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Complaint

IN THE MATTER OF

INTERNATIONAL INVENTORS INCORPORATED, EAST,
ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2976. Complaint, July 5, 1979 — Decision, July 5, 1979*

This consent order, among other things, requires an Alexandria, Va. idea promotion firm to cease failing to provide fair and thorough evaluations as to the commercial feasibility of customers' ideas; and misrepresenting that they successfully promote and negotiate with interested manufacturers on clients' behalf; that they secure lucrative contracts for their customers through such efforts; and that the Document Disclosure Program of the United States Patent and Trademark Office protects clients' ideas prior to the filing of a formal patent application. The order requires that prescribed disclosures regarding the financial success of previous clients, the lack of legal protection for ideas, and the advisability of consulting with a patent attorney before signing an agreement be included in contracts and promotional material; and prohibits the company from accepting any fees for promotional services, other than a percentage of royalties earned through its endeavors. Additionally, respondents are required to maintain particular records for a specified period, and institute a continuing surveillance program designed to ensure compliance with the terms of the order.

*Appearances*For the Commission: *Richard C. Donohue.*For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that International Inventors Incorporated, East, a corporation, and James H. Haren, individually and as an officer of said corporation, 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 charges in that respect as follows:

I. DEFINITIONS

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

- (a) The term "idea" shall mean any idea, invention or concept, but

does not include a product that has already been manufactured prior to contact with respondents.

(b) The term "client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea."

(c) The term "financial gain" shall mean an amount of money derived by a "client" from respondents' "promotion" of the "client's idea" that is greater than the amount of money paid by a "client" to respondents.

(d) The term "promotion" shall mean the advertising, evaluation, development, manufacturing, marketing or assistance in developing, manufacturing or marketing and/or otherwise contributing to the success or growth of an "idea," but does not include the seeking of legal protection under the patent laws of the U.S.

II. RESPONDENTS

PAR. 2. Respondent International Inventors Incorporated, East, (hereinafter IIIE), is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at Suite 309, 4900 Leesburg Pike, Alexandria, Virginia.

Respondent James H. Haren is an individual and is the principal owner and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

III. NATURE OF TRADE AND COMMERCE

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising for, offering to enter into and entering into contracts for present or future services in connection with the promotion of ideas.

IV. JURISDICTION

PAR. 4. In the course and conduct of their business, respondents cause, and for some time last past have caused, their services and related materials to be offered for sale and sold from their principal place of business in Virginia to clients and prospective clients located in various other States in the United States and the District of Columbia by means of advertisements placed in newspapers of interstate circulation. In addition, respondents now cause, and have caused, their advertising materials, contracts, and various business papers to be transmitted by means of the U.S. mail from their principal

place of business in the Commonwealth of Virginia to clients, prospective clients, and potential manufacturers in various other States of the United States and the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents are now, and have been, in substantial competition, in commerce, with corporations, firms, and individuals offering contracts for present or future services in connection with the promotion of ideas.

COUNT I

PAR. 6. The allegations of Paragraphs One through Five above are incorporated by reference in Count I as if fully set forth verbatim.

V. ACTS AND PRACTICES

PAR. 7. In the course and conduct of the aforesaid business, and for the purpose of inducing the purchase of their services and related materials, respondents have made numerous statements and representations in advertisements inserted in newspapers of interstate circulation, in letters and other promotional materials, and by the oral statements and representations of their sales personnel to prospective clients. Through such advertising or statements, respondents have represented, directly or by implication, contrary to fact, that:

1. Respondents gave, and still give, clients' ideas a fair and thorough evaluation of their commercial feasibility on which said clients can rely.
2. Respondents could be expected to actively and successfully promote and negotiate, on behalf of their clients, with manufacturers who were interested in acquiring rights to new ideas.
3. The United States Patent and Trademark Office's Document Disclosure Program provides legal protection for clients' ideas prior to the filing of formal patent applications in the United States Patent and Trademark Office.
4. Respondents, in many instances, could and did obtain manufacturing contracts for their clients.
5. Respondents services have resulted and may likely result in financial gain for their clients including, but not limited to, potential income to be derived by their clients from sales, licensing or royalty agreements.

The acts and practices alleged in Paragraph Seven herein are unfair, deceptive and misleading, and therefore, are in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

PAR. 8. The allegations of Paragraphs One through Five and Seven above are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 9. Respondents, in the course and conduct of their idea promotion business, have performed and are performing their services in a manner which is not reasonably calculated to produce the results that have been and are claimed by the statements and representations described in Paragraph Seven, *supra*.

PAR. 10. It was and is an unfair or deceptive act and practice for respondents to sell their services in the manner set forth in Paragraph Nine herein, while they know or should know that their services were not and are not reasonably calculated to produce the results represented.

Therefore, the acts and practices of respondents as alleged herein constituted and now constitute a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 11. The use by the respondents of the aforementioned false, misleading and deceptive acts, practices, statements or representations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and to induce the purchase of substantial quantities of respondents' products and services and into the execution of contracts with respondents by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged, were and are now causing pecuniary losses to persons contracting with respondents and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive 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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft 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, 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 International Inventors Incorporated, East is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at Suite 309, 4900 Leesburg Pike, Alexandria, Virginia.

Respondent James H. Haren is the principal officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his business address is the same as that of said corporation.

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

ORDER

I.

For the purpose of this order the following definitions shall apply:

(a) The term "idea" shall mean any idea, invention or concept.

(b) The term "client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea."

(c) The term "financial gain" shall mean the amount of money derived by a "client" from respondents' "promotion" of the "client's idea."

(d) The term "promotion" or "promote" shall mean the advertising, evaluation, development, manufacturing, marketing or assistance in developing, manufacturing or marketing and/or otherwise contributing to the success or growth of an "idea," but does not include the seeking of legal protection under the patent laws of the U.S.

II.

It is ordered, That respondents International Inventors Incorporated, East, a corporation, its successors and assigns, and James H. Haren, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising for, offering to enter into and entering into contracts for present or future services in connection with the promotion of ideas, or any other like or similar services, in or affecting commerce, as it is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing, in the normal course of business, to give clients' ideas a fair and thorough evaluation of the ideas' commercial feasibility, upon which said clients can rely.

2. Representing, directly or indirectly, orally or in writing, that respondents, in the normal course of business, can be expected to actively and successfully promote and negotiate, or in any way promote and negotiate, on behalf of their clients, with manufacturers who are interested in acquiring rights to ideas.

3. Representing, directly, or indirectly, orally or in writing, that the United States Patent and Trademark Office's Document Disclosure Program can provide legal protection for clients' ideas prior to the filing of a formal patent application in the United States Patent and Trademark Office. Provided that nothing in this agreement shall prohibit respondents from referring clients to consult a patent attorney or licensed patent agent.

4. Representing, directly or indirectly, orally or in writing, that respondents services can and do result in manufacturing contracts or licensing agreements between manufacturers and respondents' clients that produce financial gain for their clients.

5. Failing to make the following disclosures on any contract or other binding instrument to be executed by prospective clients. Said

disclosures shall be in more conspicuous print than all other language in said instrument other than respondents' name, but in no case shall they be smaller than 12-point uppercase type. Said disclosures and instrument shall be delivered to prospective clients at least 10 days prior to the time prospective clients execute said instrument. The disclosures shall be in the following form set off from the rest of the instrument by a black border and immediately above the line for the prospective clients' signatures:

NOTICE

(A) IN THE LAST FIVE YEARS THAT WE HAVE BEEN DOING BUSINESS, WE HAVE CONTRACTED TO PROMOTE IDEAS, INVENTIONS OR CONCEPTS FOR (NUMBER) CLIENTS. AS A RESULT OF OUR SERVICES:

1. (number) (____ %) OF OUR CLIENTS
EARNED \$0-99.
2. (number) (____ %) OF OUR CLIENTS
EARNED \$100-499.
3. (number) (____ %) OF OUR CLIENTS
EARNED \$500-\$1,000.
4. (number) (____ %) OF OUR CLIENTS
EARNED OVER \$1,000.
5. (number) (____ %) OF OUR CLIENTS
EARNED MORE THAN THEY PAID US.

(B) WITHOUT PATENT PROTECTION, RECOGNIZED BY THE U.S. PATENT & TRADEMARK OFFICE, YOU MAY LOSE THE OPPORTUNITY TO OBTAIN FINANCIAL BENEFIT FROM YOUR IDEA. WE DO NOT PROVIDE ANY LEGAL SERVICES FOR OBTAINING PATENT PROTECTION RECOGNIZED BY THE U.S. PATENT & TRADEMARK OFFICE. YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY OR AGENT BEFORE YOU SIGN THIS AGREEMENT.

(C) YOU SHOULD TREAT YOUR IDEA AS A CONFIDENTIAL SUBJECT IN ORDER TO AVOID LOSING ANY PATENT RIGHTS YOU MAY HAVE.

(D) TODAY IS (Date). WE CANNOT ASK YOU TO SIGN AN AGREEMENT UNTIL 10 BUSINESS DAYS HAVE ELAPSED WHICH WILL BE ON (MONTH/DAY/YEAR).

I, (Name of Customer), hereby acknowledge receipt of a copy of this agreement on the data specified below.

Customer's Signature Date

Accurate disclosures, given without comment, as required by this

paragraph of the order, shall not be deemed a violation of Paragraph 4 of this order.

6. Executing contracts or other agreements with a client prior to the expiration of the 10-day period disclosed in accordance with Paragraph 5 herein.

7. Failing to retain executed copies of all disclosures required by Paragraph 5 of this order for a period of five (5) years after such disclosure is made regardless of whether prospective clients ultimately execute contracts with respondents. Respondents shall make accurate statistical disclosures required by this paragraph and maintain records for a period of five (5) years sufficient to verify the accuracy of each disclosure.

8. Failing to include on all contracts or other binding instruments to be executed by prospective clients a schedule detailing the entire amount of any and all fees or other consideration which may be required from or paid by the client during the course of his business relationship with respondents.

It is further ordered, That:

1. Respondents shall conspicuously place in all printed advertisements, pamphlets, brochures and other promotional material, the statement below in print at least as large as the largest print in the advertising material other than respondents' name and shall state:

(Number)% of our clients have earned more than they paid to us as a result of our efforts to promote their idea.

2. In all advertisements broadcast by radio, or television, the above-required notice shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest spoken part of the advertisement.

3. Respondents shall maintain for a period of three (3) years after any of respondents' advertisements are disseminated:

(a) Records disclosing the date or dates each such advertisement was published;

(b) Records disclosing the names and addresses of the newspapers, other publications or broadcast media disseminating said advertisement; and

(c) Representative copies or representative scripts of all of respondents' advertisements published or disseminated by any media.

It is further ordered, That:

1. At the time respondents submit advertising to any newspaper or other written medium, they shall provide a copy of the following notice to each such medium:

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Decision and Order

NOTICE

The Federal Trade Commission has issued a cease and desist order against (Name of Respondent). A copy of the Commission's News Release is available from (Name of Respondent) upon request.

2. At the time respondents submit advertising to any radio or television station, they shall provide a copy of the following notice to each such station:

NOTICE

The Federal Trade Commission has issued a cease and desist order against (Name of Respondent). A copy of the Commission's News Release is available from (Name of Respondent) upon request. Your attention is directed to an agreement between the Federal Trade Commission and the Federal Communications Commission dated April 27, 1972.

It is further ordered, That respondents shall make all disclosures required by this order accurately, making such disclosures or copies thereof available to the Federal Trade Commission or any member of its staff on request.

It is further ordered, That respondents, upon receipt of a complaint from a client alleging facts that indicate this order may have been violated, rescind the contract, refund monies paid and cancel any outstanding obligations where respondents determine, after a good faith investigation, that one or more of the paragraphs of this order may have been violated in connection with such client's transaction with respondents.

It is further ordered:

1. That respondents deliver, by hand or by certified mail, a copy of this order to each of their present or future salesmen, independent brokers, franchise owners, employees or any other person who sells or promotes the sale of respondents' products or services;
2. That respondents provide each person so described in subparagraph 1. above with a form returnable to respondents, clearly stating an intention to conform sales practices to the requirements of this order and retain such form for a period of three (3) years after it is executed by said persons;
3. That respondents inform each person described in subparagraph 1. above that respondents shall not use any such person, or the services of any such person, until such person agrees to and files notice with respondents to be bound by the provisions contained in this order;
4. That in the event such person will not agree to file such notice with respondents and be bound by the provisions of this order, respondents shall not use such person, or the services or such person;

5. That respondents institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in subparagraph 1. conform to the requirements of this order; and

6. That respondents discontinue dealing with any person described in subparagraph 1. of this order who engages in the acts or practices prohibited by this order.

It is further ordered, That respondents may accept compensation from a client for the promotion of the client's idea only as a percentage of royalties or other financial gain derived through respondents' efforts. Respondents may not accept any other fee or monetary consideration from a client.

It is further ordered, That respondents shall not sell, lease, exchange or otherwise alienate a client's idea or disclose a client's name, address, telephone number or other personal data to any party which will or may request such client to pay a fee or other monetary consideration for the promotion of that client's idea.

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

It is further ordered, That:

1. The individual respondent named herein, and every firm, partnership, association, corporation or other business entity which he now or hereafter controls or manages, and which offers, or purports to offer, any service, product, or program, in connection with the advertising, evaluation, development, manufacturing, marketing, or assistance in developing, manufacturing, or marketing, or otherwise contributing to the success of any client's product or service, shall conspicuously place in all printed contracts, agreements, advertisements, pamphlets, brochures or other promotional materials, the statement below in print at least as large as the largest print on the material other than the business entity's name and shall state:

(Number)% of our clients have earned more than they paid us as a result of our efforts to (describe service, product, or program sold by such business entity.)

2. In all advertisements broadcast by radio or television, the above-required notice shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest spoken part of the advertisement.

3. Individual respondent shall maintain for a period three (3) years after any of respondent's advertisements are disseminated:

(a) Records disclosing the date or dates each such advertisement was published;

(b) Records disclosing the names and addresses of the newspapers, other publications or broadcast media disseminating said advertisement; and

(c) Representative copies or representative scripts of all advertisements published or disseminated by any media.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of 10 years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising out of this order.

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

It is further ordered, That nothing contained in this order shall relieve respondents of any additional obligations respecting idea promotion imposed by any state. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon a showing of inconsistency, shall make such modifications as may be warranted.

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

FEDERAL TRADE COMMISSION DECISIONS

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IN THE MATTER OF

NESTLE ALIMENTANA, S.A., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket 9008. Complaint, Jan. 7, 1975 — Decision, July 9, 1979

This consent order, among other things, requires a Vevey, Switzerland food processor and an affiliated Panamanian holding company to divest, within one year, the entire frozen prepared foods facility located in Darien, Wisconsin, together with the associated frozen bulk vegetable processing facility and adjoining cold storage warehouse. Additionally, for ten years, effective from January 7, 1975, the date of the complaint, Nestle is prohibited from making any large acquisition in the frozen prepared foods industry without prior Commission approval.

Appearances

For the Commission: *Raymond L. Hays, Carl J. Batter, Jr. and Chauncey Hopkins.*

For the respondents: *Allen F. Maulsby, Cravath, Swaine & Moore, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nestle Alimentana S.A. and its affiliated company, Unilac Inc., have acquired the Stouffer Corporation in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), hereby issues this complaint pursuant to Section 11 of the Clayton Act, as amended, (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act, as amended, (15 U.S.C. 45(b)), charging in that respect as follows:

I

Definitions

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

(a) *Frozen Prepared Foods* consist of frozen foods which have been cooked or processed in some manner beyond the blanching of vegetables and fruits in the freezing process or beyond the freezing of cut or cut meats and seafoods. Frozen prepared foods include, for example,

frozen (TV) dinners, desserts, meat (pot) pies, baked goods (such as cakes), breaded shrimp, snacks (such as pizzas and hors d'oeuvres), soups, breaded and precooked poultry, prepared vegetables, and entrees.

(b) *Frozen entrees* consist of frozen prepared foods which are usually served as the main dish of the principal meal of the day. Generally served with entrees to complete the meal are other home prepared or separately purchased items such as a salad, vegetable or soup.

(c) *Quality frozen entrees* are those entrees which are advertised and marketed as quality or superior food products and which are generally able to command higher than average per-ounce retail prices.

II

Respondents

2. Nestle Alimentana S.A. (Nestle) is a publicly held company organized and existing under the laws of Switzerland. Its principal offices are located in Vevey, Switzerland.

3. Unilac Inc. is a company affiliated and associated with Nestle, organized and existing under the laws of the sovereign Republic of Panama. Its principal offices are located in Panama City, Panama. The shares of Nestle and Unilac are traded together, and the stockholders of the two companies are identical. References to Nestle hereinafter shall be understood to include Unilac Inc.

4. Nestle is a leading processor of food products throughout much of the world, with plants in approximately seventy (70) countries, employing close to ninety thousand (90,000) persons. Nestle is ranked twelfth on Fortune's list of the 300 largest foreign companies for 1972.

5. In 1973, Nestle worldwide sales (in U.S. dollars) were approximately \$5.5 billion and its profits were about \$230.7 million. Its principal worldwide products include sweetened condensed milk, evaporated milk, pasteurized, skimmed, or sterilized milk and cream, milk powder, cheese, butter, and yogurt, dietetic milk foods, dietetic specialties without milk, cereal foods for infants, strained and junior foods, coffee and tea extracts, instant chocolate drinks, liquid drinks chocolate, cocoa, and confectionery products, soups, bouillon, seasonings and condiments, prepared dishes, frozen foods and ice cream. In 1971, Nestle purchased approximately 5 percent of the world's total cocoa exports and about 7.7 percent of the world's total coffee export

6. Nestle's main United States subsidiary is The Nestle Company (referred to by Nestle as "TNCo"), with its principal offices located White Plains, New York. In 1972 TNCo had sales of about \$48'

million, primarily in chocolate products and instant coffee and tea drinks.

7. Nestle was a minority shareholder in Libby, McNeill and Libby (Libby), with its principal offices located in Chicago, Illinois, beginning in 1960, and has been the majority shareholder in Libby since 1970. Libby's major product lines include canned vegetables, canned meats, canned fruits, canned juices and drinks, and frozen foods, including frozen vegetables, fruits juices, and prepared foods. Libby's sales worldwide for the year ending June 30, 1973 were about \$434 million.

8. Nestle, directly or through its subsidiaries and affiliates, ranks among the nation's leading manufacturers of branded consumer food products, including Taster's Choice freeze dried instant coffee, Nescafe instant coffee, Nestle instant tea, Nestle's Quik, Nestle's Crunch, Libby canned vegetables, canned fruits, and canned meats, Libbyland frozen dinners for children, Maggi bouillon cubes, and Crosse and Blackwell preserved foods. In the United States, Nestle was and is, directly or through its subsidiaries, or affiliates, (i) a company engaged in the manufacture of grocery products, (ii) a company with assets in excess of \$250 million, (iii) a company involved in extensive promotional efforts, selling highly differentiated consumer products, and producing a number of products in some of which it holds a strong market position.

9. At all times relevant herein, Nestle, directly or through its subsidiaries or affiliates, sold and shipped and is now selling and shipping products in interstate commerce throughout the United States and in foreign commerce. Nestle was at the time of the acquisition challenged herein and is now engaged in commerce as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act.

III

The Acquired Company

10. Prior to 1973, the Stouffer Corporation (Stouffer), a corporation organized and existing under the laws of the State of Ohio, with principal offices located in Solon, Ohio, was a wholly-owned subsidiary of Litton Industries, which had acquired it in 1967. Prior thereto, Stouffer had been an independent publicly-held corporation, Stouffer Foods Corporation. It was and is a food processor or manufacturer which was and is engaged in the operation of restaurants and inns, and the production and distribution of frozen food products to the institutional and consumer markets. The Stouffer Corporation is the continuation of a family restaurant business started

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by Vernon Stouffer and A. E. Stouffer in 1924. It was incorporated in 1929.

11. Stouffer's sales have risen for its fiscal years 1968-1973, from about \$95.5 million to about \$144.2 million. Its sales of prepared frozen food rose during the same period about \$29.4 million to about \$66.9 million. Its assets at the time of the acquisition were about \$67 million.

12. Stouffer frozen prepared consumer food products include entrees, side dishes, bakery products, and soups.

13. Stouffer has a strong position and is the leading firm in the quality frozen entree market and the second ranking factor in the frozen entree market. Stouffer (i) is and was engaged in the manufacture of grocery products, and (ii) is and was among the top eight producers of one or more important grocery products and has more than a 5 percent share of the frozen entree market.

14. Stouffer is engaged in promotional efforts, and sells highly differentiated consumer products.

15. At all times relevant herein, Stouffer sold and shipped and is now selling and shipping products in interstate commerce throughout the United States. Stouffer was at the time of the acquisition challenged herein and is now engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

IV

The Acquisition

16. On or about March 5, 1973, Nestle purchased all the outstanding shares of the Stouffer Corporation, for approximately \$105 million cash, from Litton Industries, Inc. This acquisition falls within the criteria set forth in the Commission's May 15, 1968 enforcement policy with respect to product extension mergers in grocery products manufacturing.

V

Trade and Commerce

17. The frozen entree market and the quality frozen entree market each has four-firm concentration in excess of 50 percent, high product differentiation, and high barriers to entry.

18. In the food industry generally since World War II there have been trends toward market concentration and dominance by large, multi-product companies with vast financial resources, accompanied by declining trends in the number of competitors. Trends toward concentration are also apparent in the frozen entree market. This market has

been transformed from one composed largely of independent, medium-size companies to one dominated by a small number of multi-product companies of large absolute size which entered the market by acquisition.

VI

Effects of the Acquisition

19. The effect of the acquisition of Stouffer by Nestle has been or may be substantially to lessen competition or to tend to create a monopoly or to restrain trade in the manufacture, distribution and sale of frozen entrees and quality frozen entrees, or either of these, in the United States or sections thereof, in violation of Section 7 of the Clayton Act, as amended, and in violation of Section 5 of the Federal Trade Commission Act, as amended, in the following ways, among others:

(a) Nestle has been eliminated as an actual competitor in the frozen entree market.

(b) Nestle has been eliminated as a potential competitor in the frozen entree market and in the quality frozen entree market.

(c) The dominant position of Stouffer in the quality frozen entree market has been, or may be, further strengthened and Stouffer's dominance has been, or may be, further entrenched.

(d) Concentration has been further increased in the frozen entree market, and the segments thereof.

(e) Barriers to entry in the frozen entree market and the quality frozen entree market, already high, have been or may be further raised.

(f) Forbearance of competition in the frozen entree market as well as in the food industry generally has resulted or may result or has been or may be increased.

VII

Violation

20. The acquisition of Stouffer by Nestle as alleged herein constitutes 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).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the

respondents named in the caption hereof with violations of Section 7 of the Clayton Act, as amended, and of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondent Nestle, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Nestle S.A. is a corporation organized, existing and doing business under and by virtue of the laws of the Swiss Confederation, with its office and principal place of business located at 1800 Vevey, Switzerland, and Unilac Inc., a holding company affiliated with Nestle S.A., is a corporation organized and existing under the laws of the Republic of Panama, with its principal office located in Panama City, Panama.

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

ORDER

I

It is ordered, That, within one (1) year from the date on which this order becomes final, respondent Nestle S.A. (hereinafter respondent), its subsidiaries, affiliates, successors or assigns, shall divest the entire frozen prepared foods facility, together with the associated frozen bulk vegetable processing facility and adjoining cold storage warehouse,

located in Darien, Wisconsin, such divestiture to be made by sale to a third party to be approved in writing by the Commission.

II

It is further ordered, That, for a period of ten (10) years from the date of the issuance of the Commission's complaint on January 7, 1975, respondent, its subsidiaries, affiliates, successors and assigns, shall not, without the prior written approval of the Federal Trade Commission, acquire or acquire and hold, directly or indirectly, the whole or any part of the assets or voting securities of any corporation, firm or partnership that manufactures, processes, handles, distributes, sells or brokers frozen prepared foods and which activities are in or affect United States commerce ("Acquired Person"); *provided, however,* that the foregoing provision shall not apply to any merger, acquisition or other such transaction (i) which shall have been publicly announced prior to the date of service upon respondent of this order or (ii) which involves an Acquired Person the gross sales of which of frozen prepared foods in the fiscal year immediately preceding such merger, acquisition or other such transaction shall have been less than \$10 million.

III

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

IV

It is further ordered, That, during the period described in Paragraph II, respondent shall notify the Commission of any acquisition of any material assets of, or any equity interest in, any Acquired Person (as defined herein) for which no Commission approval is required under Paragraph II of this order, by the filing, at least sixty (60) days prior to closing any such transaction, of the completed Notification and Report Form as promulgated under Section 7A of the Clayton Act, 15 U.S.C. 18A, and the Rules thereunder, regarding each such transaction; *provided, however,* that this paragraph shall not apply to (i) any acquisition of assets which results in respondent's holding less than 2.5 million of assets of an Acquired Person or (ii) any purchase of any

equity interest which results in respondent's holding less than five percent of the outstanding voting securities of an Acquired Person.

V

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order, and every sixty (60) days thereafter until the divestiture is fully affected, submit to the Commission a detailed written report of its actions, plans and progress in complying with the divestiture provisions of this order. All reports shall include, among other things that may be from time to time required, a summary of all contacts and negotiations with any person or persons interested in acquiring the assets to be divested under this order, the identity of each such person or persons, and copies of all written communications to and from each such person or persons relating to such divestiture. Annual reports of compliance with the remaining provisions of this order shall be submitted to the Commission on the anniversary date of the service of this order.

It is further ordered, That the complaint against Unilac Inc., is dismissed.

Interlocutory Order

94 F.T.C.

IN THE MATTER OF
AMREP CORPORATION*Docket 9018. Interlocutory Order, July 12, 1979*ORDER DENYING MOTION FOR A STAY OF THE INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

On June 14, 1979, respondent, AMREP Corporation, filed a motion with the Commission requesting that the Commission stay the Initial Decision of the administrative law judge so that respondent could have an opportunity to address the Commission on the matter of *ex parte* communications prior to the issuance of the Initial Decision.¹

Respondent makes two arguments in support of its motion. Respondent first argues that Section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(c), and Rule 3.41(c) of the Commission's Rules of Practice, require that the comments regarding *ex parte* communications be made on the record prior to the Initial Decision. Respondent also argues that Rule 3.54(c) limits the Commission's authority to take evidence in that the Commission has no authority to hear evidence regarding the *ex parte* communications unless such evidence is brought up in the hearings below. However, we find nothing in the text of any of these citations to support respondent's arguments.

Indeed, the respondent has previously sought injunctive relief on this same issue from the United States District Court for the District of Columbia. That relief was denied by Judge Gasch on April 9, 1979, for failure of the respondent to exhaust its administrative remedies. In his opinion, Judge Gasch ruled that respondent ". . . will have full opportunity to address the Commission on the matter of the *ex parte* communications. Furthermore, the Commission, if necessary, is empowered to take additional evidence, if indeed the Administrative Law Judge's initial decision goes to the Commission." Opinion at page 8.

We fully agree with the opinion of Judge Gasch. The Commission's appellate procedures provide respondent with an adequate mechanism to address the issue of *ex parte* communications should it be necessary.² Under the circumstances, it is unnecessary to stay the Initial Decision.³ Accordingly,

¹ Respondent also filed a motion to extend time for filing the Initial Decision because of the unlikelihood that the Commission could decide the motion for a stay before what had been a June 22, 1979 filing date. Inasmuch as that date was extended by the Commission to July 13, 1979, and a decision is now being made on the motion for a stay, the motion for an extension of time is denied as moot.

² Moreover, Rule 3.54(a) of the Commission's Rules allows the Commission to hear and take additional evidence on appeal from, or review of, an Initial Decision. See also 5 U.S.C. 557(b).

³ Since our decision not to grant respondent's motion is based on the fact that adequate procedures exist on appeal, we intimate no opinion on complaint counsel's assertion that the motion should be denied as a dilatory abuse of the Commission's Rules of Practice.

Interlocutory Order

It is ordered, That the motion for a stay of the initial determination by the administrative law judge be, and the same hereby is, denied.

IN THE MATTER OF
RHINECHEM CORPORATION, ET AL.

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket 9116. Complaint, Aug. 23, 1978 — Dismissal Order, July 12, 1979*

This order dismisses the August 23, 1978 complaint issued against Allegheny Ludlum Industries, Inc. and its subsidiary, Chemetron Corporation, a producer of organic pigments, for alleged violations of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint was dismissed on grounds that changed circumstances which have occurred since issuance of the complaint have provided the Commission with adequate assurances that the challenged matter will not reoccur, and additional relief will not be necessary.

Appearances

For the Commission: *Glenn M. Fellman* and *Michael P. Waxman*.

For the respondents: *Thomas L. VanKirk, Buchanan, Ingersoll, Roderwald, Kyle & Buerger*, Pittsburgh, Pa. and *A.F. Maulsby, Cravath, Swaine & Moore*, New York City.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE LAW
JUDGE

MAY 30, 1979

PRELIMINARY STATEMENT

The complaint in this matter was issued by the Commission on August 23, 1978, alleging that the Commission had reason to believe that the above-named respondents had entered into a merger agreement which, 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 that a proceeding in respect thereof would be in the public interest. Rhinechem Corporation filed its answer to the complaint on October 2, 1978, and Allegheny Ludlum Industries, Inc. and Chemetron Corporation filed their answer to the complaint on September 29, 1978.

On October 20, 1978, Judge Joel M. Flaum, presiding in the United States District Court for the Northern District of Illinois, enjoined consummation of the acquisition "during the pendency of the adminis-

* Complaint previously reported at 98 F.T.C. 883.

trative proceedings and any subsequent judicial review." Following the issuance of the injunction, the parties to the merger agreement announced the proposed sale would not be pursued. On November 20, 1978, Allegheny Ludlum Industries, Inc. announced that it would sell the Chemetron Pigments Division ("CPD") to BASF Wyandotte Corporation ("BASF"). This sale of the Chemetron Pigments Division to BASF was consummated on March 23, 1979. Thereafter, on April 5, 1979, the Commission issued a complaint challenging the sale of CPD to BASF under Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act (*In the Matter of BASF Wyandotte Corporation*, Dkt. 9125). Allegheny Ludlum Industries, Inc. was not named as a party respondent in the BASF complaint.

At the prehearing conference held on December 19, 1978, it was stated by complaint counsel that Rhinechem Corporation was desirous of negotiating a consent order and would not be present at the prehearing conference. Such a consent agreement was negotiated and the Commission withdrew this matter from adjudication with respect to respondent Rhinechem Corporation on January 15, 1979.

Allegheny Ludlum Industries, Inc. and Chemetron Corporation subsequently filed a motion to dismiss the complaint as to them on the grounds that the proposed acquisition by Rhinechem Corporation had been abandoned and that there was no public interest in allowing this proceeding to continue. The Commission denied this motion (Order Denying Respondents' Motion For Dismissal of Complaint, February 12, 1979) [93 F.T.C. 233]. [2]

Counsel supporting the complaint, by motion filed pursuant to Section 3.22(a) of the Rules of Practice, have requested dismissal of the complaint for lack of public interest. Complaint counsel state that since the assets of CPD are no longer under the influence or control of Allegheny Ludlum Industries, Inc. and the Commission is presently challenging the sale of those assets to BASF, it is extremely unlikely that the respondents in this matter could return to the challenged acquisition after the complaint herein is dismissed and the injunction dissolved. Complaint counsel further state that the changed circumstances which have occurred have given the Commission the assurances it needs to conclude that the matter will not reappear in a disadvantageous context and that no additional relief is necessary. Counsel supporting the complaint, therefore, move that an order dismissing the instant complaint for lack of public interest be entered.

Section 3.22(e) of the Rules of Practice requires that when a motion to dismiss a complaint is granted with the result that the proceeding before the administrative law judge is terminated, an initial decision in accordance with the provisions of Section 3.51 shall be filed.

Having carefully reviewed the record of this proceeding, the administrative law judge makes the following findings of fact and conclusions and issues the order set out at the end hereof.

FINDINGS OF FACT

1. This matter has been withdrawn from adjudication as to respondent Rhinechem Corporation ("Rhinechem") (Order Withdrawing Matter From Adjudication With Respect To Rhinechem Corporation, January 15, 1979).

2. Allegheny Ludlum Industries, Inc. ("Allegheny") is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 2700 Two Oliver Plaza, Pittsburgh, Pennsylvania (Answer, Par. 9).

3. Chemetron Corporation ("Chemetron") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 111 E. Wacker Drive, Chicago, Illinois (Answer, Par. 8). Chemetron is a wholly-owned subsidiary of Allegheny (Answer, Par. 9). [3]

4. Chemetron and Allegheny, at all times relevant herein, have been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affects commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 44. (Answer, Pars. 9, 10, 14).

5. On or about June 12, 1978, Rhinechem entered into an agreement in principle which provided, *inter alia*, for the acquisition by Rhinechem of the assets of Chemetron's Pigment Division (Answer, Par. 15). On August 25, 1978 Rhinechem entered into a written agreement providing that the sale be consummated on August 30, 1978, or such other date as fixed by them. The Commission, on August 25, 1978 issued its complaint alleging that the merger, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act (complaint). The Commission also brought suit to preliminarily enjoin the proposed purchase under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). The United States District Court for the Northern District of Illinois, on October 10, 1978, issued an injunction prohibiting consummation of the purchase agreement during the pendency of the administrative proceeding and any subsequent review thereof (*Federal Trade Commission v. Rhinechem Corporation, et al.*, CCH Trade Cases 1978-2 ¶ 62,350).

6. On October 23, 1978 the purchase agreement between Rhinechem and Allegheny and Chemetron was terminated by mutual

agreement of the parties (Motion For Dismissal Of Complaint, filed by Allegheny Ludlum Industries, Inc. and Chemetron Corporation, December 20, 1978, with attached affidavit of Clayton A. Sweeney, Vice President, Allegheny Ludlum Industries, Inc.).

7. On or about November 18, 1978, BASF Wyandotte Corporation ("BASF") and Allegheny and Chemetron entered into a definitive agreement which provided for the acquisition by BASF of the assets of Chemetron's Pigment Division. On or about March 23, 1979 BASF acquired the assets of Chemetron's Pigment Division (*In the Matter of BASF Wyandotte Corporation*, complaint, Dkt. 9125, April 5, 1979).

CONCLUSIONS

Since the assets of Chemetron's Pigment Division are no longer under the control of Allegheny and Chemetron, but have been purchased by BASF in a transaction now being challenged by the Commission in another proceeding, it is [4] extremely unlikely that the respondents herein can return to the acquisition which was challenged in this instant proceeding. The changed circumstances which have occurred since issuance of the complaint herein have provided the Commission with adequate assurances that the matter which was challenged in the complaint will not reoccur and no additional relief is necessary. Accordingly, further pursuance of this complaint is not in the public interest.

ORDER

It is ordered, That the complaint in this matter be, and it hereby is, *dismissed* as to respondents Allegheny Ludlum Industries, Inc. and Chemetron Corporation.

FINAL ORDER

The administrative law judge filed an Initial Decision in this matter on May 30, 1979, dismissing the complaint against respondents Allegheny Ludlum Industries, Inc. and Chemetron Corporation on the ground that changed circumstances which have occurred since issuance of the complaint have provided the Commission with adequate assurances that the matter which was challenged in the complaint will not reoccur and no additional relief is necessary. No appeal from the Initial Decision was filed.

The Commission having now determined that the matter should not be placed on its own docket for review, and that the Initial Decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice, [2]

Final Order

94 F.T.C.

It is ordered, That the Initial Decision and order contained therein shall become effective on July 12, 1979.

Modifying Order

IN THE MATTER OF
NORRIS INDUSTRIES, INC.MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2946. Decision, Dec. 27, 1978 — Modifying Order, July 12, 1979

This order modifies the cease and desist order issued on December 27, 1978, 44 FR 6880, 92 F.T.C. 989, by revising Paragraph "2." of Part II of the original order to require affirmative disclosures and include definitions of "clear and conspicuous" for purposes of print, radio, and television advertising.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on April 25, 1979, issued its Order to Show Cause why this proceeding should not be reopened and its order of December 27, 1978, modified.

Respondents filed an Answer on May 31, 1979, setting forth objections to the Order to Show Cause, and proposing certain amendments. Commission staff interposed no objections and recommended that the respondent's amendments be incorporated into the order,

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the Order to Show Cause and the Respondent's Answer, without necessity of further action by the Commission, as follows:

ORDER

PART I

It is ordered, That Norris Industries, Inc., [hereinafter referred to as the respondent], its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of dishwashers in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can sterilize or destroy all microorganisms on utensils placed in the dishwasher.
2. Representing directly, or by implication, that the stainless steel parts in any dishwasher manufactured or sold by respondent are rustproof or will not rust under normal household conditions.

3. Representing, directly or by implication, that the disposo-drain in any dishwasher manufactured or sold by respondent will remove all soft food waste from the dishwasher.

4. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can completely clean dishes, cookware, and other utensils placed in the dishwasher, without prior scraping, scouring, or rinsing.

5. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can be randomly loaded or that there are no special instructions to follow when loading.

PART II

It is further ordered, That respondent, its successors and assigns, either jointly or individually, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of major home appliances in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. (a) Making any statements or representations, directly or by implication, concerning the performance of such products unless at the time that the statements or representations are made respondent possesses and relies on a reasonable basis for such statements or representations, which shall consist of a competent and reliable scientific test, as defined in Paragraph One (b) hereafter.

(b) For purposes of this order a "competent and reliable scientific test" is one in which one or more persons with education, knowledge, and experience in the field conduct a test and evaluate its results in an objective manner using testing, evaluation, and analysis procedures generally accepted in the profession and which best insure valid and reliable results. Moreover, the test results must either accurately predict, or be correlated with, the results that a consumer ordinarily would obtain using the product under normal household conditions.

2. Failing to make a "clear and conspicuous disclosure" that product features, depicted or described in advertising for a product, apply only to the model being advertised or, if applicable, only to certain models. Such disclosure shall identify the model(s) by number(s) (and name(s) if applicable) to which the product features do or, at the respondent's option, do not apply. This disclosure shall not be required where the advertisement clearly and conspicuously identifies the model by number (and model name if applicable) to which the product features being advertised apply.

For purposes of this provision:

Television Advertising – clear and conspicuous shall be as set forth in the FTC's Statement of Enforcement Policy of October 21, 1970;

Radio Advertising – the disclosure shall be clear and conspicuous and shall be made with no other sounds including music;

Print Advertising – clear and conspicuous shall mean that the disclosure of the model number and name, if applicable, shall be in no less a type size than that used to describe the product features and shall be in immediate conjunction with the description of the product features.¹

3. Making any statements or representations, directly or by implication, in connection with the advertisement of any such product, which are inconsistent in any material respect with any statements or representations contained, directly or by implication, in post purchase material(s) supplied to the purchaser of such products.

4. For purposes of this order the term "major home appliances" means the following appliances presently manufactured or sold by the respondent: automatic dishwashers; garbage disposers; trash compactors; and microwave ovens.

PART III

It is further ordered, That respondent, its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, distribution or sale of "major home appliances" in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain the following accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) documentation in support of and on which respondent relied in making any claim included in advertising, sales promotional material, or post purchase materials, disseminated by respondent or by any division or subdivision of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division or

¹ The provisions of this order in respect to print advertising will be implemented per the following schedule: (1) Reproducible advertising for use by distributors and retail dealers – when stock in existence on June 1, 1979, is exhausted but in any event no later than January 1, 1980; (2) Advertising for placement by respondent – promptly upon the effective date of this modification to the final order; (3) Brochures – when stock in existence on June 1, 1979, is exhausted but in any event no later than January 1, 1980, except, respondent's brochure identified as Exhibit 22 in the Compliance Report dated as of April 12, 1979 – promptly upon the effective date of this modification to the final order.

Modifying Order

94 F.T.C.

subsidiary, concerning the performance characteristics of any of respondent's major home appliances;

(b) documentation which contradicts, qualifies or calls into serious question any claim included in advertising, sales promotional material or post purchase materials disseminated by respondent or by any division or subdivision of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division or subsidiary, concerning the performance characteristics of any of respondent's major home appliances.

Such documentation shall be retained by respondent for a period of three years from the date such advertising, sales promotional or post purchase materials were last disseminated.

PART IV

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

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its officers, agents, representatives or employees of the respondent's Thermador/Waste King division who are engaged in the preparation, placement, or review of advertisements for the "major home appliances" defined in this order.

It is further ordered, That the respondent 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.

IN THE MATTER OF

TRANS WORLD ACCOUNTS, INC., ET AL.

MODIFIED ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9059. Decision, October 25, 1977 — Modified Order, July 25, 1979

This modified order to cease and desist replaces an order issued on October 25, 1977, 43 FR 2388, 90 F.T.C. 350. To clarify and reformulate the earlier order in accordance with the March 29, 1979 mandate of the Court of Appeals for the Ninth Circuit, 594 F.2d 212, Paragraph 3, which is the subject of further proceeding, has been omitted, but Paragraph 4 has not been renumbered.

MODIFIED ORDER TO CEASE AND DESIST

On February 21, 1978, respondents filed in the United States Court of Appeals for the Ninth Circuit a petition to review an order to cease and desist issued herein on October 25, 1977. The Court thereafter rendered its decision and judgment, affirming and enforcing the Commission's order with the exception of numbered Paragraph 3 thereof which was remanded for clarification pursuant to the decision of the Court. The time in which to file a petition for certiorari has now expired without any party having filed such a petition, and, accordingly, the order of the Commission shall be rendered in accordance with the mandate of the Court. See 15 U.S.C. 45(i).

Therefore, It is ordered, That the aforesaid order to cease and desist, save for numbered Paragraph "3" (which is the subject of further proceedings), be rendered to read as follows:

ORDER

It is ordered, That respondents, Trans World Accounts, Inc., a corporation, its successors and assigns, and its officers, and Floyd T. Watkins, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by their appearance,

