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FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION OFFICE

[REDACTED]

November 8, 1995

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**VIA FAX 202-326-2624**

Nancy Ovuka, Esq.  
Room 303  
Federal Trade Commission  
Washington, D.C. 20580

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provisions of the Freedom of Information  
Act, 5 U.S.C. 552, which restricts  
release under the Freedom of Information  
Act.

Re: [REDACTED]

Dear Ms. Ovuka:

We represent [REDACTED]  
in connection with the proposed acquisition (the "Acquisition") by [REDACTED]  
L.L.C., [REDACTED] limited liability company and 99% owned subsidiary of [REDACTED]  
[REDACTED] wholly owned subsidiary of [REDACTED] a subsidiary of [REDACTED]  
[REDACTED] for a total purchase price of \$26,200,000 (the "Purchase Price"). The  
purpose of this letter is to obtain confirmation of our telephone discussion on  
September 22, 1995 regarding whether [REDACTED] must file a notification  
of the Acquisition with the Federal Trade Commission (the "FTC") and the  
Department of Justice ("DOJ") under the Hart-Scott-Rodino Act (the "Act").

During our telephone conversation, you preliminarily concluded that the  
Acquisition will not meet the minimum requirements for filing under the Act.  
The following summary of the Acquisition and the status of [REDACTED] may be  
helpful to you:

The Acquisition.

[REDACTED] have entered into a letter agreement dated August 3, 1995,  
setting forth the basic terms of the Acquisition. As provided in the letter  
agreement, the parties will enter into a definitive agreement (the "Asset  
Agreement") which will more clearly delineate the rights and obligations of the  
parties. The Asset Agreement will provide for a two-phase closing of the  
Acquisition. Closing of the first phase is scheduled for December 1995; closing  
of the second phase is targeted for May, 1996.

[REDACTED]

[REDACTED] 3

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Currently, the assets [REDACTED] including the assets of all consolidated and unconsolidated entities controlled by [REDACTED] are considerably less than \$10 million; however, the amount of assets acquired at the first phase of the closing of the Acquisition will cause [REDACTED] assets to exceed the \$10 million threshold for filing under the Act prior to the second phase of the closing. Accordingly, [REDACTED] questions relate to the two-phase closing of the Acquisition.

You indicated in our telephone conversation that based on the following facts, the FTC would consider the Acquisition to be a single transaction: (i) despite the two-phase closing, the Acquisition is contemplated by the parties as a single transaction; (ii) there is only one Asset Agreement and plan of financing governing the entire Acquisition; (iii) the Purchase Price is the total price for all of the assets to be acquired in both phases of the closing; (iv) the type and classification of assets (real and personal property in connection with [REDACTED] franchises) are identical for both phases of the closing; and (v) the ultimate parent entity for each of the acquiring party and the acquired party for the entire Acquisition is the same for both phases of the closing.

Please confirm that the FTC considers the Acquisition to be a single transaction and, accordingly, that [REDACTED] are not required to file a notification with the FTC and the DOJ because the first phase of the closing of the Acquisition would cause [REDACTED] have more than \$10 million in assets prior to the second phase of the closing.

[REDACTED]

The annual net sales of [REDACTED] including the annual net sales of all consolidated and unconsolidated entities controlled by [REDACTED] also do not meet the \$10 million filing threshold under the Act. [REDACTED] will prepare its year-end financial statements for 1995, which will be the final regularly prepared financial statements prior to the second phase of the closing of the Acquisition. The net sales of [REDACTED] including [REDACTED] net sales from and after the closing of the first phase of the Acquisition, as of December 31, 1995, will be less than \$10 million.

You indicated in our telephone conversation that (i) the determination of whether filing is necessary under the Act is based on the most recent regularly prepared financial statements prior to the time of closing of an acquisition, and, accordingly, (ii) it is not necessary to project the net sales [REDACTED] 1996.

[REDACTED]

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Please confirm that [redacted] understanding of the criteria for determination of annual net sales for purpose of the filing requirements under the Act as set forth in this paragraph is correct.

You stated in our telephone conversation that the FTC does not commit to writing any of its decisions in response to letters such as this; rather, the FTC will not [redacted] by telephone and place this letter in the FTC's file, and [redacted] will be entitled to rely on such notification. Please call me at [redacted] notify me of the decision of the FTC or if you have any questions regarding this letter or the Acquisition. Thank you for your courtesy and prompt consideration of this matter.

Very truly yours,

[redacted signature block]

cc: [redacted]

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Because the acquisition is one transaction, the company may rely on the balance sheet available at 12/95 when it begins consummating the deal.

[redacted]