefield, WV 24701
Blue Cross Hospital Service, Inc. Commerce Square Box 1343 Charleston, WV 25325	Parkersburg Hospital Service, Inc. 203 Union Trust Building Box 1948 Parkersburg, WV 26101

Decision and Order

93 F.T.C.

West Virginia Hospital Service, Inc. 20th & Chapline Streets Wheeling, WV 26003	Surgical Service, Inc. Commercial Bank Building Box 131 Bluefield, WV 24701
Blue Shield of Southern West Virginia, Inc. Commerce Square Box 1353 Charleston, WV 25325	Medical-Surgical Service, Inc. Union National Bank Building Clarksburg, WV 26301
Morgantown Medical-Surgical Service, Inc. 265 High Street Morgantown, WV 26505	Memphis Hospital Service and Surgical Association, Inc. 85 N. Danny Thomas Boulevard Box 98 Memphis, TN 38101
West Virginia Medical Service Inc. 20th & Chapline Streets Box 6246 Wheeling, WV 26003	Group Hospital Service, Inc. Main at N. Central Expressway Dallas, TX 75201
Associated Hospital Service, Inc. 4115 N. Teutonia Avenue Box 2025 Milwaukee, WI 53201	Group Life and Health Insurance Co. Main at N. Central Expressway Dallas, TX 75201
Wisconsin Physicians' Service 330 E. Lakeside Street Box 1109 Madison, WI 53701	Blue Cross of Utah 2455 Parley's Way Box 270 Salt Lake City, UT 84110
Surgical Care, The Blue Shield Plan of the Medical Society of Milwaukee County 756 N. Milwaukee Street Milwaukee, WI 53202	Blue Shield of Utah 2455 Parley's Way Box 270 Salt Lake City, UT 84110
Blue Cross of Wyoming 4020 House Avenue Box 2266 Cheyenne, WY 82001	Blue Shield of Wyoming 4020 House Avenue Box 2266 Cheyenne, WY 82001
Genesee Valley Medical Care, Inc. 41 Chestnut Street Rochester, NY 14647	Medical Mutual of Cleveland, Inc. 2060 E. Ninth Street Cleveland, OH 41115
Blue Shield of Central New York, Inc. 344 S. Warren Street Syracuse, NY 13202	Ohio Medical Indemnity, Inc. 6740 N. High Street Worthington, OH 43085

519

Decision and Order

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| Medical and Surgical Care, Inc.
5 Hopper Street
Utica, NY 13501 | Blue Cross and Blue Shield of Oklahoma
1215 S. Boulder Avenue
Box 3283
Tulsa, OK 74102 |
| Blue Cross and Blue Shield of North Carolina
P. O. Box 2291
1830 Chapel Hill-Durham Blvd.
Durham, NC 27702 | Blue Cross of Oregon
100 S.W. Market Street
Box 1271
Portland, OR 97207 |
| Blue Cross of North Dakota
301 S. Eighth Street
Fargo, ND 58102 | Oregon Physicians' Service
619 S.W. 11th Avenue
Box 1071
Portland, OR 97207 |
| Blue Shield of North Dakota
301 S. Eighth Street
Fargo, ND 58102 | Blue Cross of Lehigh Valley
1221 Hamilton Street
Allentown, PA 18102 |
| Blue Cross Hospital Plan, Inc.
201 Ninth Street, N.W.
Canton, OH 44702 | Capital Blue Cross
100 Pine Street
Harrisburg, PA 17101 |
| Blue Cross of Southwest Ohio
1351 William Howard Taft Rd.
Cincinnati, OH 45206 | Blue Cross of Greater Philadelphia
1333 Chestnut Street
Philadelphia, PA 19107 |
| Blue Cross of Northeast Ohio
2066 E. Ninth Street
Cleveland, OH 44115 | Blue Cross of Western Pennsylvania
1 Smithfield Street
Pittsburgh, PA 15222 |
| Blue Cross of Central Ohio
174 E. Long Street
Columbus, OH 43215 | Blue Cross of Northeastern Pennsylvania
15 S. Franklin Street
Wilkes-Barre, PA 18701 |
| Blue Cross of Lima, Ohio
7 Public Square
Box 1046
Lima, OH 45802 | Pennsylvania Blue Shield
Blue Shield Building
Camp Hill, PA 17011 |
| Blue Cross of Northwest Ohio, Inc.
3737 Sylvania Avenue
Box 943
Toledo, OH 43656 | Blue Cross and Blue Shield of Rhode Island
Box 1298
444 Westminster Mall
Providence, RI 02901 |
| Blue Cross of Nebraska
Box 3248
Main P.O. Station
Omaha, NB 68103 | Chautauqua Region Hospital Service Corporation
306 Spring Street
Box 1119
Jamestown, NY 14701 |

Decision and Order

93 F.T.C.

Blue Shield of Nebraska Box 3248 Main P.O. Station Omaha, NB 68103	Associated Hospital Service of New York 622 Third Avenue New York, NY 10017
Nevada Blue Shield 3660 Baker Lane Reno, NV 89502	Rochester Hospital Service Corporation 41 Chestnut Street Rochester, NY 14647
New Hampshire-Vermont Hospitalization Service - BC 2 Pillsbury Street Concord, NH 03301	Blue Cross of Central New York, Inc. 344 S. Warren Street Box 271 Syracuse, NY 13201
New Hampshire-Vermont Physicians' Service 2 Pillsbury Street Concord, NH 03301	Hospital Plan, Inc. 5 Hopper Street Utica, NY 13501
Hospital Service Plan of New Jersey - BC 33 Washington Street Box 420 Newark, NJ 07101	Hospital Service Corporation of Jefferson County 158 Stone Street Watertown, NY 13601
Medical-Surgical Plan of New Jersey - BS 33 Washington Street Newark, NJ 07102	Blue Shield of Northeastern New York, Inc. Box 8650 Albany, NY 12208
New Mexico Blue Cross and Blue Shield, Inc. 12800 Indian School Road N.E. Albuquerque, NM 87112	Blue Shield of Western New York, Inc. 298 Main Street Buffalo, NY 14202
Blue Cross of Northeastern New York, Inc. 1251 New Scotland Road Box 8650 Albany, NY 12208	Chautauqua Region Medical Service Inc. 306 Spring Street Jamestown, NY 14701
Blue Cross of Western New York, Inc. 298 Main Street Buffalo, NY 14202	United Medical Service, Inc. 2 Park Avenue New York, NY 10016
Blue Cross of Washington-Alaska, Inc. 15700 Dayton Avenue, North Seattle, WA 98133	California Physicians' Service P. O. Box 7608 San Francisco, CA 94120
The Indiana State Medical Association 3935 North Meridian Street Indianapolis, IN 46208	Colorado Medical Service, Inc. 244 University Blvd. Denver, CO 80206

519

Decision and Order

Continental Service Life & Health Insurance Company Box 3397 5353 Florida Boulevard Baton Rouge, LA 70821	Connecticut General Life Insurance Company Hartford, CT 06115
Blue Cross & Blue Shield of Greater New York 622 3rd Avenue New York, NY 10016	Medical Association of Georgia 938 Peachtree Street, N.E. Atlanta, GA 30309
Missouri Medical Service 5775 Campus Parkway Hazelwood, MO 63042	Mississippi State Medical Association 735 Riverside Drive Jackson, MS 39216
Washington Physicians' Service 220 West Harrison Street Seattle, WA 98119	Medical-Surgical Care, Inc. 203 Union Trust Building Box 1948 Parkersburg, WV 26101
New York Life Insurance Company 51 Madison Avenue New York, NY 10010	Metropolitan Life Insurance Company 1 Madison Avenue New York, NY 10010
Prudential Insurance Company of Amer- ica Prudential Plaza Newark, NJ 07101	The Travelers Insurance Company 1 Tower Square Hartford, CT 06115
Continental Assurance Company CNA Plaza Chicago, IL 60605	Aetna Life Insurance Company 151 Farmington Avenue Hartford, CT 06115
Bankers Life Company 711 High Street Des Moines, IA 50307	Employers Life Insurance Company of Wausau 2000 Westwood Drive Wausau, WI 54401
Nationwide Life Insurance Company 246 North High Street Columbus, OH 43216	Colonial Penn Life Insurance Company 5 Penn Center Plaza Philadelphia, PA 19103
Equitable Life Assurance Society of the U.S. 1285 Avenue of the Americas New York, NY 10019	Firemen's Fund Insurance Company 3333 California Street San Francisco, CA 94118
Reliance Insurance Group 4 Penn Center Plaza Philadelphia, PA 19103	Zurich Life Insurance Company 111 West Jackson Boulevard Chicago, IL 60604
Occidental Life Insurance Company of California Box 2101 Terminal Annex Los Angeles, CA 90054	Mutual of Omaha Insurance Company Dodge at 33rd Street Omaha, NE 68131

Decision and Order

93 F.T.C.

Blue Shield of Massachusetts, Inc.
133 Federal Street
Boston, MA 02106

Blue Cross of Eastern Ohio, Inc.
2400 Market Street
Youngstown, OH 44507

Nevada State Medical Association
3660 Baker Lane
Reno, NV 89502

Alameda-Contra Costa
Medical Association
6230 Claremont Avenue
Oakland, CA 94618

Butte-Glenn Medical Society
811 East Fifth Avenue
Chico, CA 95926

Butte-Glenn Foundation for Medical
Care
815 East Fifth Avenue
Chico, CA 95926

Forty First Medical Society
3250 Wilshire Boulevard
Suite 606
Los Angeles, CA 90010

Fresno-Madera Medical Society
P. O. Box 31
Fresno, CA 93707

Foundation for Medical Care of Fresno
County
P. O. Box 31
Fresno, CA 93707

Humboldt-Del Norte County Medical So-
ciety
P. O. Box 1395
3100 Edgewater Drive
Eureka, CA 95501

Humboldt-Del Norte Foundation for
Medical Care
P. O. Box 1395
Eureka, CA 95501

Imperial County Medical Society
200 South Imperial Avenue
Imperial, CA 92251

Inyo-Mono County Medical Society
c/o Owen R. Walker, MD, President
293 Willow Street
Bishop, CA 93514

Kern County Medical Society
1314 17th Street
Bakersfield, CA 93301

Foundation for Medical Care of Kern
County
2603 G Street
Bakersfield, CA 93301

Kings County Medical Society
P. O. Box 1003
Hanford, CA 93230

Lassen-Plumas-Modoc-Sierra County
Medical Society
c/o Herman H. Gray, MD, President
P. O. Box 519
Chester, CA 96020

Los Angeles County Medical Association
P. O. Box 3465
Terminal Annex
Los Angeles, CA 90054

Marin Medical Society
P. O. Box 4344
4460 Redwood Highway
San Rafael, CA 94903

519

Decision and Order

Marin Foundation for Medical Care,
Inc.
P. O. Box 4344
San Rafael, CA 94903

Mendocino-Lake County Medical Society
P. O. Box 722
215 West Standley Drive
Ukiah, CA 95482

Merced-Mariposa Medical Society
2835 North G Street
Merced, CA 95340

Foundation for Medical Care of Merced
County
2835 G Street
Bear Creek Plaza
Merced, CA 95340

Monterey County Medical Society
P. O. Box 308
19045 Portola Drive
Salinas, CA 93901

Monterey Bay Area Foundation for
Medical Care
P. O. Box 308
Salinas, CA 93901

Napa County Medical Society
1041 Lincoln Avenue
P. O. Box 2158
Napa, CA 94558

Orange County Medical Association
300 South Flower Street
Orange, CA 92668

Foundation for Medical Care of Orange
County
300 South Flower Street
Orange, CA 92668

Placer-Nevada County Medical Society
1212 High Street
Auburn, CA 95603

Riverside County Medical Association
6833 Indiana Avenue
Riverside, CA 92506

Foundation for Medical Care of River-
side County
6833 Indiana Avenue
Riverside, CA 92506

Sacramento County Medical Society
5380 Elvas Avenue
Sacramento, CA 95819

Medical Care Foundation
650 University Avenue
Sacramento, CA 95825

San Benito County Medical Society
c/o Fisk Brooks, MD, President
565 Monterey Street
Hollister, CA 95023

San Bernardino County Medical Society
P. O. Box 5216
San Bernardino, CA 92412

San Bernardino Foundation for Medical
Care
P. O. Box 6186
San Bernardino, CA 92412
San Diego, CA 92123

San Diego County Medical Society
P. O. Box 23015
3702 Ruffin Road

San Diego Foundation for Medical Care
3702 Ruffin Road
San Diego, CA 92123

San Francisco Medical Society
250 Masonic Avenue
San Francisco, CA 94118

Decision and Order

93 F.T.C.

San Francisco Medical Society Health Plan, Inc. 250 Masonic Avenue San Francisco, CA 94118	San Joaquin County Medical Society P. O. Box 230 445 West Acacia Street Stockton, CA 95201
San Joaquin Foundation for Medical Care P. O. Box 230 Stockton, CA 95203	San Luis Obispo County Medical Soci- ety P. O. Box 319 San Luis Obispo, CA 93406
Medical Care Foundation of /Santa Barbara County Nine East Pedrogosa Santa Barbara, CA 93101	San Mateo County Medical Society 3080 La Selva San Mateo, CA 94403
The Health Care Foundation of San Mateo County, Inc. 3080 La Selva San Mateo, CA 94403	Medical Society of Santa Barbara Coun- ty Nine East Pedrogosa Santa Barbara, CA 93101
Medical Care Foundation of Santa Barbara County Nine East Pedrogosa Santa Barbara, CA 93101	Santa Clara County Medical Society 700 Empey Way San Jose, CA 95128
Foundation for Medical Care of Santa Clara County P. O. Box 50003 San Jose, CA 95150	Santa Cruz County Medical Society P. O. Box 308 Salinas, CA 93901
Monterey Bay Area Foundation for Medical Care P. O. Box 308 Salinas, CA 93901	Shasta-Trinity County Medical Society P. O. Box 959 Redding, CA 96001
Siskiyou County Medical Society c/o Donald Meamber, MD, President 750 South Main Yreka, CA 96097	Solano County Medical Society 773 Tuolumne Street Vallejo, CA 94590
Sonoma County Medical Association 3452 Mendocino Avenue Santa Rosa, CA 95401	Foundation for Medical Care of Sonoma County 3452 Mendocino Avenue Santa Rosa, CA 95401
Stanislaus Medical Society P. O. Box 1755 Modesto, CA 95354	Stanislaus Foundation for Medical Care P. O. Box 1755 Modesto, CA 95354
Tehema County Medical Society 343 Oak Street Red Bluff, CA 96080	Tulare County Medical Society P. O. Box 16 1821 West Meadow Lane Visalia, CA 93277

519

Decision and Order

Foundation for Medical Care of Tulare

County	Ventura County Medical Society
1821 West Meadow Lane, Suite A	2977 Loma Vista Road
Visalia, CA 93277	Ventura, CA 93003

Ventura County Foundation for Medical Care

3212 Loma Vista Road	Yolo County Medical Society
Ventura, CA 93003	P. O. Box 1312
	117 West Main Street, Suite 20
	Woodland, CA 95695

Medical Care Foundation
650 University Avenue
Sacramento, CA 95825

Yuba-Sutter-Colusa County Medical Society
P. O. Box L
Marysville, CA 95901

Los Angeles County Medical Association
District 1 - Metropolitan
1925 Wilshire Boulevard
Los Angeles, CA 90057

Los Angeles County Medical Association
District 2 - Pasadena
127 North Madison Ave., Suite 110
Pasadena, CA 91101

Los Angeles County Medical Association
District 3 - Long Beach
115 East Eighth Street
Long Beach, CA 90813

Long Beach Foundation for Medical Care
P. O. Box 887
Long Beach, CA 90813

Los Angeles County Medical Association
District 4 - Glendale
545 West Glenoaks Boulevard
Glendale, CA 91202

Los Angeles County Medical Association
District 5 - Bay
2901 Wilshire Blvd., Suite 101
Santa Monica, CA 90403

Los Angeles County
Medical Association
District 6 - West San Fernando Valley
15910 Ventura Blvd., Suite 1403
Encino, CA 91436

San Fernando Valley Foundation for Medical Care
15910 Ventura Boulevard
Encino, CA 91436

Los Angeles County Medical Association
District 7 - Beverly Hills
184 North Canon Drive
Beverly Hills, CA 90210

Los Angeles County Medical Association
District 8 - South
438 South Gaffey
San Pedro, CA 90731

Los Angeles County Medical Association
District 9 - Southwest
3655 Lomita Blvd., Suite 319
Torrance, CA 90505

Los Angeles County Medical Association
District 10 - Southeast
14724 Ventura Blvd., Suite 604
Sherman Oaks, CA 91403

Los Angeles County Medical Association
District 11 - East
13766 East Philadelphia Street
Whittier, CA 90601

Los Angeles County Medical Association
District 12 - San Gabriel Valley
P. O. Box 848
San Gabriel, CA 91778

Decision and Order

93 F.T.C.

Los Angeles County Medical Association	Los Angeles County Medical Association
District 13 - Foothill	District 14 - Pomona
735 West Duarte Road, Suite 405	1798 North Garey Avenue
Arcadia, CA 91006	Pomona, CA 91767

Los Angeles County Medical Association	Los Angeles County Medical Association
District 15 - Centinela Valley	District 16 - Antelope Valley
P. O. Box 2368	P. O. Box 2469
Inglewood, CA 90305	Lancaster, CA 93534

Los Angeles County Medical Association
District 17 - East San Fernando Valley
14724 Ventura Blvd., Suite 604
Sherman Oaks, CA 91403

IN THE MATTER OF
INTERMATIC INCORPORATED

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

Docket C-2961. Complaint, April 25, 1979 — Decision, April 25, 1979

This consent order, among other things, requires a Spring Grove, Ill. manufacturer and distributor of electrical devices to cease misrepresenting energy or cost savings that may be realized through the use of its water heater timer without disclosing that use of the timer would decrease the quantity and temperature of hot water used and adversely affect dishwasher operations. The firm would be required to make relevant disclosure statements in product advertising, labeling and instructions; and recall all previously disseminated material which fails to conform with the terms of the order. Additionally, the firm would be required to continue its existing refund policy; and maintain specified records for designated time periods.

Appearances.

For the Commission: *Randall H. Brook* and *Michael E. Kipling*.

For the respondent: *Ann Ray Heitland* and *Richard J. Hoskins*,
Schiff, Hardin & Waite, Chicago, Ill.

COMPLAINT

The Federal Trade Commission, having reason to believe that Intermatic Incorporated, a corporation, has violated Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding in that respect is in the public interest, issues this complaint.

PARAGRAPH 1. Respondent Intermatic Incorporated ("Intermatic") is a Delaware corporation with its principal office and place of business at Intermatic Plaza, Spring Grove, Illinois.

Allegations below stated in the present tense include the past tense.

PAR. 2. Intermatic is engaged in the manufacture, advertising, offering for sale, sale and distribution of a variety of electric appliances (primarily electric timing and switching devices) for home and business usage.

PAR. 3. In the conduct of its business, Intermatic ships electric appliances and devices to wholesale purchasers throughout the United States. Intermatic prepares advertising, promotional and labeling materials for its products in Spring Grove, Illinois and disseminates these materials throughout the country. Intermatic, therefore, maintains a substantial course of advertising and trade in

electric appliances and devices in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course of its business, Intermatic has advertised and sold an "electric water heater timer," and electric appliance or device designed for permanent installation in electrical circuits supplying home water heaters. The timer is identical in function to standard electric 24-hour clock timers (*i.e.*, those not designated as "water heater timers"). The timer can be set to turn on and off the power supplied to the water heater at various preset times during each 24-hour period.

PAR. 5. Intermatic's advertising for its electric water heater timer suggests using it to turn on the heater for a one-hour period in the morning and for a two-hour period in the evening during "periods of major hot water usage."

PAR. 6. Intermatic represents, directly or by implication, that:

A. Use of the timer will result in substantial savings on water heating bills without significant reduction in hot water usage or change in lifestyle. Expected annual savings range in amount from \$48 to \$120. Electric water heating costs are expected to diminish by an average of 35 percent because of the timer.

B. Cost savings are attributable to saving energy which is used by a water heater during periods when no hot water is being drawn off.

C. Intermatic has a reasonable basis in valid scientific studies or tests from which to conclude that substantial or specific cost savings will be realized by typical consumers using its timer without significant reduction in hot water usage.

PAR. 7. Contrary to these representations:

A. The use of a water heater timer will not result in substantial savings on water heating bills, nor in the specific dollar or percentage savings claimed by Intermatic, without a significant reduction in both the quantity and temperature of hot water used.

B. Any savings actually attributable to "off" periods will be negligible, since any heat lost during "off" periods must be made up by additional energy consumption during "on" periods. The only substantial savings occur from consumer acceptance of lower temperature and quantity of hot water.

C. Intermatic did not have a reasonable basis in valid scientific studies or tests from which to conclude that its representations were true.

PAR. 8. In actual use as suggested by Intermatic's instructions, hot

water temperature may drop thirty to forty degrees or more. Consumers may be unaware that water temperature is inadequate for some uses, particularly to meet recommended minimum temperatures for dishwashers.

PAR. 9. The misrepresentations by Intermatic have the tendency and capacity to induce consumers to purchase the water heater timer based on the incorrect belief that substantial savings may be realized without reduction in hot water usage.

PAR. 10. The fact that the temperature of hot water available to consumers is much lower when the water heater timer is used and the fact that consumers who use the timer may be forced to schedule certain activities (e.g., dishwashing) at specific times of the day when adequate hot water is available are facts material in light of consumers' understanding of the function and use of the timer. Failure to disclose these material facts has the tendency and capacity to mislead consumers to purchase the timer based on the incorrect belief that substantial savings may be realized without reduction in hot water usage and that substantial savings may be realized without changing one's lifestyle.

PAR. 11. Many of the purchasers of Intermatic's water heater timer may incur additional, often greater, expense in paying for installation of the device by a licensed electrician. Consumers could realize savings equal to or greater than those claimed by simply turning down water heater thermostats and/or reducing hot water usage. PAR. 12. The use of the water heater timer could be of harm to some electrical generation programs by public and private utilities. By maximizing water heater usage during peak energy consumption periods of the day, as directed by Intermatic, additional strains will be put on some power generating facilities at the hours when they are already most heavily taxed. The result of increased peak hour load usage is that utilities will have to rely on their oldest or most expensive back-up generation systems to meet the peaks. This will increase costs to the consumers and the public as a whole. On a long range basis, it may further increase public costs by contributing to the need for new generator facilities.

The promotion and sale of the water heater timer to be used as directed is contrary to public policy and therefore unfair.

PAR. 13. For the reasons stated above, and because sale of the timers may divert consumer expenditures away from valid energy saving methods, including insulating water heaters and pipes, the acts and practices of Intermatic are to the prejudice and injury of the public and constitute false, misleading, deceptive and unfair 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 has initiated an investigation of certain acts and practices of respondent Intermatic Incorporated. The respondent has been furnished with a copy of a draft complaint which the Seattle Regional Office proposed to present to the Commission for its consideration. If issued by the Commission, this complaint would charge respondent with violation of the Federal Trade Commission Act.

Respondent, its attorney, and counsel for the Commission have executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts in the complaint, and a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint. The agreement also includes waivers and other provisions as required by the Commission's Rules.

The Commission has considered the matter and has determined that it has reason to believe that the respondent has violated the Federal Trade Commission Act, and that the complaint should issue. The Commission has therefore accepted the executed consent agreement and placed the agreement on the public record for a period of sixty (60) days. Now, in conformance with Section 2.34 of its Rules, the Commission issues the complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Intermatic Incorporated is a Delaware corporation with its office and principal place of business at Intermatic Plaza, Spring Grove, 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

This order applies to respondent Intermatic Incorporated ("Intermatic"), its successors, assigns, officers, agents and employees, whether acting directly or through any corporation, subsidiary, division or other device. Order provisions apply to any acts taken in connection with Intermatic's advertising, displaying, offering for sale, sale or distribution of electric water heater timers except that paragraphs I.C., X., XI., and XII. also apply to any other electric

appliance or device which is promoted, displayed, offered for sale or distributed directly or indirectly to consumers, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

I. *It is ordered*, That Intermatic cease and desist from representing, directly or by implication, that:

A. Use of Intermatic's water heater timers will result in substantial savings on hot water heating bills without significant reduction in the temperature or quantity of hot water used, except where the savings would be attributable to the consumer's use of the timer to take advantage of utilities' discount or time-of-day rates.

B. Significant cost savings from the use of the water heater timer are attributable to saving energy used by water heaters during periods when no hot water is being drawn off. This subparagraph does not prohibit respondent from making any representation that meets the requirements of subparagraph I.C., below.

C. Any energy or cost savings can be realized by any electric appliance or device unless Intermatic has a reasonable basis in valid scientific studies or tests from which to conclude that typical consumers, in the areas in which the representations are disseminated, will achieve those savings under expectable and usual consumer usage.

II. *It is further ordered*, That Intermatic make the following affirmative disclosures in any advertisement or promotional, labeling, or packaging material for its water heater timer:

A. That cost savings are accompanied by a decrease in the quantity and temperature of hot water available.

B. That dishwashers should be used during certain periods of the timer's cycle in order to operate properly.

The above affirmative disclosures shall be made clearly and conspicuously. The disclosure required in subparagraph II.A. shall be in close conjunction with and in type size at least as large as any reference to cost savings. In the case of packaging materials these disclosures need be made only once; the disclosure required in subparagraph II.A shall be on the most prominent face of each packaging material.

The above affirmative disclosure need not be made in any advertisement: (1) which is disseminated only in areas where some form of discount or time-of-day rates are offered by local utilities or where such rates are reasonably foreseeable; and (2) where no cost savings

claim is made except a claim that the water heater timer provides savings by turning the water heater off during periods of higher rates.

The affirmative disclosure contained in subparagraph II.B. need not be made in advertising prepared by customers of respondent and for which respondent pays only part of the cost; *provided*, that the advertising appears as part of a multi-product advertisement the portion of which advertisement relating to the Intermatic water heater timer is no greater than eleven (11) square inches and the purpose of which is only to make the availability of the product at the retail outlet known.

III. *It is further ordered*, That Intermatic's instructions or directions for use of its water heater timer contain the following information in clear lay language:

A. The affirmative disclosures in paragraph II above. Type size shall be the same as (or larger than) that of the rest of the instructions or directions.

B. A statement that when the timer is off, the temperature of the water in the tank will decline. An explanation that if the consumer increases the amount of water drawn from the hot water tank as the temperature drops (such as by adjusting the hot/cold mix at a faucet) or uses any hot water during the "off" periods of the timer the temperature of available hot water will be decreased.

C. A method for using a dishwasher in order to have hot water available at the maximum temperature.

D. That the local electrical utility should be contacted to determine how to use timers on water heaters to avoid or minimize peak load demand problems for the utility.

E. A statement that in the event that the electrical utility serving the consumer introduces lower rates for "off peak" electrical consumption, the consumer should contact the utility to determine the "off-peak" periods so as to take advantage of lower rates.

IV. *It is further ordered*, That Intermatic immediately recall from all persons and entities that have engaged in the advertising, promotion, sale or distribution of the Intermatic water heater timer since January 1, 1977 (or request the disposal of) all advertising mats and promotional materials which contain a representation prohibited by this order or which omit a disclosure required by this order.

V. *It is further ordered*, That Intermatic prepare and distribute to all Intermatic customers who may reasonably be expected to have

remaining stocks of the Intermatic water heater timer on hand, replacement packaging materials and instructions to conform with the terms of this order. Intermatic shall ask its customers to replace the packaging materials and instructions with the new ones provided, prior to making a further sale of the Intermatic water heater timer. In lieu of replacing the packaging materials Intermatic may provide its customers with self-adhesive labels to cover existing packaging materials.

VI. *It is further ordered*, That Intermatic distribute a copy of this order to each of its customers to which it has shipped five or more water heater timers at any time since January 1, 1977.

VII. *It is further ordered*, That Intermatic continue its present policy of refunding the purchase price and installation cost for the Intermatic water heater timer.

VIII. *It is further ordered*, That Intermatic prepare a point-of-sale display, in a form to be approved by authorized representatives of the FTC, which clearly and conspicuously (1) refers to the Intermatic "Little Gray Box" water heater timer; (2) contains the affirmative disclosures in paragraph II above; and (3) contains a statement of the refund policy required by paragraph VII above. Intermatic shall provide copies of the display, directly or through its distributors, to all retail stores which have sold the Intermatic water heater timer at any time since January 1, 1977, and request that the stores post the display for at least 30 days.

IX. *It is further ordered*, That respondent maintain complete business records relative to the manner and form of its compliance with this order. Respondent shall retain each record for at least three years, and shall retain substantiation and other documentation at least two years beyond the last dissemination of any representation contingent thereon under the provisions of this order. Upon reasonable notice, respondent shall make any and all the records available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

X. *It is further ordered*, That respondent forthwith deliver a copy of this order to each operating division and affiliated business, to all present and future franchisees and licensees, and to all employees or agents now or hereafter engaged in the sale or offering for sale of respondents's products or in any aspect of the preparation, creation or placing of advertising on behalf of respondent; and that respondent secure from each such person a signed statement acknowledg-

ing receipt of this order. In the case of persons or entities not involved with respondent's water heater timers, this paragraph shall be satisfied by delivery of a statement including, verbatim, the order preamble and paragraph I.C., above.

XI. *It is further ordered,* That respondent notify the Commission at least thirty days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in said corporations which may affect compliance obligations arising out of the order.

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

IN THE MATTER OF
HUK-A-POO SPORTSWEAR, INC., ET AL.

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

Docket C-2962. Complaint, April 25, 1979 — Decision, April 25, 1979

This consent order, among other things, requires two New York City wearing apparel manufacturers to cease establishing, maintaining or enforcing resale price agreements; suggesting retail prices or issuing price lists for a three-year period; pre-ticketing products with recommended retail prices; soliciting the identity of non-conformers and taking any adverse action against them. Additionally, respondents are required to reinstate customers who were terminated since January 1, 1974 for failing to maintain suggested prices; and keep records regarding reinstatement requests for five years.

Appearances

For the Commission: *Judith Braun and Sandra Bird.*

For the respondents: *Gilbert S. Edelson, Rosenman, Colin, Freund & Cohen, New York City.*

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 parties identified in the caption hereof, hereinafter sometimes referred to as respondents, have 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. Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

PAR. 2. Respondents are now, and have been engaged in the manufacture, sale and distribution of wearing apparel. In 1977 respondents had net sales in excess of \$ 70,000,000.

PAR. 3. Respondents sell and distribute their products to retail dealers located throughout the United States who in turn resell respondents' products to the general public.

PAR. 4. In the course and conduct of their business as aforesaid, respondents cause and have caused apparel and related products to be shipped from the states in which they are manufactured or warehoused to purchasers in other states. Respondents maintain and

at all times mentioned herein have maintained a substantial course of trade in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended.

PAR. 5. For purposes of the complaint, the following definitions shall apply:

"Reseller" is defined as any person, firm or corporation which sells any product sold or distributed by any respondent.

"Prospective reseller" is defined as any person, firm or corporation which requests to purchase any product from any respondent.

"Resale price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any reseller for pricing any product. Such term includes but is not limited to any suggested, established or customary resale price.

"Sale period" is defined as any break date, end of season or period for selling or advertising any product at a price other than the suggested, established or customary price.

PAR. 6. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondents have been and are in substantial competition with persons or firms engaged in the manufacture, distribution or sale of apparel and related products.

PAR. 7. Respondents, unilaterally or in combination, agreement or understanding with some resellers or with the cooperation or acquiescence of other resellers, have engaged in the following acts or practices, among others:

(a) establishing agreements, understandings, or arrangements with resellers or prospective resellers that such resellers or prospective resellers will maintain certain resale prices or sale periods;

(b) informing resellers or prospective resellers, by direct and indirect means, that respondents expect or require such resellers or prospective resellers to maintain or adhere to certain resale prices or sale periods;

(c) suggesting resale prices to resellers or prospective resellers or otherwise informing them of the resale prices respondents deem appropriate;

(d) entering agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective resellers will not advertise any respondent's first-line quality products at resale prices other than those established, suggested or deemed appropriate by such respondent;

(e) entering agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective

resellers will not advertise any respondent's close-out or promotional products or second-line quality or irregular products as having been manufactured by such respondent;

(f) directing, soliciting or encouraging resellers, salespersons, employees or agents to cooperate and assist in identifying and reporting any reseller or prospective reseller who is engaged in any of the following activities:

(1) offering for sale or selling any product at a resale price other than that which any respondent has established, suggested or deemed appropriate.

(2) advertising any first-line quality product at a resale price other than that which any respondent has established, suggested or deemed appropriate.

(3) advertising any close-out or promotional product or second-line quality or irregular product as having been manufactured by any respondent.

(g) threatening to terminate, terminating, warning, intimidating and harassing resellers engaged in, or suspected of engaging in, any of the activities set forth in subparagraph (f) (1)-(3) above and using various forms of coercion and discipline, including but not limited to delaying order shipments, limiting the frequency of visits by salesmen and restricting the availability of products, against such resellers; or,

(h) refusing to deal with certain prospective resellers who may engage in any of the activities set forth in subparagraph (f) (1)-(3) above.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, as hereinabove alleged, have the capacity, tendency or the effect of:

(a) fixing, maintaining or stabilizing the resale prices for respondents' products;

(b) suppressing or eliminating competition between or among resellers of respondents' products;

(c) depriving resellers of their freedom to function as free and independent businessmen; and

(d) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition constitute unfair methods of competition and unfair acts and 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondents Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 48 West 38th St., New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

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

"Reseller" is defined as any person, firm or corporation which sells any product sold or distributed by any respondent.

"Prospective reseller" is defined as any person, firm or corporation which requests to purchase any product from any respondent.

"Resale price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any

reseller for pricing any product. Such term includes but is not limited to any suggested, established or customary resale price.

"Sale period" is defined as any break date, end of season or period for selling or advertising any product at a price other than the suggested, established or customary price.

"Product" is defined as apparel or apparel accessories including but not limited to handbags, belts, gloves, scarves, hats, jewelry and footwear.

I

It is ordered, That each of the respondents Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc., corporations, their successors and assigns, and each of the respondents' officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacture, offering for sale, sale, distribution or advertising of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Establishing, exacting assurances to comply with, continuing or enforcing any combination, agreement, understanding or arrangement to fix, establish, control, maintain or enforce, directly or indirectly, the price at which any product is to be resold or advertised by any reseller or prospective reseller.

2. Communicating, publishing, circulating, disseminating or providing by any means any resale price or sale period to any reseller or prospective reseller for a period of three (3) years from the date of service of this order; *provided, however*, that after said three (3) year period, a respondent shall not resume suggesting any resale price or sale period until it has mailed to all its open accounts a letter stating that no reseller is obligated to adhere to any suggested resale price or sale period and that suggested resale prices or sale periods are for informational purposes only.

Provided further, however, that after said three (3) year period, a respondent shall not suggest resale prices or sale periods unless it is clearly and conspicuously stated on those pages of any list, book, advertising or promotional material or other document where any suggested resale price or sale period appears:

THE [RESALE PRICES OR SALE PERIODS] QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN [RESALE PRICES OR SALE PERIODS].

Provided further, however, that after said three (3) year period, a

respondent shall not suggest resale prices on any tag, ticket or comparable marking affixed or to be affixed to any product.

3. Requiring or coercing any reseller or prospective reseller to establish, maintain, issue, adopt or adhere to any resale price or sale period.

4. Requiring or soliciting any reseller, prospective reseller, person or firm, either directly or indirectly, to report any reseller, prospective reseller, person or firm that does not adhere to any resale price or sale period.

5. Communicating with any reseller or prospective reseller concerning its deviation or alleged deviation from any resale price or sale period.

6. Suggesting or requiring that any reseller or prospective reseller refrain from or discontinue advertising any product at a certain resale price.

7. Representing that any action may or will be taken against any reseller if it deviates from any resale price or sale period.

8. Threatening to withhold or withholding advertising allowances or any other assistance, payment, service or consideration from any reseller, or limiting or restricting the eligibility of any reseller to receive such benefits because said reseller advertises or sells any product at a certain resale price.

9. Making any payment or granting any other consideration or benefit to a reseller because another reseller has sold any product at a certain resale price.

10. Hindering or precluding the lawful use by any reseller of a brand name of any respondent in conjunction with the sale or advertising of any product at any price.

11. Refusing to sell to, terminating, suspending, delaying shipments to or taking or threatening any action against any reseller or prospective reseller because the reseller or prospective reseller has, or was alleged to have, sold or advertised any product at a certain resale price or because the reseller or prospective reseller may engage in any such activity in the future.

12. Attempting to secure any promise or assurance from any reseller or prospective reseller regarding the price at which such reseller or prospective reseller will or may advertise or sell any product; or requesting or requiring any reseller or prospective reseller to obtain approval from any respondent for any price at which such reseller or prospective reseller may or will advertise or sell any product.

II

It is further ordered, That respondents shall:

1. Within sixty (60) days after the date of service of this order, mail under separate cover a copy of either this order or the Federal Trade Commission's news release in this matter to every present reseller of Huk-A-Poo Sportswear, Inc. or Pranx Fashions, Inc. An affidavit of mailing shall be sworn to by an official of respondents verifying that said mailing was completed.

2. Mail a copy of either this order or the Federal Trade Commission's news release in this matter to any reseller that purchases any product from Huk-A-Poo Sportswear, Inc. or Pranx Fashions, Inc. within five (5) years after the date of service of this order. The mailing required by this paragraph shall occur within thirty (30) days after first purchase by said reseller.

3. Within thirty (30) days after the date of service of this order distribute a copy of this order to each of respondents' operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies retained by each respondent and secure from each entity or person a signed statement acknowledging receipt of said order.

4. Within sixty (60) days from the date of service of this order, mail or deliver, and obtain a signed receipt therefor, an offer of reinstatement, to every reseller who was terminated for failing to maintain a certain resale price or sale period by any respondent during the period from January 1, 1974 to the date of service of this order, unless the reseller does not meet the credit requirements applied by respondents in the retention of accounts, and reinstate any such reseller who requests reinstatement within thirty (30) days after receiving the offer.

5. Notify the Commission at least thirty (30) days prior to any proposed change in any respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other such change in the corporations which may affect compliance obligations arising out of the order.

6. For a period of five (5) years from the date of service of this order maintain complete business records which fully disclose the manner and form of respondents' compliance with the order, including but not limited to any records referring or relating in whole or in part to:

(a) any communication between any respondent and any reseller or prospective reseller relating to the price at which any reseller or

prospective reseller is selling, proposes to sell, is advertising or proposes to advertise any product;

- (b) the termination or suspension of any reseller for any reason;
- (c) the refusal to deal with any prospective reseller for any reason, including the name and address of the prospective reseller; or
- (d) any request for reinstatement pursuant to Part II Paragraph (4) of this order.

The records required by this paragraph shall be made available to Commission staff upon reasonable notice.

7. File with the Commission within sixty (60) days after service of this order a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

