JUL 17'95 15:38 FR [redacted]

Sec. 801 generally; 801.10(b) and (c)

[redacted]

July 17, 1995

VIA FACSIMILE
ORIGINAL VIA FEDERAL EXPRESS

Richard D. Smith, Esq.
Premerger Notification Office
Room H-303
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Reportability of Licensing Transaction

Dear Mr. Smith:

I am writing, as we discussed, to confirm the substance of our telephone conversation on July 13 pertaining to my June 28 letter request, pursuant to 16 C.F.R.§ 803.30, for an informal interpretation of the premerger notification rules. First, you confirmed our general understanding that the "Primary Trademark" license component of this transaction would only be considered the acquisition of an "asset" to the extent it grants exclusive trademark rights, and that in order to be reportable those exclusive rights would need to independently meet the size-of-transaction test, i.e. be valued at more than $15 million under §801.10 (b) and (c). Further, it is the conclusion of the Staff that the rights described in our June 28 letter are not sufficiently exclusive to constitute an asset. Therefore, that component of the transaction is not reportable.

Second, you stated that the mailing list component of the transaction would be required to meet the same criteria of exclusivity and value in order to be reportable. Since the exclusivity involving the mailing list data extends only to the provision of certain limited data, and then only for a period of thirty days, the issue becomes whether those limited rights are valued at more than $15 million.

The financial structure of the proposed transaction provides for an initial payment by the Licensee to the Licensor of an aggregate of $10 million, which is not allocated in the agreement among the different rights conveyed. Then, over the ensuing fifteen years of the agreement, royalties would be paid based on a percentage of the sales price of products sold to customers under licensed trademarks and/or whose names were obtained from the other party to the transaction, subject to certain minimum royalty payments. The agreement does not specifically allocate any portion of the consideration to be paid to the thirty-day exclusive period for use of the mailing list data.

Under these circumstances, we understand that it is the position of the Staff that the acquiring person (the Licensee), through its board of directors or delegee, should determine the value of the asset based on its fair market value. See ABA Section of Antitrust Law, *Premerger Notification Practice Manual*, Int. 129 at 107 (1991). If the fair market value of the exclusive portion of the mailing list component is $15 million or less, as our client believes it is, this asset does not meet the size-of-transaction test. In that case, no part of the transaction is reportable.

We would, of course, appreciate hearing from you if the foregoing is incorrect in any respect. We continue to request that this letter and the information disclosed to you be treated as confidential under applicable law and regulations. Thank you for your consideration and assistance.

Very truly yours,

[redacted]

[redacted] 7/20/95 - PMN's decision on "Primary Trademark" license was based on two factors: the use of the trademark was based on exclusive use in ~~certain~~ distribution through certain "Direct Marketing Channels" and the Licensor retained the right to use trademark in distribution through other Direct Marketing Channels.

RDSmith

[redacted]