

Complaint

IN THE MATTER OF

MICHAEL G. CHRISMAN, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3951; File No. 0023113
Complaint, June 7, 2000--Decision, June 7, 2000*

This consent order requires Respondents Michael G. Chrisman and Michelle R. Chrisman individually and doing business as DayTrading International to have a reasonable basis substantiating any representation about the percentage, ratio, or number of trades that a user of any trading program could reasonably expect to be profitable; the amount of earnings, income, or profit that a user of any trading program could reasonably expect to attain; the rate of return that a user of any trading program could reasonably expect to attain or the length of time over which such a rate of return could reasonably be expected; or the past performance of a trading program, or claims about any financial benefit or other benefit from any trading program. The order also prohibits Respondents from misrepresenting that since January 1996, respondents' "Daily Picks Newsletter" program has returned an average of 167 percent annually or that during 1996 and 1997, respondents' "Hot Small Caps Newsletter" program returned an average annual return of 214 percent, or that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed. In addition, the order requires Respondent to disclose, clearly and conspicuously, "DAY TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation he makes about the financial benefits of any trading program.

Participants

For the Commission: *Michael Ostheimer, C. Lee Peeler, and BE.*

For the Respondents: *Lora A. Brzezynski, McKenna & Cuneo, L.L.P.*

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COMPLAINT

The Federal Trade Commission, having reason to believe that Michael G. Chrisman and Michelle R. Chrisman ("respondents"), individually and doing business as DayTrading International, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondents Michael G. Chrisman and Michelle R. Chrisman are the co-owners of DayTrading International, a Missouri company with its principal office or place of business at 113 West Porter Street, Kirksville, MO 63501. Individually or in concert with others, they formulate, direct, or control the policies, acts, or practices of the company, including the acts or practices alleged in this complaint. Their address is the same as that of the company.
2. Respondents have advertised, offered for sale, sold, and distributed products or services to the public, including recommendations for trading stock. Respondents sell these products or services through their Internet Web site, <www.daytradingintl.com>. Stock trading products or services sold by respondents include the "Live Interactive Trading Room," the "Daily Picks Newsletter," and the "Hot Small Caps Newsletter." The "Live Interactive Trading Room" is an Internet chat room where respondents provide "live" day trading advice during the day on when to buy and sell stocks. The "Daily Picks Newsletter," and the "Hot Small Caps Newsletter" are in the form of e-mails delivered once per day which contain advice for stock trading.
3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

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4. Respondents have disseminated or have caused to be disseminated advertisements for their trading programs, including but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statements:

- A. "Our daily and intra-day stock picks produce substantial profits within very short periods of time. *Imagine the advantages you will have, trading with professionals that make their entire livelihood from the equity markets. Sign up now! View our services for more information and prices.*" (emphasis in original).

(Exhibit A, The home page of respondent's Web site, <www.daytradingintl.com>).

B. "Live Interactive Trading Room"

The Trading Room provides live intra-day plays to our members. These trades produce fractional gains in a very short period of time. If you are looking to make 1/4's, 3/8's, 1/2's, or even points, perhaps on several occasions though out [sic] the day, then this is where you should be. These calls are made by our traders that have over 18 years of trading experience and are profitable more than 85% of the time when managed correctly. This forum allows us to alert all of our members instantaneously of breaking news stocks [sic] on the verge of exploding upwards.

. . . In order to take full advantage of this service, you should have sufficient capital to buy between 500 and 1000 shares or more, have access to real time quotes as well as a good broker with fast execution. This style of trading can be most profitable of all, because 1/4 point on

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2000 shares is \$500. Two or three of those each day, adds up pretty nicely.

The Trading Room will provide you with plenty of those 3, 4, and 5 point winners you always dream about. Just one decent trade pays for this service for an entire year. We do all the research for our own trading, sharing it with our members in real time helps everyone involved.”

(Exhibit B, Page of respondents’ Web site devoted to their services <www.daytradingintl.com/SignUp/Services>).

C. “The Daily Picks Newsletter

. . . . These plays are short-term which are usually held only 1 to 5 days to produce gains of between 2% and 10% per trade. This compounds very rapidly. Since inception in January 1996, this service has returned an average of 167% annually. This strategy is . . . the perfect opportunity for the individual trader.”

(Exhibit B, Page of respondents’ Web site devoted to their services <www.daytradingintl.com/SignUp/Services>).

D. “Hot Small Caps Newsletter

. . . . This has become our fastest growing service, as well as our best performer. During 1996 and 1997 the small cap recommendations returned an average annual return of 214%. As you can see, small caps stocks, or should I say, the RIGHT small cap stocks can score remarkable gains.”

(Exhibit B, Page of respondents’ Web site devoted to their services <www.daytradingintl.com/SignUp/Services>).

5. Through the means described in Paragraph 4, respondents have represented, expressly or by implication, that:

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- A. Users of respondents' trading programs can reasonably expect to trade stocks profitably with little or no risk.
 - B. Since January 1996, respondents' "Daily Picks Newsletter" program has returned an average of 167 percent annually.
 - C. During 1996 and 1997, respondents' "Hot Small Caps Newsletter" program returned an average annual return of 214 percent.
6. In truth and in fact:
- A. Users of respondents' trading programs cannot reasonably expect to trade stocks profitably with little or no risk.
 - B. Since January 1996, respondents' "Daily Picks Newsletter" program has not returned an average of 167 percent annually. Respondents did not begin to offer the "Daily Picks Newsletter" until 1998.
 - C. During 1996 and 1997, respondents' "Hot Small Caps Newsletter" program did not return an average annual return of 214 percent. Respondents did not begin to offer the "Hot Small Caps Newsletter" program until 1998.

Therefore, the representations set forth in Paragraph 5 were, and are, false or misleading.

7. Through the means described in Paragraph 4, respondents have represented, expressly or by implication, that:
- A. Users of respondents' "Live Interactive Trading Room" program can reasonably expect to achieve profits on their trades more than 85 percent of the time.

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B. Users of respondents' "Live Interactive Trading Room" program can reasonably expect to achieve substantial profits on a consistent basis (e.g., \$500 per trade, two or three times each day).

C. Users of respondents' "Daily Picks Newsletter" program can reasonably expect to make short term trades, held one to five days, that achieve a rate of return of between two percent and ten percent per trade.

8. Through the means described in Paragraph 4, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 7, at the time the representations were made.

9. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 7, at the time the representations were made. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this seventh day of June, 2000, has issued this complaint against respondents.

By the Commission.

Complaint Exhibits

Complaint Exhibits

...FOR THE BEST SITE FOR SHORT-TERM TRADERS:

Services

- Trading Hours/Access
- Chart Pack
- Print Cap
- Trading System
- Custom Start Page
- IP Center
- Stock Split
- Upgrade/Downgrade

Welcome to the fastest growing trading site on the web today. We specialize in the short-term trading of equities that are listed on the NYSE, AMEX and Nasdaq.

FREE!

- Earnings Calendar
- Stock Screener
- Global Market
- Portfolio Tracker

We offer a **2-week Free Trial** on all our services so you can see for yourself how profitable short-term trading can be. As a member you will be alerted to stocks .exploding to the upside in real-time allowing you to jump aboard for a profit instead of just reading about it in the newspapers the next day.

Real Time

- Real Time
- Global Resources
- Trading Tools
- Real Performance
- 1999 Historical Schedule

Our daily and intra-day stock recommendations produce substantial profits within very short periods. *Imagine the advantages you will have, trading with professionals that make their entire livelihood from the equity markets.* Sign up now! View our [services](#) for more information and prices.

Support

- FAQ
- Contact Us
- Suggestion Box
- Update Info
- Billing Questions

ETG

New! Spread the news and win a **FREE month's membership!**

Get Report!

New! Members can now customize a start page to their preferences.

(888) 790-4800



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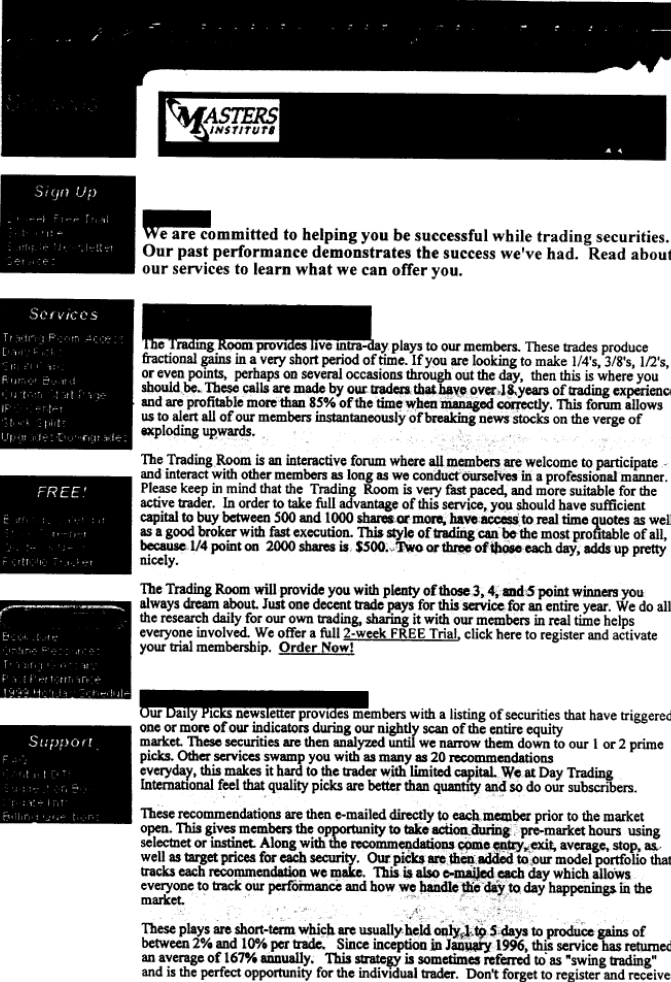
Site design by Digitalism

Exhibit A

Complaint Exhibits

Services

wysiwyg://21:http://www.daytradingintl.com/SignUp/Services_services.htm



MASTERS INSTITUTE

Sign Up
 2 Week Free Trial
 30 Day Money Back Guarantee
 Sample Newsletter Delivered

Services
 Trading Room Access
 Evening News
 Expert News
 Futures Board
 Market Chat Page
 100 Member
 Stock Alerts
 Updated During Week

FREE!
 2 Week Free Trial
 30 Day Money Back Guarantee
 Sample Newsletter Delivered

Book Here
 Online Resources
 Trading with
 Buy Performance
 1999 Model Portfolio

Support
 FAQ
 Contact Us
 Copyright © 1999
 All Rights Reserved

We are committed to helping you be successful while trading securities. Our past performance demonstrates the success we've had. Read about our services to learn what we can offer you.

The Trading Room provides live intra-day plays to our members. These trades produce fractional gains in a very short period of time. If you are looking to make 1/4's, 3/8's, 1/2's, or even points, perhaps on several occasions through out the day, then this is where you should be. These calls are made by our traders that have over 18 years of trading experience and are profitable more than 85% of the time when managed correctly. This forum allows us to alert all of our members instantaneously of breaking news stocks on the verge of exploding upwards.

The Trading Room is an interactive forum where all members are welcome to participate and interact with other members as long as we conduct ourselves in a professional manner. Please keep in mind that the Trading Room is very fast paced, and more suitable for the active trader. In order to take full advantage of this service, you should have sufficient capital to buy between 500 and 1000 shares or more, have access to real time quotes as well as a good broker with fast execution. This style of trading can be the most profitable of all, because 1/4 point on 2000 shares is \$500. Two or three of those each day, adds up pretty nicely.

The Trading Room will provide you with plenty of those 3, 4, and 5 point winners you always dream about. Just one decent trade pays for this service for an entire year. We do all the research daily for our own trading, sharing it with our members in real time helps everyone involved. We offer a full 2-week FREE Trial, click here to register and activate your trial membership. [Order Now!](#)

Our Daily Picks newsletter provides members with a listing of securities that have triggered one or more of our indicators during our nightly scan of the entire equity market. These securities are then analyzed until we narrow them down to our 1 or 2 prime picks. Other services swamp you with as many as 20 recommendations everyday, this makes it hard to the trader with limited capital. We at Day Trading International feel that quality picks are better than quantity and so do our subscribers.

These recommendations are then e-mailed directly to each member prior to the market open. This gives members the opportunity to take action during pre-market hours using selectnet or instinet. Along with the recommendations come entry, exit, average, stop, as well as target prices for each security. Our picks are then added to our model portfolio that tracks each recommendation we make. This is also e-mailed each day which allows everyone to track our performance and how we handle the day to day happenings in the market.

These plays are short-term which are usually held only 1 to 5 days to produce gains of between 2% and 10% per trade. Since inception in January 1996, this service has returned an average of 167% annually. This strategy is sometimes referred to as "swing trading" and is the perfect opportunity for the individual trader. Don't forget to register and receive

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Services

wystwyg: 21 http://www.daytradingintl.com/SignUp/Services/Services.htm

your 2-week FREE Trial, and view our sample newsletter. **Order Now!**

This daily newsletter deals strictly with equities in the \$5 - \$15 range, that have explosive upside potential. Every night we scan the securities in this price range. The stocks that trigger two or more of our indicators are then run through our analytical program to determine our buy recommendations. You will receive between 1 and 3 calls per day, you won't be flooded with them.

These will then be compiled into our daily newsletter which is e-mailed to each member prior to the market open. Along with these recommendations come entry, exit, average, stop as well as target prices. Please keep in mind, we do NOT play penny stocks, nor do we have a desire to. None of these small cap recommendations will be below \$5. These stocks are then added to our model portfolio which is also contained in the daily newsletter. This way we can all see what and how well we are doing.

This has become our fastest growing service as well as our best performer. During 1996 and 1997 the small cap recommendations returned an average annual return of 214%. As you can see, small cap stocks, or should I say, the RIGHT small cap stocks can score remarkable gains. We offer you a full 2-week FREE Trial, and view our sample newsletter. **Order Now!**

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- **Premium Service \$189.00- Includes Trading Room and Both Newsletters**
 - **Trading Room *plus* Daily Picks \$169.00**
 - **Daily Picks and Small Caps Newsletters Only \$139.00**
 - **Daily Picks Newsletter \$79.00**
 - **Small Caps Newsletter \$79.00**
 - **Order Now!**
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Our guarantee is to provide you with the best service possible. If you are experiencing a problem with your account at anytime, simply contact us and we'll correct it as soon as possible. If you wish to discontinue your membership, simply e-mail us before the end of the month, and your account will be canceled at the end of the current billing cycle. Service is month-to-month, partial refunds are not given unless service is interrupted due to prolonged equipment failure.

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Site design by
Design

Exhibit B

Decision and Order

DECISION AND ORDER

The Federal Trade Commission ("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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondents Michael G. Chrisman and Michelle R. Chrisman are the co-owners of DayTrading International, a Missouri company with its principal office or place of business at 113 West Porter Street, Kirksville, MO 63501. Individually or in concert with others, they formulate, direct, or control the policies,

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acts, or practices of the company. Their address is the same as that of the company.

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

DEFINITIONS

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

1. "Clearly and conspicuously" shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media, the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

Decision and Order

- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

- 2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- 3. "Trading program" shall mean any program, service, course, instruction, system, training, manual or other materials involving the purchase or sale of stocks, currencies, commodity futures, options, or other financial instruments or investments.
- 4. "Day trading program" shall mean any trading program involving the purchase and sale of stocks, currencies, commodity futures, options, or other financial instruments or investments within a short period of time, usually within one day.
- 5. Unless otherwise specified, "respondents" shall mean Michael G. Chrisman and Michelle R. Chrisman, individually and doing business as DayTrading International, and their officers, agents, representatives, and employees.

Decision and Order

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not represent, in any manner, expressly or by implication:

- A. The percentage, ratio, or number of trades that a user of such trading program could reasonably expect to be profitable;
- B. The amount of earnings, income, or profit that a user of such trading program could reasonably expect to attain;
- C. The rate of return that a user of such trading program could reasonably expect to attain or the length of time over which such a rate of return could reasonably be expected;
- D. The past performance of such trading program; or
- E. Any financial benefit or other benefit of any kind from the purchase or use of such trading program;

unless respondents possess and rely upon a reasonable basis substantiating the representation at the time it is made.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

Decision and Order

- A. That since January 1996, respondents' "Daily Picks Newsletter" program has returned an average of 167 percent annually;
- B. That during 1996 and 1997, respondents' "Hot Small Caps Newsletter" program returned an average annual return of 214 percent;
- C. That users of such trading program can reasonably expect to trade profitably with little or no risk; or
- D. The extent of risk to which users of such trading program are exposed.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any day trading program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the financial benefits of such program, unless they disclose, clearly and conspicuously, and in close proximity to the representation,

"DAY TRADING involves high risks and YOU can LOSE a lot of money."

Provided, the disclosure required by this Part is in addition to, and not in lieu of, any other disclosure that respondents may be required to make, including but not limited to any disclosure required by state or federal law or by a self-regulatory organization. The requirements of this Part are not intended to, and shall not be interpreted to, exempt respondents from making any other disclosure.

Decision and Order

IV.

IT IS FURTHER ORDERED that respondents Michael G. Chrisman and Michelle R. Chrisman, individually and doing business as DayTrading International, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials (including packaging) containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

V.

IT IS FURTHER ORDERED that respondents Michael G. Chrisman and Michelle R. Chrisman, individually and doing business as DayTrading International, shall deliver a copy of this order to all current and future officers, employees, and agents having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain and upon request

Decision and Order

make available to the Commission for inspection and copying each such signed and dated statement for a period of five (5) years after creation.

VI.

IT IS FURTHER ORDERED that respondents Michael G. Chrisman and Michelle R. Chrisman, individually and doing business as DayTrading International, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment, or of a change in the name of their business. The notice shall include respondents' new business address and telephone number and a description of the nature of the business or employment and their duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondents Michael G. Chrisman and Michelle R. Chrisman, individually and doing business as DayTrading International shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on June 7, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any

Analysis to Aid Public Comment

violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondents that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Michael G. Chrisman and Michelle R. Chrisman, individually and doing business as DayTrading International (“respondents”).

Analysis to Aid Public Comment

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sell and distribute recommendations for trading stock. Their trading products or services include the "Live Interactive Trading Room," the "Daily Picks Newsletter," and the "Hot Small Caps Newsletter." The "Live Interactive Trading Room" is an Internet chat room where respondents provide "live" day trading advice during the day on when to buy and sell stocks. The "Daily Picks Newsletter," and the "Hot Small Caps Newsletter" are in the form of e-mails delivered once per day which contain advice for stock trading. Respondents advertise on their Internet Web site, www.daytradingintl.com. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondents' stock trading program.

The Commission's proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' "Live Interactive Trading Room" program can reasonably expect to achieve profits on their trades more than 85 percent of the time and achieve substantial profits on a consistent basis (e.g., \$500 per trade, two or three times each day); and that users of respondents' "Daily Picks Newsletter" program can reasonably expect to make short term trades, held one to five days, that achieve a rate of return of between two percent and ten percent per trade.

In addition, the complaint alleges that respondents misrepresented that users of their trading programs can reasonably expect to trade stocks profitably with little or no risk. The complaint also alleges that respondents misrepresented that since January 1996, their "Daily Picks Newsletter" program has

Analysis to Aid Public Comment

returned an average of 167 percent annually and that during 1996 and 1997, their “Hot Small Caps Newsletter” program returned an average annual return of 214 percent. The complaint explains that respondents did not begin to offer the “Daily Picks Newsletter” or “Hot Small Caps Newsletter” until 1998.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation about the percentage, ratio, or number of trades that a user of any trading program could reasonably expect to be profitable; the amount of earnings, income, or profit that a user of any trading program could reasonably expect to attain; the rate of return that a user of any trading program could reasonably expect to attain or the length of time over which such a rate of return could reasonably be expected; or the past performance of a trading program. Part I also requires respondents to possess a reasonable basis substantiating claims about any financial benefit or other benefit from any trading program.

Part II of the proposed order prohibits respondents from misrepresenting that since January 1996, respondents’ “Daily Picks Newsletter” program has returned an average of 167 percent annually or that during 1996 and 1997, respondents’ “Hot Small Caps Newsletter” program returned an average annual return of 214 percent. It also prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Analysis to Aid Public Comment

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, "DAY TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation they make about the financial benefits of any day trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Parts IV-VII of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain personnel; to notify the Commission of changes in their employment status and any changes in the name of their business for a period of ten years; and to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF
COLEGIO DE CIRUJANOS DENTISTAS
DE PUERTO RICO

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

Docket C-3953; File No. 9710038
Complaint, June 12, 2000--Decision, June 12, 2000

This consent order prohibits Respondent Colegio de Cirujanos Dentistas de Puerto Rico from endorsing or approving, refusing to endorse or approve, or prohibiting or declaring unethical a dentist's participation in a health plan based on the amount, manner of calculating, or other terms relating to reimbursement for dental services, or on whether the plan is open to participation by all Colegio members. The Colegio also is prohibited from 1) negotiating on behalf of any dentists with any payer or provider; 2) refusing to deal, boycotting, or threatening to boycott any payer or provider; or 3) determining any terms, conditions, or requirements upon which dentists will deal with any provider, including terms of reimbursement, and whether the plan is open to participation by all Colegio members. The order also prohibits respondent from communicating to any payer or provider any term, condition, or requirement on which Colegio members are willing or unwilling to deal with a payer or provider, and from communicating with any member concerning the desirability or appropriateness of any term or condition of a payer relating to dental services, or whether the plan is open to participation by all Colegio members, or facilitating in any manner, or transfer the exchange of, information concerning dentists' intentions to contract with any payer, or under what terms. Respondent also may not limit truthful advertising of dental services and the solicitation of costumers, though it may generate ethical rules and guidelines for it members to limit representations that would be deemed false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or in person solicitations to people who may be vulnerable to undue influence.

Complaint

Participants

For the Commission: *Steven J. Osnowitz, Gary H. Schorr, Patricia A. Allen, Meleah A. Geertsma, Christopher S. Thurber, David R. Pender, Richard A. Feinstein, Peter D. Guly, Louis Silvia, and Gregory Vistnes.*

For the Respondents: *Rebeca Rojas and Hector Reichard de Cardona, Richard & Escalera, and Julio Fontanet-Maldonado.*

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 Colegio de Cirujanos Dentistas de Puerto Rico ("Colegio"), hereinafter sometimes referred to as "respondent," has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH ONE: The Colegio is a nonprofit incorporated professional association of dentists in Puerto Rico, and is organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its principal place of business located at Calle Manuel V. Domenech #200, Hato Rey, Puerto Rico 00918.

PARAGRAPH TWO: The Colegio exists and operates, and at all times relevant to this complaint existed and operated, in substantial part for the pecuniary benefit of its members. By virtue of its purposes and activities, the Colegio is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

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PARAGRAPH THREE: The acts and practices of the Colegio and its members, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

PARAGRAPH FOUR: Approximately 1800 dentists are members of the Colegio, constituting almost all of the dentists licensed to practice in Puerto Rico. Membership in the Colegio is required by statute in order to practice dentistry in Puerto Rico, excepting only certain dental faculty and dentists in the United States Armed Forces.

PARAGRAPH FIVE: Colegio members are generally engaged in the business of providing dental services to patients for a fee. Absent agreements among competing dentists on the price and other terms upon which they will provide services to third-party payers and patients, competing dentists decide individually whether to enter into contracts with third-party payers and treat patients, and on the terms and conditions under which they are willing to enter into such contracts and treat patients.

PARAGRAPH SIX: Puerto Rico has created a program to provide medical, pharmaceutical, and dental services to the indigent (“the Reform”), established pursuant to the Puerto Rico Health Insurance Administration Act of 1993, Act No. 72, Article II. The Reform was intended to create a health insurance system to give high quality health care, including dental services, to indigent residents of Puerto Rico. The Reform is financed by the Commonwealth of Puerto Rico, federal Medicaid funds, and income from privatization funds (such as leases and sales of government owned health care facilities). The Administracion de Seguros de Salud (“ASES”), a public corporation, implements and administers the Reform. ASES has divided Puerto Rico into regions, soliciting for each region bids from payers to organize

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and provide services for beneficiaries. ASES selects payers for the regions, and each payer then contracts with providers, including hospitals, physicians, pharmacies, and dentists.

PARAGRAPH SEVEN: The Colegio, acting as a combination of its members, and in conspiracy with at least some of its members, has acted to restrain competition by, among other things, encouraging, facilitating, entering into, and implementing agreements among the Colegio's members, express or implied, to raise the fees paid by payers and patients to dentists, to conduct boycotts or threaten boycotts of payers to obtain higher reimbursement, and to restrain truthful, nondeceptive advertising by dentists.

PARAGRAPH EIGHT: The Colegio has promulgated a Code of Ethics that states that any dentist contracting with a plan not endorsed by the Colegio is in "serious" violation of the Code of Ethics. The Code provides that serious violations may be punished, at the discretion of the Ethics Committee, by penalties that can include suspension or expulsion from the Colegio. The Code also sets forth certain minimum requirements that plans must satisfy for dentists' participation to be acceptable, including requirements that plans be open to all Colegio members, and that the plans pay fees that are at an appropriate level. The Code of Ethics has been widely distributed to Colegio members, and Colegio officials have acted to promote adherence to the Code.

PARAGRAPH NINE: The Colegio established a Committee on Prepaid Dental Services to act as the collective bargaining agent for its members. Through this Committee, and in other ways, the Colegio has engaged in discussions with numerous payers about fees and other terms its members would accept as reimbursement from these payers. The Colegio has refused to give its endorsement or approval of health insurance plans ("plans") unless they meet certain conditions: the plans must reimburse dentists on a fee-for-service basis, and must not pay dentists on the basis of capitation; the plans must be open to the

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participation of all dentists (“free selection”); and the plans must be responsive to raising fees at the Colegio’s request.

PARAGRAPH TEN: Many third-party payers seek endorsement or approval of their plans from the Colegio, in order to secure a sufficient number of participating dentists. When well-established third-party payers have been able to successfully market their plans to dentists without the formal endorsement or approval of the Colegio, it is because these plans have been consistent with the requirements of the Colegio: these plans are open to all dentists, pay relatively high levels of fee-for-service reimbursement, and do not include capitation as a form of payment to dentists.

PARAGRAPH ELEVEN: In furtherance of its anticompetitive agreements, combinations, and conspiracies to set the prices and other terms under which its member dentists would deal with payers, and raise the fees paid by payers and patients to dentists, the Colegio’s conduct included, but was not limited to, the following with regard to contracts with payers not under the Reform:

A. Conducted negotiations with Island Health Care in 1989 over the terms and conditions of dental contracts for Colegio members, including the amount of fees and which procedures would be covered.

B. Conducted negotiations with payer representatives in 1993 and 1994 to achieve higher fees for Colegio members, while urging Colegio members to give the Colegio support and solidarity during these dealings. During 1993, when CIGNA attempted to establish a new PPO, the Colegio’s President urged the membership to not sign the CIGNA contract until the Colegio and CIGNA reached an agreement that would insure periodic rate increases for Colegio members.

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C. Conducted negotiations with Atlantic Southern Insurance Co. ("Atlantic") during 1993 and 1994, including negotiation of price terms, as a condition for giving Atlantic the Colegio's endorsement. Atlantic had difficulty signing up dentists absent the Colegio's endorsement, which the Colegio provided after Atlantic agreed to added reimbursement by expanding coverage for high-priced procedures, and Atlantic committed to meet annually with Colegio representatives to review and adjust fees.

D. Conducted negotiations for many years with the two largest payers for dental coverage in Puerto Rico, Triple S and La Cruz Azul, concerning the fees they would reimburse for dental services. From 1992 through 1994, the President of the Colegio and other Colegio officials successfully negotiated fee increases from both payers for a variety of procedures.

E. During 1994, Triple S attempted to form a managed care plan under which dentists would be paid by capitation. The Colegio helped organize dentists to refuse to deal with this proposed plan, and Triple S was compelled to cancel its capitated plan.

PARAGRAPH TWELVE: In furtherance of its anticompetitive agreements, combinations, and conspiracies to set the prices and other terms under which its member dentists would deal with payers, and raise the fees paid by payers to dentists, the Colegio's conduct included, but was not limited to, the following with regard to contracts with payers under the Reform:

A. During 1995, the Colegio successfully resisted Triple S attempts to implement a system of capitation for the payment of dentists in the North Region of the Reform, resisted Triple S attempts to implement a 10% discount for dental fees, and negotiated a limited discount of 5% off of regular dental fees. During 1996, the Colegio successfully imposed the same terms and conditions of payment on Triple S for the Northwest region of the Reform.

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B. During 1995, the Colegio negotiated with PCA, a payer, the terms under which its member dentists would participate in the Central Region of Reform. In return for obtaining the Colegio's endorsement, the Colegio required PCA to agree that payments to dentists would be based on fee for service, with dental panels open to all Colegio members. During 1996, when PCA attempted to revise its dental contracts for the Central Region to provide for utilization and quality audits, the Colegio withheld its endorsement. When PCA attempted to bypass the Colegio and approached dentists in the Central Region of the Reform individually, only 60 of 450 dentists contracted with it, an insufficient number under ASES regulations. In return for most dentists agreeing to deal with PCA, the Colegio was able to limit utilization review.

C. During 1995 after another payer, United, contacted individual dentists about their willingness to participate in capitation, United was informed by the Colegio that its members would refuse to participate in any capitation plan. As a result, United was forced to implement its Reform plans in the Southwest and East Regions without capitation.

D. During 1998, the Colegio succeeded in forcing Triple S to raise its fees for dentists in the North Region of the Reform. During these efforts to raise fees, the President of the Colegio wrote to Triple S that when members of the Colegio's Board of Directors, Executive Committee, or Committee on Prepaid Dental Services meet with Triple S, these dentists do so as representatives of the membership of the Colegio, and not as individual dentists.

PARAGRAPH THIRTEEN: The Colegio maintains, distributes to its members, and enforces a Code of Ethics that prohibits truthful, nondeceptive advertising and solicitation.

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Among other things, the Colegio's rules ban advertising that is not professionally acceptable, use of most illustrations, advertisements deemed not in good taste, and all personal solicitations. The Ethics Committee and other Colegio officials have acted to ensure that Colegio members adhere to the Code of Ethics.

PARAGRAPH FOURTEEN: During December 1995 and January 1996, dentists from Juana Diaz, Coamo, and Santa Isabel, Puerto Rico, in an effort to secure higher fees and other terms as a condition for participating in the Reform, concertedly refused to treat patients under the Reform. Dentists from Ponce truthfully advertised their willingness to accept Reform patients from Juana Diaz, Coamo, and Santa Isabel. In response to complaints by boycotting dentists about this advertising, the Colegio found three Ponce dentists to be in violation of the Code of Ethics for engaging in newspaper advertising not professionally acceptable. In addition, one of the dentists from Ponce was found to be in violation of the Code of Ethics rules on advertising on the ground that signs and banners containing his advertisements were placed too close to the offices of the dentists conducting a boycott of the Reform. In response to the Colegio's inquiries and actions, the Ponce dentists stopped advertising that was targeted to residents of Juana Diaz, Coamo, and Santa Isabel.

PARAGRAPH FIFTEEN: The Colegio has not integrated the practices of its members in any economically significant way, nor has it created any efficiencies that might justify the acts and practices described in paragraphs seven through fourteen.

PARAGRAPH SIXTEEN: The acts and practices of the respondent as described in this complaint have had the purpose, tendency, effects, and capacity to restrain trade unreasonably and hinder competition in the provision of dental goods and services in Puerto Rico in the following ways, among others:

- A. to restrain competition among dentists;

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B. to deprive consumers of the benefits of competition among dentists;

C. to fix or increase the prices that consumers and third-party payers pay for dental services;

D. to fix the terms and conditions upon which dentists would deal with third-party payers, including terms of compensation for dental services, thereby raising the price to consumers of insurance coverage issued by third-party payers;

E. to raise prices paid by ASES and delay the offering of dental services under the Reform;

F. to deprive consumers of the benefits of new health care delivery systems; and

E. to deprive consumers of the benefits of truthful information contained in advertising.

PARAGRAPH SEVENTEEN: The aforesaid acts and practices of the respondent are to the prejudice and injury of the public and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The acts and practices of the respondent, as herein alleged, are continuing and will continue or recur in the absence of the relief requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twelfth day of June, 2000, issues its complaint against said respondent.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondent, named in the caption above, and the respondent having been furnished thereafter with a copy of the draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission would charge 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 the respondent of all of 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, or that the facts as alleged in such complaint other than jurisdictional facts, are true, and waivers and other provisions as required by 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 the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed it on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent is a nonprofit incorporated professional association of dentists in Puerto Rico, and is organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its principal place of business located at Calle Manuel V. Domenech #200, Hato Rey, Puerto Rico 00918.

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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, for the purposes of this Order, the following definitions shall apply:

- A. "Respondent" or "Colegio" means Colegio de Cirujanos Dentistas de Puerto Rico, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, chapters, and affiliates controlled by Colegio de Cirujanos Dentistas de Puerto Rico, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Dentist" means a provider of dental services as defined by the laws of Puerto Rico, with a degree of D.M.D. or D.D.S.
- C. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- D. "Payer" means any person that purchases, reimburses for, or otherwise pays for all or part of any health care services for itself or for any other person. Payer includes, but is not limited to, any health insurance company; preferred provider organization; prepaid hospital, medical, or other health service plan; health maintenance organization;

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government health benefits program; employer or other person providing or administering self-insured health benefits programs; and patients who purchase health care or dental services for themselves.

- E. "Provider" means any person, including but not limited to any dentist, physician, hospital, or clinic, that supplies health care services to any other person.
- F. "Reimbursement" means any payment, whether cash or non-cash, or other benefit received for the provision of dental services.

II.

IT IS FURTHER ORDERED that respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of dental services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Endorsing or approving, refusing to endorse or approve, or prohibiting or declaring unethical participation in, any health plan based on the amount of, manner of calculating, or other terms relating to reimbursement for dental services, or on whether the plan is open to participation by all Colegio members.
- B. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding:
 - 1. To negotiate on behalf of any dentists with any payer or provider;
 - 2. To deal, refuse to deal, or threaten to refuse to deal with any payer or provider;

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3. Regarding any term, condition, or requirement upon which any dentists deal, or are willing to deal, with any payer or provider, including, but not limited to, terms of reimbursement and whether the health plan is open to participation by all Colegio members.
- C. Communicating to any payer or provider any term, condition, or requirement, on which Colegio members are willing or unwilling to deal with any payer or provider, including, but not limited to, terms of reimbursement and whether the health plan is open to participation by all Colegio members.
 - D. Communicating with any member regarding the desirability or appropriateness of any term or condition of dealing with any payer or provider that relates to the amount of, manner of calculating, or other terms relating to reimbursement for dental services, or to whether the plan is open to participation by all Colegio members.
 - E. Exchanging, transferring, or facilitating in any manner the exchange or transfer among dentists of information (including, but not limited to, any actual or possible views, intentions, or positions) concerning any dentist's intention or decision with respect to:
 1. entering into, refusing to enter into, threatening to refuse to enter into, or withdrawing from any existing or proposed agreement with any payer; or
 2. agreeing to, or refusing to agree to, any term, condition, or requirement upon which any dentist deals, or is likely willing to deal, with any payer or provider.

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- F. Encouraging, urging, suggesting, requesting, advising, pressuring, inducing, or attempting to induce any nongovernmental person or organization to engage in any action that would be prohibited if the person were subject to Part II. of this Order.

PROVIDED, HOWEVER, that nothing contained in this Order shall be construed to prevent respondent from petitioning any federal, state, or Commonwealth government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal, state, or Commonwealth administrative or judicial proceeding, in so far as such activity is protected by the Noerr-Pennington doctrine.

III.

IT IS FURTHER ORDERED that respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of dental services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Prohibiting, restricting, regulating, impeding, declaring unethical, or interfering with the advertising or publishing by any person of the prices, terms or conditions of sale of dentists' services, or of information about dentists' services, facilities or equipment which are offered for sale or made available by dentists or by any organization with which dentists are affiliated.
- B. Prohibiting, restricting, regulating, impeding, declaring unethical, or interfering with the solicitation of patients, patronage, or contracts to supply dentists' services by any dentist or by any organization with which dentists are affiliated, through advertising or by any other means.

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- C. Encouraging, urging, suggesting, requesting, advising, pressuring, inducing, or attempting to induce any nongovernmental person or organization to engage in any action that would be prohibited if the person were subject to Part III. of this Order.

PROVIDED, HOWEVER, that nothing contained in this Order shall prohibit respondent from formulating, adopting, disseminating, and enforcing, reasonable ethical guidelines governing the conduct of its members with respect to representations that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or with respect to uninvited in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence.

IV.

IT IS FURTHER ORDERED that respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail a copy of this Order and the accompanying complaint, as well as certified Spanish translations thereof, to:
1. Each person who, at the time this Order becomes final, is an employee or member of the Colegio;
 2. Each payer or provider with whom, at any time since January 1, 1995, the Colegio has had communications regarding a possible or executed contract for the provision of dental services.
- B. For a period of five (5) years after the date this Order becomes final:

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1. Within thirty (30) days of the date the person assumes such position, distribute by first-class mail a copy of this Order and the accompanying complaint, as well as certified Spanish translations thereof, to each new officer, director, manager, agent, representative, employee, committee member, or member of the Colegio;
 2. Annually publish, in an official annual report, newsletter, or memorandum sent to all members of the Colegio, a copy of this Order and the accompanying complaint, as well as certified Spanish translations thereof, with such prominence as is given to official communications or regularly featured articles;
 3. Annually provide a briefing, class, or seminar for members of the Colegio, available and open to all members of the Colegio and in conjunction with a meeting open to the full Colegio membership, on the meaning and requirements of this Order and the antitrust laws, including penalties for the violation of this Order.
- C. For a period of ten (10) years after the date this Order becomes final:
1. Maintain complete files and records of all correspondence and other communications concerning advertising and solicitation by dentists;
 2. Create and maintain records of nonwritten communications, in which the Colegio participates, concerning advertising and solicitation by dentists, including in such records the names and positions of all participants, the dates and locations of the meetings or other communications, a summary or description of

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any advice or information given or stated by the Colegio, and the nature of such information or advice;

3. Maintain complete files and records of all ethical codes, bylaws, rules, and regulations of the Colegio, or amendments or proposed amendments thereto, which concern advertising or solicitation by dentists;
4. Retain and make available to any authorized representative of the Commission on request the complete files and records required by subparagraphs 1, 2, and 3 of IV. C of this Order.

PROVIDED, HOWEVER, that nothing contained in the requirements of IV.C. of this Order shall require respondent to retain any individual document or record responsive to IV.C. that is over five years old.

V.

IT IS FURTHER ORDERED that the Colegio shall file a verified written report with the Commission within sixty (60) days after this Order becomes final, annually thereafter for five (5) years on the anniversary of the date the Order becomes final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which the respondent intends to comply, is complying, and has complied, with this Order. In addition to any other information that may be necessary to demonstrate compliance, the Colegio shall include in such reports information identifying each payer and provider that has communicated with the Colegio concerning a possible contract for dental services, the proposed terms and conditions of any such contract, and the Colegio's response to such payer or provider.

Decision and Order

VI.

IT IS FURTHER ORDERED that the Colegio shall notify the Commission at least thirty (30) days prior to any proposed change in the Colegio, such as dissolution, assignment, sale, or other event resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries or constituent societies or associations, changes in the requirements for membership in the Colegio, or any other change in the Colegio that may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, the Colegio shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in the possession or under the control of the Colegio relating to any matter contained in this Order; and
- B. Upon five (5) business days' notice to the respondent, and without restraint or interference from it, to interview the Colegio's officers, directors, employees, agents, and other representatives.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on June 12, 2020.

By the Commission.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, a proposed consent order settling charges that the Colegio de Cirujanos Dentistas de Puerto Rico ("Colegio"), an association of dentists in Puerto Rico: (1) organized boycotts and refusals to deal, and engaged in other anticompetitive conduct, designed to raise prices for dental services; and (2) prohibited its members from engaging in certain types of truthful, nondeceptive advertising. The proposed consent order has been placed on the public record for sixty (60) days to receive comments by interested persons. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the Colegio that it violated the law or that the facts alleged in the complaint, other than the jurisdictional facts, are true.

The Complaint

The Colegio is an association of approximately 1800 dentists licensed to practice dentistry in Puerto Rico. Puerto Rico law requires, with certain limited exceptions, that dentists maintain membership in the Colegio to practice in Puerto Rico. Accordingly, the Colegio's members constitute the vast majority of dentists practicing in Puerto Rico.

The complaint charges that the Colegio restrained competition among dentists in Puerto Rico by, among other things, fixing the terms under which individual dentists would deal with health insurers and other payers of health care services, and orchestrating or threatening boycotts of payers by its members to obtain higher reimbursement. According to the proposed complaint, the Colegio promulgated a Code of Ethics that bars dentists from contracting with any health insurance plan ("plan") that is not endorsed by the Colegio. The Colegio refused to approve plans

Analysis to Aid Public Comment

unless they: reimbursed dentists on a fee-for-service basis rather than capitation; were open to participation by all dentists; and were “responsive” to raising fees at the Colegio’s request. Plans sought the Colegio’s endorsement or approval in order to secure a sufficient number of participating dentists.

The complaint also alleges that the Colegio acted as the collective bargaining agent for its members. Through its Committee on Prepaid Dental Services, and in other ways, the Colegio engaged in discussions with numerous payers about fees and other terms its members would accept from these payers. For example, from 1992 through 1994, the Colegio successfully negotiated on behalf of its members to obtain fee increases from the two largest payers for dental coverage in Puerto Rico, Triple S and La Cruz Azul. In another instance, the complaint charges, the Colegio organized dentists to refuse to deal with a new plan proposed by Triple S that would have paid dentists a set amount per enrollee rather than the traditional fee for service, and Triple S was compelled to cancel the plan.

The complaint further alleges that the Colegio set the prices and other terms under which its member dentists would deal with plans operating under Puerto Rico’s Health Insurance Act of 1993 (the “Reform”), a program to provide health care services to the indigent. During 1995, for example, the Colegio successfully blocked Triple S attempts to implement a new plan in the North Region of the Reform, and defeated Triple S plans to implement a 10% discount for dental fees. In the Central Region of the Reform, the Colegio succeeded in forcing PCA to agree that payments to dentists would be based on fee for service, and that its dental panels would be open to all Colegio members. When PCA attempted in 1996 to revise its dental contracts for the Central Region, in order to provide for utilization and quality audits, the Colegio withheld its endorsement, and PCA was unable to secure contracts with a sufficient number of dentists to offer the plan.

Analysis to Aid Public Comment

The complaint charges that the Colegio has acted to prevent certain forms of truthful, nondeceptive advertising. Its Code of Ethics bans advertising that is not “professionally acceptable,” use of most illustrations, advertisements deemed not in good taste, and all personal solicitations. The complaint further alleges that the Colegio applied its ban on unprofessional advertising against dentists from Ponce, Puerto Rico, who truthfully advertised their willingness to accept Reform patients from neighboring areas where dentists were conducting a boycott of the Reform.

According to the complaint, the Colegio has not integrated the practices of its members in any economically significant way, nor has it created any efficiencies that might justify the acts and practices alleged in the complaint. Rather, the complaint charges that the Colegio's conduct has had the purpose and effect of restraining competition among dentists and injuring consumers by, among other things, fixing or increasing prices for dental services; fixing the terms and conditions upon which dentists would deal with payers, thereby raising the price to consumers of insurance coverage; raising prices paid by the Reform and delaying the offering of dental services under the Reform; and depriving consumers of truthful information about dental services.

The Proposed Consent Order

The proposed consent order prohibits the Colegio from continuing the illegal conduct described in the complaint. Specifically, Part II of the order prohibits the Colegio from endorsing or approving, refusing to endorse or approve, or prohibiting or declaring unethical a dentist's participation in a health plan based on the amount, manner of calculating, or other terms relating to reimbursement for dental services, or on whether the plan is open to participation by all Colegio members. The Colegio also is prohibited from 1) negotiating on behalf of any dentists with any payer or provider; 2) refusing to deal,

Analysis to Aid Public Comment

boycotting, or threatening to boycott any payer or provider; or 3) determining any terms, conditions, or requirements upon which dentists will deal with any provider, including terms of reimbursement, and whether the plan is open to participation by all Colegio members.

Further, the Colegio is prohibited from communicating to any payer or provider any term, condition, or requirement on which Colegio members are willing or unwilling to deal with a payer or provider, and from communicating with any member concerning the desirability or appropriateness of any term or condition of a payer relating to dental services, or whether the plan is open to participation by all Colegio members. The Colegio cannot facilitate in any manner, or transfer the exchange of, information concerning dentists' intentions to contract with any payer, or under what terms.

The proposed order does not restrict legitimate communications between the Colegio and payers. Health care practitioners' provision of certain kinds of information to payers is not likely to raise antitrust concerns, but instead may serve to promote competition and benefit consumers. For example, the DOJ/FTC *Statements of Enforcement Policy in Health Care* (1996) define two "antitrust safety zones" dealing with the provision of information to payers, and state that conduct falling within these safety zones will not be challenged by the enforcement agencies absent extraordinary circumstances.¹ The

¹ Statement 5 provides a safety zone for providers' collective provision of "factual information concerning the providers' current or historical fees or other aspects of reimbursement, such as discounts or alternative reimbursement methods accepted . . .," so long as collection of the information meets certain requirements designed to ensure that the exchange of price or cost data is not used by competing providers to discuss or coordinate costs or prices. Statements at 44-45. The safety zone in Statement 4 covers the provision of "underlying medical data that may improve purchasers' resolution of issues relating to the mode, quality, or efficiency of treatment," as well as providers' "development of suggested practice parameters - standards for patient management developed to assist providers in clinical decisionmaking - that

Analysis to Aid Public Comment

proposed order does not prohibit the Colegio from engaging in activities encompassed in these safety zones, or from communicating with payers about other matters, unless the communication is part of an agreement or course of conduct specifically prohibited by the order.

The proposed order likewise does not restrict the right of the Colegio to provide government bodies with information and opinions in an effort to influence legislation or regulatory action. A proviso states explicitly that the order does not prohibit the Colegio from petitioning any federal, state, or Commonwealth government executive agency or legislative body concerning legislation, rules, or procedures, or from participating in any federal, state, or Commonwealth administrative or judicial proceeding, insofar as the activity is protected from antitrust scrutiny by the Noerr-Pennington doctrine.² That doctrine does not, however, protect price-fixing agreements, refusals to deal, or similar conduct designed to obtain higher prices from government purchasers.³

Part III of the proposed order prohibits the Colegio from restricting truthful advertising of dental services or solicitation of patients. The Colegio, however, can formulate, adopt, disseminate, and enforce reasonable ethical guidelines governing the conduct of its members with respect to representations that respondent reasonably believes would be false or deceptive within

also may provide useful information to patients, providers, and purchasers.” Statements at 41.

² See, e.g., *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411 (1990); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965); *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961).

³ *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. at 424-425.

Analysis to Aid Public Comment

the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence.

Part IV of the proposed order requires the Colegio to distribute copies of the order and accompanying complaint to its employees and members, and to payers or providers who since January 1, 1995, communicated a desire or interest in contracting for dentists' services. Part IV also requires the Colegio to maintain certain records pertaining to advertising for a period of ten years, while other order provisions will remain in effect for twenty years. Parts V and VI of the proposed order impose certain reporting requirements, while Part VII of the proposed order provides for access to the Colegio's documents and personnel. Parts V, VI, and VII are to assist the Commission in monitoring compliance with the proposed order.

Opportunity for Public Comment

The proposed order has been placed on the public record for sixty (60) days in order to receive public comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the agreement. The analysis is not intended to constitute an official interpretation of the agreement, the proposed complaint, or the proposed consent order, or to modify their terms in any way.

Complaint

IN THE MATTER OF

BUMBLE BEE SEAFOODS, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3954; File No. 9823560
Complaint, June 12, 2000--Decision, June 12, 2000*

This consent order prohibits Respondent Bumble Bee Seafoods, Inc. From making representation of the terms or conditions of any rebate offer and requires the company to display prominently the amount of items required for purchase to receive any rebate. The consent order defines "rebate" as cash, merchandise, credit towards future purchases, or any other consideration offered to consumers who purchase products from the respondent, which is provided subsequent to purchase. The consent order also requires that Respondent commence a coupon program that includes the distribution of seven million, five hundred eighty-six thousand, two hundred and eight tearpad coupons that clearly offer 75¢ off any two or multi-pack Bumble Bee Solid White Albacore Tuna which an expiration date of at least six months after distribution.

Participants

For the Commission: *Don D'Amato, Rhonda Joy McLean, and BE.*

For the Respondents: *John F. Kroeger, International Home Foods, Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Bumble Bee Seafoods, Inc., a corporation, (hereinafter "Bumble Bee" or "respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

Complaint

1. Respondent Bumble Bee is a Delaware corporation with its principal office or place of business at 3990 Ruffin Road, San Diego, CA 92123.

2. Respondent has advertised, offered for sale, sold and distributed food products to the public, including Bumble Bee Solid White Albacore Tuna. Bumble Bee Solid White Albacore Tuna is sold in six ounce cans, among other sizes.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has distributed or caused to be distributed six ounce cans of Bumble Bee Solid White Albacore Tuna that are affixed with labels that include, but are not limited to, the attached Exhibit A. Copy on the face side of these labels includes the statement: "75¢ OFF Next Purchase Details Inside Label."

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that purchasers of six ounce cans of Bumble Bee Solid White Albacore Tuna affixed with the label described in Paragraph 4 can receive seventy-five cents off their next purchase of a single six ounce can of Bumble Bee Solid White Albacore Tuna.

6. In truth and in fact, purchasers of six ounce cans of Bumble Bee Solid White Albacore Tuna affixed with the label described in Paragraph 4 cannot receive seventy-five cents off their next purchase of a single six ounce can of Bumble Bee Solid White Albacore Tuna. Purchasers are not eligible for the seventy-five cents off unless they purchase five additional six ounce cans of Bumble Bee Solid White Albacore Tuna. That fact is disclosed only on the reverse side of the label, which is affixed to the can and is not accessible until after the purchase. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

Decision and Order

7. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twelfth day of June, 2000, has issued this complaint against respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("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 Commission's Northeast Region 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 the 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true

Decision and Order

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 a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments 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 Bumble Bee Seafoods, Inc. is a Delaware corporation with its principal office or place of business at 3990 Ruffin Road, San Diego, CA 92123.
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

DEFINITIONS

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

1. Unless otherwise specified, "respondent" shall mean Bumble Bee Seafoods, Inc., a corporation, its successors and assigns and its officers; and each of the above's agents, representatives, and employees.
2. "Rebate" shall mean cash, merchandise, credit towards future purchases, or any other consideration offered to consumers who

Decision and Order

purchase products or services from respondent, which is provided subsequent to the purchase.

3. "Clearly and prominently" shall mean as follows:

- A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. ***Provided, however,*** that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the advertisement is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.
- B. In a print advertisement, promotional material, or instructional manuals, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multi-page documents, the disclosure shall appear on the cover or, alternatively, on the first page.
- C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and

Decision and Order

comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall:

- A. Not misrepresent, in any manner, expressly or by implication, the terms or conditions of any rebate offer; and
- B. Disclose the number of products or services that must be purchased in order to qualify for any rebate offer. The disclosure shall be made clearly and prominently and in close proximity to the offer.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall commence within ninety (90) days after the service of this order a consumer tearpad coupon program that includes a national distribution of at least seven million, five hundred and eighty-six thousand, two hundred and eight (7,586,208) tearpad coupons at least five inches (5") by two and one-half inches (2½") in size that clearly and prominently offer seventy-five cents (75¢)

Decision and Order

off the purchase of “any two (2) cans or multi-packs” of Bumble Bee Solid White Albacore Tuna. These tearpad coupons shall be redeemable at the place of purchase, and have an expiration date of at least six (6) months after distribution. Respondent’s obligations set forth in this Subpart shall hereafter be referred to as the “Program.”

- B. Respondent agrees that if the total costs incurred in this Program (including but not limited to the costs of printing, distributing, and redeeming the tearpad coupons) do not exceed two hundred thousand dollars (\$200,000) (“Minimum Expenditure”) ninety (90) days after the expiration date on the tearpad coupon, respondent shall transfer electronically to the United States Treasury within ten (10) business days a dollar amount equal to the difference between the actual cost of the Program and the Minimum Expenditure.
- C. In the event of respondent’s failure to implement the Program in accordance with the terms of this order, the entire amount of the Minimum Expenditure, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of service of this order to the date of payment, shall immediately become due and payable. Notwithstanding any other provision of this order, respondent agrees that if it fails to meet the payment obligations set forth in this Part, respondent shall pay the costs and attorneys fees incurred by the Federal Trade Commission and its agents in any attempts to collect amounts due pursuant to this order.
- D. Respondent further agrees that the facts as alleged in the complaint filed in this action shall be taken as true in any subsequent litigation filed by the Federal Trade Commission to enforce its rights pursuant to this Part.

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III.

IT IS FURTHER ORDERED that respondent shall within ninety (90) days after the date of service of this order, send by certified mail a report, in the form of a sworn affidavit executed on behalf of the respondent to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 certifying that it has implemented the Program set forth in Part II. Within ninety (90) days of the expiration date on the Program's tearpad coupon, the respondent shall send by certified mail a report, in the form of a sworn affidavit executed on behalf of the respondent to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 setting forth in detail the manner and form it has complied with Part II of this order, including but not limited to a detailed report that specifies the costs of the Program such as monies expended printing the coupons, distributing the coupons, dispersing coupon processing fees to retailers, and redeeming the coupons.

IV.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. all advertisements, product labels, and promotional materials containing the representation; and
- B. all tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

Decision and Order

V.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. **Provided, however,** that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Federal Trade Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Decision and Order

VII.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VIII.

This order will terminate on June 12, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; **provided, however,** that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Bumble Bee Seafoods, Inc. (“Bumble Bee”).

The proposed consent order has been placed on the public record for sixty (60) days for the receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves Bumble Bee's making of a representation in the marketing and sale of canned tuna. Specifically, the face of the product label indicates that the purchaser will save seventy-five cents (75¢) on his next purchase of tuna, however, the reverse side of the label, which is affixed to the can and is not accessible until after purchase, indicates that the purchase of five additional cans of tuna is required in order to save the seventy-five cents (75¢). The proposed complaint alleges that Bumble Bee has violated Section 5 of the Federal Trade Commission Act (“FTC Act”) by misrepresenting that purchasers of tuna affixed with the subject label can receive seventy-five cents (75¢) off their next purchase of a single can of tuna.

Part I of the proposed order prohibits Bumble Bee from misrepresenting the terms or conditions of any rebate offer and requires the company to disclose clearly and prominently and in close proximity to the offer the number of products that must be purchased in order to qualify for any rebate offer. The order defines “rebate” to mean cash, merchandise, credit towards future purchases, or any other consideration offered to consumers who

Analysis to Aid Public Comment

purchase products from the respondent, which is provided subsequent to purchase.

Part II A provides that Bumble Bee shall commence within ninety (90) days after the service of the order, a consumer tearpad coupon program that includes a national distribution of at least seven million, five hundred and eighty-six thousand, two hundred and eight (7,586,208) tearpad coupons at least five inches (5") by two and one-half inches (2½") in size that clearly and prominently offer seventy-five cents (75¢) off the purchase of "any two (2) cans or multi-packs" of Bumble Bee Solid White Albacore Tuna. Part II A further provides that these tearpad coupons shall be redeemable at the place of purchase, and have an expiration date of at least six (6) months after distribution. The proposed order refers to Bumble Bee's obligations set forth in Part II A as the "Program."

Part II B provides that if Bumble Bee's total costs incurred by implementing the Program do not exceed two hundred thousand dollars (\$200,000) ("Minimum Expenditure") ninety (90) days after the expiration date on the tearpad coupon, Bumble Bee shall transfer electronically to the United States Treasury within ten (10) business days a dollar amount equal to the difference between the actual cost of the Program and the Minimum Expenditure.

Part III provides that Bumble Bee shall provide to the Commission: a) within ninety (90) days after the date of service of the order, a sworn affidavit certifying that it has implemented the Program set forth in Part II; and b) within ninety (90) days of the expiration date on the Program's tearpad coupon, a sworn affidavit setting forth in detail the manner and form in which it has complied with Part II of the order, including but not limited to, a detailed report that specifies the costs of the Program.

Part IV of the proposed order contains record keeping requirements for materials related to representations covered by the proposed order. Part V of the proposed order requires

Analysis to Aid Public Comment

distribution of a copy of the order to current and future officers and agents having responsibilities with respect to the subject matter of the proposed order. Part VI provides for Commission notification upon a change in the respondent and Part VII requires the respondent to keep and maintain all records demonstrating compliance with the terms and provisions of the order. Part VIII provides for the termination of the order after twenty (20) years under certain circumstances.

The purpose of the analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

**SANTA FE NATURAL TOBACCO COMPANY,
INC.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3952; File No. 9923026
Complaint, June 12, 2000--Decision, June 12, 2000*

This consent order requires Respondent Santa Fe Natural Tobacco Company, Inc. to include the following disclosure, clearly and prominently, in certain advertising for its tobacco cigarettes: "No additives in our tobacco does NOT mean a safer cigarette." The order exempts Santa Fe from the disclosure requirement: (1) for cigarette advertisements not required to bear the Surgeon General's health warning; and (2) if Santa Fe possesses scientific evidence demonstrating that its "no additives" cigarette poses materially lower health risks than other cigarettes of the same type. Respondent is also required to include the following disclosure, clearly and prominently, in advertising and on packaging for herbal cigarettes: "Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide." The disclosure must be included in all advertising and on packaging for herbal smoking products that represent that the product has no tobacco, unless respondent possesses scientific evidence demonstrating that such herbal smoking products do not pose any material health risks.

Participants

For the Commission: *Michael Ostheimer, Shira Modell, Matthew D. Gold, Linda K. Badger, Kerry O'Brien, C. Lee Peeler, and BE.*

For the Respondents: *C. Randall Nuckolls and Mark R. Heilbrun, Long Aldridge & Norman.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Santa Fe Natural Tobacco Company, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade

Complaint

Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation with its principal office or place of business at 1368 Cerrillos Road, Santa Fe, NM 87505-3507.
2. Respondent has advertised, promoted, offered for sale, sold and distributed cigarettes, including Natural American Spirit tobacco cigarettes and Natural American Spirit herbal cigarettes.
3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
4. Respondent disseminated or caused to be disseminated advertisements for Natural American Spirit tobacco cigarettes, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

(A) "If you use tobacco the way Native Americans intended ...

or if you smoke out of choice rather than habit ...

Here is an alternative you should try.

**100% FREE OF CHEMICAL ADDITIVES
• NATURAL TOBACCO AND CIGARETTES**

[Depiction of Natural American Spirit cigarettes]

Made from 100% Chemical-Additive-Free, Whole Leaf,
Natural Tobacco
and nothing else."

Complaint

(Exhibit A, June - August 1997 magazine advertisement)
(emphasis in original).

(B) "If you smoke *because you enjoy smoking*, Natural American Spirit is the natural tobacco alternative you should try.

Natural American Spirit cigarettes are made from 100% chemical-additive-free, natural tobacco ... and nothing else."

(Exhibit B, Fall 1997 magazine advertisement).

(C) "100% Chemical-Additive-Free
Whole Leaf, Natural Tobacco Products"

(Exhibit C, Winter 1996 - 97 magazine advertisement).

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that smoking Natural American Spirit tobacco cigarettes, because they contain no additives or chemicals, is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives or chemicals.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 5, at the time the representation was made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 5, at the time the representation was made. Among other reasons, the smoke from Natural American Spirit tobacco cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide.

Complaint

Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twelfth day of June, 2000, has issued this complaint against respondent.

By the Commission.

Complaint Exhibits

Complaint Exhibits

didn't happen a hundred years ago—they are still happening today.

After five hundred years of White exploitation, there is a very real feeling among some Native people that, now that Whites have taken everything else, we want their religion, too. Louis always spoke of such things as the sacred pipe and the drum as his people's "instruments of worship" and the ceremonies as their "ways of worship." The statement is often made that these "ways of worship" do not constitute a religion. This is usually stated in the positive sense—that these ways are not reliant on a written code and that they are a way of life, as opposed to something outside of daily life. Yet, I believe such statements can lead some people to want to borrow bits and pieces of these ways of worship as spiritual "exercises." Within Native communities, the ceremonies are used to help heal broken families, alcoholism, and all the terrible effects of oppression. It should not surprise us if some Natives are reluctant to welcome Whites who want to use Native sacred instruments of worship because it is now the "spiritually cool" thing to do.


The bridge Louis wanted to create was one of mutual respect. If calling his people's spiritual ways a religion afforded them the same respect as the so-called Great Religions, then he would call them a religion. It bothered him to no end that money was being charged for his people's sacred ceremonies. He likened it to money being charged to take part in a Catholic Mass.

Many aspects of the New Age approach to Native American spirituality both amused and troubled Louis. The idea that picking up a drum and performing certain rituals learned in one or two weekend workshops could make one a shaman was an utterly foreign concept to him. Within most Native traditions, a shaman is one who is chosen or deemed worthy by the spirits. The ease with which some people claimed to have obtained animal spirit guides was also amusing to Louis. Almost everyone today has an eagle, bear, or other equally majestic animal as a guide, but few understand those powers. Bear medicine, for example, was very powerful—something obtained through a dangerous encounter with a bear, or through a lifetime of observing and living and breathing Bear. These days, most people's knowledge of bears is limited to images from Disney cartoons or, at best, from Discovery documentaries; few people are willing to make any effort to learn more—much less to make the sacrifices necessary to obtain and maintain Bear medicine.

Something Louis stressed was that the

If you use tobacco the way Native Americans intended ... *Here is an alternative you should try.* ... or if you smoke out of choice rather than habit ...

100% FREE OF CHEMICAL ADDITIVES - NATURAL TOBACCO AND CIGARETTES



Made from 100% Chemical-Additive-Free, Whole Leaf, Natural Tobacco and nothing else.

First time customers receive free shipping and handling on pre-paid orders for a full carton or more. Or send \$1.00 for each sample of the Natural American Spirit® product checked below. Only one sample of each product per household.

pack of Mild Cigarettes pack of Regular Filter Cigarettes pack of Menthol Cigarettes pack of Non-Filter Cigarettes

Identify that I am of legal age to purchase tobacco products. pouch of rolling tobacco to make my own cigarettes.

NAME _____ Charge telephone orders for cartons
STREET _____ or for sample orders (\$4) to MC/V.
CITY/STATE _____ ZIP _____ 1-(800)-332-5595

Natural American Spirit, PO Box 25140, Santa Fe, NM 87504

**SURGEON GENERAL'S WARNING: Cigarette
Smoke Contains Carbon Monoxide.**

SD39

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Dan Alford, Matthew Bronson, Lisa Faithorn, Peter Gold, Michael Harner, Joanna Macy, Margaret Mackenzie, Mutombo Mpanya, Richard Shapiro, Jody Timms



Complaint Exhibits

THE SECRET TO OUR GREAT TASTING CIGARETTES?

OUR INGREDIENTS...



If you smoke *because you enjoy smoking*, Natural American Spirit is the natural tobacco alternative you should try.

Natural American Spirit cigarettes are made from 100% chemical-additive-free natural tobacco... and nothing else. The result is great tobacco flavor, with no chemical aftertaste. Discover the slower-burning, longer-lasting, *all-natural* smoking experience already enjoyed by hundreds of thousands of satisfied smokers across America.

Try them yourself — Call today for samples! If you are of legal age to purchase tobacco products, you can order sample packs at only \$1 each (Limit: 1 pack each of Regular, Mild, Menthol, or Non-Filter). We'll also send you a list of retailers in your area who carry Natural American Spirit products.

**For SAMPLES and more INFORMATION
Call toll-free:
1 (800) 332-5595
ext. 6100**

Natural Tobacco... nothing else. 100% Free of Chemical Additives.

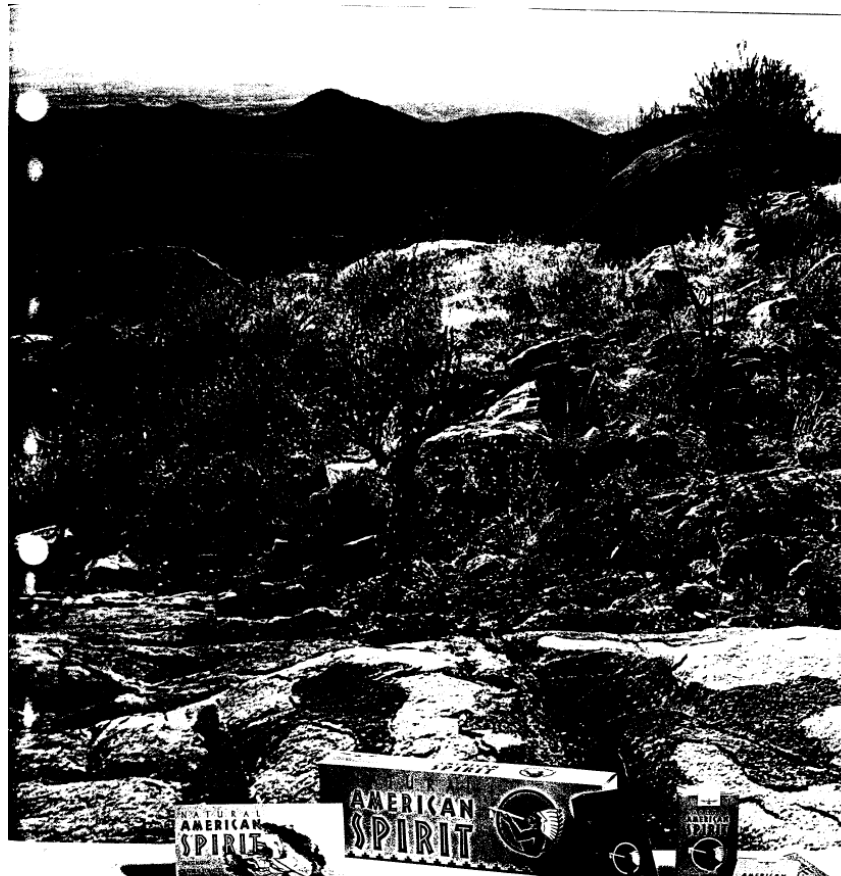
SURGEON GENERAL'S WARNING: Smoking hu

Santa Fe Natural

Exhibit B

Santa Fe, NM 87504

Complaint Exhibits



**NATURAL
AMERICAN
SPIRIT**

100% Chemical-Additive-Free
Whole Leaf, Natural Tobacco Products
Regular filter, Mild filter, Non-filter,
and Menthol filter Cigarettes;
Pouch Tobacco, and Pow-Wow Blend

and A List of Stores in Your Area Please
5595 or Send Your Name and Address to:
NATURAL TOBACCO COMPANY
40, SANTA FE, NM 87504

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
SURGEON GENERAL
Causes Lung Cancer
Emphysema, And May Complicate Pregnancy

Exhibit C

Decision and Order

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 Bureau of Consumer Protection 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 Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation with its principal office or place of business at 1368 Cerrillos Road, Santa Fe, NM 87505-3507.

Decision and Order

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

DEFINITIONS

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

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. Unless otherwise specified, "respondent" shall mean Santa Fe Natural Tobacco Company, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
4. "Advertisement" shall mean any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of any product, including but not limited to a statement, illustration or depiction in or on a brochure, newspaper, magazine, free standing insert, pamphlet, leaflet, circular, mailer, book insert, letter, coupon, catalog, poster, chart, billboard, transit advertisement, point of purchase display, specialty or utilitarian item, sponsorship material, package insert, film, slide, or the Internet or other computer network or system.

Decision and Order

5. "Tobacco product" shall mean cigarettes, cigars, cigarillos, little cigars, smokeless tobacco, cigarette tobacco, pipe tobacco, and any other product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product.
6. "Herbal smoking product" shall mean cigarettes, cigars, cigarillos, little cigars and any other product made or derived from plant material other than tobacco, that is intended for human smoking, including any component, part, or accessory of an herbal smoking product.
7. "Clearly and prominently" shall mean:
 - a. With regard to advertisements for tobacco and herbal smoking products, in black type on a solid white background, or in white type on a solid red background, or in any other color combination that would provide an equivalent or greater degree of print contrast as objectively determined by densitometer or comparable measurements of the type and the background color. The color of the ruled rectangle shall be the same color as that of the type; and
 - b. (i) With regard to advertisements for tobacco products, centered, both horizontally and vertically, in a ruled rectangle. The area enclosed by the rectangle shall be no less than 40% of the size of the area enclosed by the ruled rectangle surrounding the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333. The width of the rule forming the rectangle shall be no less than 50% of the width of the rule required for the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333.

Decision and Order

Provided that, if, at any time after this order becomes final, 15 U.S.C. § 1333 is amended, modified, or superseded by any other law, the area enclosed by the ruled rectangle shall be no less than 40% of the area required for health warnings for tobacco cigarettes by such amended, modified, or superseding law, and the width of the rule forming the rectangle shall be no less than 50% of the width of any surrounding rule required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- (ii) With regard to advertisements for herbal smoking products, centered, both horizontally and vertically, in a ruled rectangle. The area enclosed by the rectangle shall be no less than the size of the area enclosed by the ruled rectangle surrounding the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333. The width of the rule forming the rectangle shall be no less than the width of the rule required for the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333.

Provided that, if, at any time after this order becomes final, 15 U.S.C. § 1333 is amended, modified, or superseded by any other law, the area enclosed by the ruled rectangle shall be no less than the area required for health warnings for tobacco cigarettes by such amended, modified, or superseding law, and the width of the rule forming the rectangle shall be no less than the width of any surrounding rule required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- c. In the same type style and type size as that required for health warnings for tobacco cigarettes pursuant to 15 U.S.C. § 1333.

Decision and Order

Provided that, if, at any time after this order becomes final, 15 U.S.C. § 1333 is amended, modified, or superseded by any other law, the type style and type size of the disclosure shall be the same as the type style and type size required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- d. In a clear and prominent location but not immediately next to other written or textual matter or any rectangular designs, elements, or similar geometric forms, including but not limited to any warning statement required under the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 *et seq.*, or the Comprehensive Smokeless Tobacco Health Education Act, 15 U.S.C. § 4401 *et seq.* In addition, the disclosure shall not be positioned in the margin of a print advertisement. A disclosure shall be deemed "not immediately next to" other geometric or textual matter if the distance between the disclosure and the other matter is as great as the distance between the outside left edge of the rule of the rectangle enclosing the health warning required by 15 U. S. C. § 1333 and the top left point of the letter "S" in the word "SURGEON" in that health warning; and
- e. For audiovisual or audio advertisements, including but not limited to advertisements on videotapes, cassettes, discs, or the Internet; promotional films or filmstrips; and promotional audiotapes or other types of sound recordings, the disclosure shall appear on the screen at the end of the advertisement in the format described above for a length of time and in such a manner that it is easily legible and shall be announced simultaneously at the end of the advertisement in a manner that is clearly audible.

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Provided, however, that in any advertisement that does not contain a visual component, the disclosure need not appear in visual format, and in any advertisement that does not contain an audio component, the disclosure need not be announced in audio format.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Natural American Spirit tobacco cigarettes or any other tobacco product in or affecting commerce, shall display in advertisements as specified below, clearly and prominently, the following disclosures (including the line breaks, punctuation, bold font and capitalization illustrated):

In cigarette advertisements:

No additives in our tobacco
does **NOT** mean a safer cigarette.

In advertisements for any other tobacco product:

No additives in our tobacco
does **NOT** mean safer.

These disclosures shall be displayed beginning no later than thirty (30) days after the date of service of this order, in any advertisement that, through the use of such phrases as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, represents that a tobacco product has no additives or chemicals.

Provided, that the above disclosures shall not be required in any cigarette advertisement that is not required to bear a health warning pursuant to 15 U.S.C. § 1333.

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Provided further, that the above disclosures shall not be required if respondent possesses and relies upon competent and reliable scientific evidence demonstrating that such cigarette or other tobacco product poses materially lower health risks than other cigarettes or other products of the same type.

Nothing contrary to, inconsistent with, or in mitigation of any disclosure provided for in this part shall be used in any advertisement. *Provided, however*, that this provision shall not prohibit respondent from truthfully representing, through the use of such phrases as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, that a tobacco product has no additives or chemicals, where such representation is accompanied by the disclosure mandated by this provision.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any herbal smoking product in or affecting commerce, shall display in advertisements and on packaging as specified below, clearly and prominently, the following disclosure (including the line breaks, punctuation and capitalization illustrated):

In advertisements and on packaging for herbal cigarettes:

Herbal cigarettes are dangerous to your health.
They produce tar and carbon monoxide.

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In advertisements and on packaging for other herbal smoking products:

Smoking this product is dangerous to your health.
It produces tar and carbon monoxide.

These disclosures shall be displayed beginning no later than thirty (30) days after the date of service of this order, in any advertisement and on any package that, through the use of such phrases as "no tobacco," "tobacco-free," "herbal," or substantially similar terms, represents that an herbal smoking product has no tobacco.

Provided, that the above disclosures shall not be required if respondent possesses and relies upon competent and reliable scientific evidence demonstrating that such herbal smoking products do not pose any material health risks. Nothing contrary to, inconsistent with, or in mitigation of any disclosure provided for in this part shall be used in any advertisement. *Provided, however*, that this provision shall not prohibit respondent from truthfully representing, through the use of such phrases as "no tobacco," "tobacco-free," "herbal," or substantially similar terms, that an herbal smoking product has no tobacco, where such representation is accompanied by the disclosure mandated by this provision.

III.

IT IS FURTHER ORDERED that respondent shall:

- A. Provide, within forty-five (45) days after the date of service of this order, an exact copy of the notice attached hereto as Attachment A to each retailer, distributor, or other purchaser for resale to whom respondent has supplied Natural American Spirit tobacco cigarettes since January 1, 1998. Respondent shall send the notice by first class mail. The mailing shall not include any other documents.

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- B. Discontinue dealing with any retailer, distributor, or other purchaser for resale once respondent has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such retailer, distributor, or other purchaser for resale has continued to use or disseminate any of respondent's advertisements for any of respondent's tobacco products that:
1. represents, through the use of such phrases as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, that the tobacco products have no additives or chemicals; and
 2. does not include the disclosure specified in Part I of this order

unless, upon notification by respondent, such retailer, distributor, or other purchaser for resale immediately ceases using or disseminating such advertisements. If, after such notification, respondent obtains actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such retailer, distributor, or other purchaser for resale has not permanently ceased using or disseminating such advertisements, respondent must immediately and indefinitely, discontinue dealing with such retailer, distributor, or other purchaser for resale, until such time as respondent has obtained written assurance and verified that such retailer, distributor, or other purchaser for resale has permanently ceased using or disseminating such advertisements.

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- C. For five (5) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:
1. copies of all notification letters sent to retailers, distributors, or other purchasers for resale pursuant to subparagraph A of this part; and
 2. copies of all communications with retailers, distributors, or other purchasers for resale pursuant to subparagraph B of this part.

IV.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and packaging containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

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V.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns, shall deliver a copy of this order, in either paper or electronic form, to all current and future principals, officers, and directors, and to all current and future managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall secure from each such person either 1) a signed and dated statement acknowledging receipt of the order; or 2) a dated, electronic acknowledgment indicating that the person has read, downloaded or printed the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order or a record, in either electronic or paper form, of each electronic acknowledgment of receipt of the order.

VI.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to the sale of any of its tobacco products or herbal smoking products for which the composition or formula has been changed in such a manner as may affect compliance obligations arising under this order, including but not limited to the addition of any additives to any variety of such products. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade

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Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IX.

This order will terminate on June 20, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any

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violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not effect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ATTACHMENT A

[To be printed on Santa Fe Natural Tobacco Company, Inc. letterhead]

[date]

Dear [retailer, distributor, or other purchaser for resale]:

Decision and Order

This letter is to inform you that Santa Fe Natural Tobacco Company, Inc. recently reached a settlement agreement with the Federal Trade Commission ("FTC") concerning certain past advertising for Natural American Spirit cigarettes. The FTC has been reviewing "no additive" claims for cigarettes and other tobacco products as a result of concerns that such representations might mislead consumers to believe that tobacco products without additives are safer than tobacco products containing additives. As part of this review, the FTC conducted an investigation of past advertising for Natural American Spirit cigarettes and alleged that certain of our past advertising was misleading. Although we do not admit the FTC's allegations, we have agreed to notify our distributors, retailers and others who sell our cigarettes to consumers that we will be adding a new disclosure statement to certain advertisements making a "no additive" claim and that they should discontinue the use of certain old advertising materials not containing the new disclosure language.

The FTC Agreement

The FTC claimed that because we state that the tobacco used in Natural American Spirit cigarettes contains no additives or chemicals, we made implied, unsubstantiated claims that smoking our cigarettes is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives or chemicals. Beginning in late 1997, we voluntarily began placing the statement "To our knowledge there is no research indicating cigarettes containing additive-free tobacco are safer than cigarettes with tobacco containing additives" in certain ads for Natural American Spirit tobacco cigarettes. Since early 1998, we have also included the statement "We make no representation expressed or implied that these cigarettes are any less hazardous than any other cigarettes" on the packaging of Natural American Spirit cigarettes. We have now agreed to revise our disclosure in certain advertisements for Natural American Spirit tobacco cigarettes to state the following:

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**No additives in our tobacco
does NOT mean a safer cigarette.**

Our Notification Obligations

In addition to agreeing to revise our disclosure statement, we have also agreed to request that you discontinue using, relying on or distributing certain old Natural American Spirit advertisements or promotional materials in your possession that do not contain the new disclosure statement. Certain existing point of sale items may continue to be used without the new disclosure statement while other items will need to be discontinued or removed unless a sticker is applied containing the new disclosure statement. In the near future, we will provide instructions for dealing with these existing items and we will be sending you new Natural American Spirit promotional materials. If you are a distributor, we also ask that you make this information available to your Natural American Spirit dealers who may have existing materials so that they can take similar action. The FTC agreement requires us to cease doing business with even our most loyal customers in the event they continue using noncompliant materials, so please help us make this transition in an orderly and prompt fashion.

If you have any questions, you may call us at (xxx) xxx-xxxx. We apologize for any inconvenience this may cause you and thank you for your assistance.

Sincerely,
Robin Sommers, President
Santa Fe Natural Tobacco Company, Inc.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Santa Fe Natural Tobacco Company, Inc. ("Santa Fe").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves an alleged misleading representation for Natural American Spirit cigarettes, which Santa Fe has advertised as containing no additives. According to the FTC complaint, through these advertisements, Santa Fe represented that because Natural American Spirit cigarettes contain no additives, smoking them is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives. The complaint alleges that Santa Fe did not have a reasonable basis for the representation at the time it was made. Among other reasons, according to the complaint, the smoke from Natural American Spirit cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide¹.

The proposed consent order contains provisions designed to prevent Santa Fe from engaging in similar acts and practices in the future.

¹ In late 1997, Santa Fe voluntarily did begin placing the statement, "To our knowledge there is no research indicating cigarettes containing additive-free tobacco are safer than cigarettes with tobacco containing additives" in certain ads for Natural American Spirit tobacco cigarettes. Since early 1998, Santa Fe has also included the statement "We make no representation expressed or implied that these cigarettes are any less hazardous than any other cigarettes" on the packaging of Natural American Spirit cigarettes.

Analysis to Aid Public Comment

Part I of the order requires Santa Fe to include the following disclosure, clearly and prominently, in certain advertising for its tobacco cigarettes: "No additives in our tobacco does NOT mean a safer cigarette." (The order requires a similar disclosure in advertising for other tobacco products Santa Fe advertises as having no additives.) The disclosure must be included in all tobacco advertising that represents (through such phrases as "no additives" or "100% tobacco") that the product has no additives. This Part exempts Santa Fe from the disclosure requirement: (1) for cigarette advertisements not required to bear the Surgeon General's health warning; and (2) if Santa Fe possesses scientific evidence demonstrating that its "no additives" cigarette poses materially lower health risks than other cigarettes of the same type. In general, the disclosure required by Part I must be in the same type size and style as the Surgeon General's warning and must appear within a rectangular box that is no less than 40% of the size of the box containing the Surgeon General's warning.

Part II of the order requires Santa Fe to include the following disclosure, clearly and prominently, in advertising and on packaging for herbal cigarettes: "Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide." (The order requires a similar disclosure for other herbal smoking products.) The disclosure must be included in all advertising and on packaging for herbal smoking products that represent (through such phrases as "no tobacco," "tobacco-free," or "herbal") that the product has no tobacco. This Part also contains an exemption from the disclosure requirement if Santa Fe possesses scientific evidence demonstrating that such herbal smoking products do not pose any material health risks. In general, the disclosure required by Part II must be in the same type size and style as the Surgeon General's warning and for advertisements must appear within a rectangular box that is the same size as the box containing the Surgeon General's warning.

Analysis to Aid Public Comment

Part III requires Santa Fe to send a letter to its purchasers for resale notifying them that they should discontinue the use of certain existing Natural American Spirit cigarette advertisements and promotional materials and that Santa Fe is required to stop doing business with purchasers for resale that do not comply with this request.

Parts IV VIII of the order require Santa Fe to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of its personnel; to notify the Commission of changes in the composition or formula of Natural American Spirit cigarettes that may affect the order; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

QVC, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3955; File No. 9823152
Complaint, June 14, 2000--Decision, June 14, 2000*

This consent order addresses representations by respondent Quigley Corporation concerning the effectiveness of its Cold-Eeze Zinc Lozenges, Cold-Eezer Plus Zinc Gluconate Lozenges, and Kids-Eeze Bubble Gum ("Kids-Eeze") products. The consent order prohibits the respondent from making representations that its products prevent users from contracting colds and pneumonia; will treat allergies; will reduce the severity of colds in children; and that Kids-Eeze will reduce the severity of cold symptoms in children unless it possesses and relies upon competent and reliable scientific evidence that substantiates such representations. The consent order also prohibits the respondent from making any representation that any food, drug, or dietary supplement can or will cure, treat, or prevent any disease, or have any effect on the structure or function of the human body, unless it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Participants

For the Commission: *Daniel Kaufman, Lisa B. Kopchik, C. Lee Peeler and Michelle K. Rusk.*

For the Respondent: *Lewis Rose, Arent Fox Plotkin & Kahn, PLLC; Alan K. Palmer, Cooper, Carvin & Rosenthal; Glenn A. Mitchell, Stein, Mitchell & Mezines; and Ed Glynn, Venable, Baetjer, Howard & Civiletti, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that QVC, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing

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to the Commission that this proceeding is in the public interest, alleges:

1. Respondent QVC, Inc. ("QVC") is a Delaware corporation with its principal office or place of business at 1200 Wilson Drive, West Chester, PA 19380. QVC operates two cable shopping services and is principally engaged in the marketing of a variety of consumer products by means of live, customer-interactive, televised sales programs and through its Internet Web site (www.qvc.com). QVC produces and disseminates advertising in the form of television programming that is disseminated through cable channels, broadcast stations and satellite dish receivers. This programming markets consumer products directly to viewers.

2. Respondent has advertised, offered for sale, sold and distributed dietary supplement products to the public, including Cold-Eezer Plus Zinc Gluconate Lozenges and Cold-Eeze Zinc Lozenges (hereinafter, collectively, "Cold-Eeze"). These products are "foods" and/or "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4 Respondent has disseminated or has caused to be disseminated advertisements for Cold-Eeze, including but not limited to the attached Exhibits A through E, transcripts of television advertisements that appeared on QVC or Q2, home shopping cable channels run by QVC. These advertisements contain the following statements:

- (a) Show Host: Chuck is back to tell us why Cold-Eezers are so fabulous. Perfect time of year to bring them back because we've got hay fever and allergies combined with an

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upcoming cold season. Already I'm starting to see lots of sniffles around QVC.

(Exhibit A, p. 1).

(b) C. Phillips: To have a strategy to help fight the common cold. The kids are in school. They are there right now.

...

C. Phillips: It's a breeding ground. Everything they touch -- if the child before had a cold and they touch that spot and they touch their noses, its off to the races.

...

C. Phillips: So, there's a couple of strategies. One is we can take one a day and try to see if you can beat the cold to what they call prophylactic or a preventive medicine.

Show Host: Excellent

C. Phillips: Try taking one a day. Or if the child comes home and you see that it's here . . . that they have symptoms, start treating the child. Take one every three hours. But everyone in the family should take a couple to prevent picking up that cold.

(Exhibit A, p. 2).

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(c) Caller: I just wanted you to know I have a granddaughter that's 12 years old, and ever since birth when she gets a cold, it turns into bronchitis.

. . .

Caller: And so I tried these . . . and it eliminated the cold almost immediately.

C. Phillips: Well, that's really important because we have several customers we know through QVC and other places where they really can't afford to have their children even get a cold because what happens is this exacerbated condition appears.

Show Host: Sure.

C. Phillips: You get bronchitis, pneumonias. And here's an opportunity right in front of us to stop it right now.

Show Host: Right. Exactly.

(Exhibit A, p. 3).

(d) C. Phillips: The other thing is allergies.

Show Host: Yes.

C. Phillips: We have many, many people who have reported to us that their usual choice is to have antihistamines, which make them dopey --

Show Host: Sure.

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C. Phillips: -- which make them incapable of functioning, some of them.

Show Host: Right.

C. Phillips: And we suggested they try it. So, we -- they tried it and they take one and they see how long it lasts. It does diminish the symptoms of allergies.

(Exhibit A, p. 4).

(e) Show Host: Children can absolutely take this. In fact, I've heard . . . people will wrap one of these in cheesecloth and let their toddler suck on it so they can get the benefits from it without actually risking choking or anything.

C. Phillips: Um-hum. Yes.

(Exhibit A, p. 6).

(f) Caller: And I was glad to hear you say something about taking one a day as a preventative. We've never tried that before.

C. Phillips: Yes. Well, now's the time to try it.

Show Host: Yep.

C. Phillips: This is -- this is a strategy that may pay off big-time because it does help block as you saw in the animation. If we can stop the

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viruses we pick up over the day, they will not have a chance to even start.

Show Host: Perfect.

C. Phillips: Therefore, it will preclude you getting the cold.

Caller: Yes.

C. Phillips: And it's a good strategy. We highly recommend people try that.

(Exhibit A, pp. 6-7)

(g) Show Host: \$18.25. Now, you get 60 lozenges. If you want to do it as a preventative measure, that's going to be a two month supply for you. If you want to stash some in your desk at work, stash some in the glove compartment in your car. Give a couple to your kids at school, because halfway through the day if they start to get that tickle in their throat, by taking one of these, they're already taking steps ahead to prevent getting sicker and to prevent spreading it to the rest of the family. So, these do last you a good long time.

But this is the time of year to stock up. Even if you're not suffering from hay fever and allergies, you know that cold season has pretty much started –

(Exhibit A, p. 8).

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(h) C. Phillips: Well not only that, but zinc is a critical, very important mineral that we all need. A lot of us are deficient in it. . . . So, not only are you preventing a cold, but you're getting that zinc which has been proven many times to have a positive effect on many conditions of the body.

Show Host: So you're getting even healthier.

C. Phillips: Absolutely.

(Exhibit A, p. 9).

(i) Show Host: And actually, if you take these on a preventative basis, you might not ever get a cold at all.

R. Pollack: Right.

(Exhibit B, p. 3)

(j) Show Host: You know, my own grandma just got over pneumonia.

R. Pollack: Hmm.

Show Host: And I'm sending her these so that she can continue to take them, and as some of the people do, take them on a preventative basis.

R. Pollack: Right. Yes.

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Show Host: I know that you have women in nursing homes --

R. Pollack: Right.

Show Host: -- and gentlemen in retirement communities who are taking these.

R. Pollack: Yes. And they find them very effective.

(Exhibit B, p. 4).

(k) Show Host: If you're thinking, oh, well, cold season is over, we're already into April 1st, let me tell you, many, many, many of our viewers and studies will prove that the Cold-Eezers Plus are also effective on airborne allergies. If you are just about to get into ragweed season in your part of the country, if you are constantly dealing with allergic reactions to all of the pollen, if you have to deal with sinus infections because you're just breathing in the junk, this is the alternative. . . . What does Cold-Eezers Plus do? Well, it's the zinc. The zinc that's included within this product literally prohibits the virus or the airborne allergies from adhering to the tissue inside your nose.

(Exhibit C. p. 1)

(l) Show Host: Well, and this is also going to help -- from what the information has told us and what from viewers tell us, this is going to help during your allergy season, because you guys have a lot of beautiful flowering plants out that way. So, this is going to

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help if you are ever subject to allergy attacks.

(Exhibit C, p. 2)

(m) Show Host: But I'm telling you something, I'm always sick. November of every year, I get strep throat, tonsillitis, I always get some sort of horrible throat ailment. And, you know, this year, I didn't get it and I really am a firm believer in these. I think that they're preventing me from getting sick.

(Exhibit D, p. 4).

(n) C. Phillips: We're suggesting to moms, get Cold-Eezer Plus in the house.

Show Host: Um-hum.

C. Phillips: Have it ready, and at the very first hint of a cold, start applying it. But even before then, try to use it as a preventative measure, so that if you know that the child has had an exposure, which is school, they can take one a day --

Show Host: Um-hum.

C. Phillips: -- to try to prevent getting a cold.

Show Host: And you're talking about schools, I mean, everywhere you go, I mean, other children have it, other adults have it, you're just always exposed.

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C. Phillips: Always exposed, exactly. You touch things.

Show Host: Um-hum.

C. Phillips: You touch a doorknob and you go up and you touch your nose, you've got the chance to have it.

Show Host: Right.

C. Phillips: So, what we're saying is, point one, if you don't have it in the house, get some in the house so that you have it to use at the very first sign of a cold.

Show Host: Um-hum.

C. Phillips: That's the important thing. This year we're saying, have it around and take one a day. Give your child one before he goes to school, that way, it can possibly prevent that child from getting a cold.

(Exhibit E, p. 2).

(o) C. Phillips: It's also excellent for allergies.

Show Host: Oh, really?

C. Phillips: Absolutely.

(Exhibit E, p. 5)

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5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

- (a) Daily use of Cold Eeze will prevent users from contracting colds.
- (b) Use of Cold-Eeze will prevent users from contracting colds.
- (c) Use of Cold Eeze will reduce the risk of contracting pneumonia.
- (d) Use of Cold Eeze will relieve or reduce the symptoms of hay fever or allergies.
- (e) Use of Cold Eeze will reduce the severity of cold symptoms in children.
- (f) Daily use of Cold Eeze will prevent children from contracting colds.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that, it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the

Complaint

making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

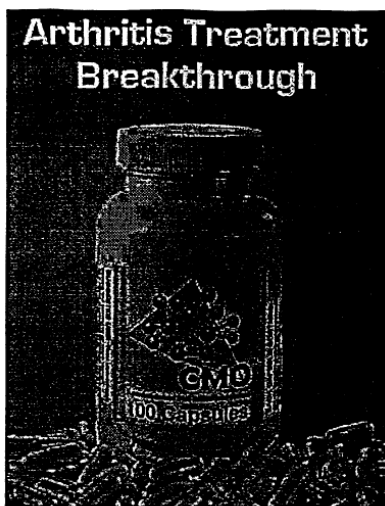
IN WITNESS WHEREOF, the Federal Trade Commission has caused its complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C. this fourteenth day of June, 2000.

By the Commission, Commissioner Leary not participating.

Complaint Exhibits

Complaint Exhibits

ARTHRITIS TREATMENT BREAKTHROUGH

<http://home.earthlink.net/~cmocure/cmocure>

Welcome to our online information center. The purpose of this web site is to give you the opportunity to learn about the arthritis treatment breakthrough called CMO™. It is being hailed by doctors, the media and its users as the cure for arthritis. It has taken 26 years to develop CMO™ and make it available to the public. We urge you to explore this site and learn about this revolutionary new substance.

- [CMO... THE DISCOVERY](#)
- [HOW IT WORKS](#)
- [WHY IT'S DIFFERENT](#)
- [WHAT'S BEING SAID](#)
- [ABOUT CMO](#)
- [FREQUENTLY ASKED QUESTIONS](#)
- [ORDERING !\[\]\(e7a5b2ecc7ab80b32b565dd7dfa9a5a9_img.jpg\)](#)



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Exhibit A
CMO Distribution Center

Complaint Exhibits

CMO... THE DISCOVERY

<http://home.earthlink.net/~cmocure/cmocure/cm00001.html>**CMO... THE DISCOVERY**

In 1971, the predecessor of CMO™ capsules, was first discovered by a researcher at the National Institutes of Health. That predecessor was cetyl myristoleate. The researcher was unable to get his project funded and slowly carried on at his own expense. Eventually he discovered that when this substance was injected near the joints of lab animals it protected them from arthritis. Many years later he contracted arthritis himself. After his doctor could provide no further relief through conventional medicine, he successfully injected himself to permanently reverse his arthritic condition. His doctor was so amazed at the beneficial results, he urged him to publish a report.



In March of 1994, that report about injectable cetyl myristoleate was published in The Journal of Pharmaceutical Sciences. In that report, the researcher expressed his hope that other studies would be conducted, "particularly, more extensive tests of cetyl myristoleate analogues."

In late 1994, the San Diego Clinic's research staff did exactly what that researcher had hoped for in his report. They developed an orally administered nutritional supplement. This natural dietary supplement is an analogue called CMO™, which is the trade name for cerasomal-cis-9-cetylmyristoleate. The San Diego Clinic did the first clinical study on CMO™. That study proved CMO™ to be of great benefit to osteo, rheumatoid and reactive arthritis. Subsequent data proves its value for nearly all other forms of arthritis except gouty arthritis.

In December 1995, CMO™ was introduced to the medical community at the National Medical Conference on Aging in Nevada. Five doctors afflicted with a variety of arthritis conditions tried CMO™ at the conference. All five doctors responded successfully within three days and CMO™ became the "star" of the conference resulting in hundreds of doctors using CMO™ on their patients.

In February 1996, after successful reports from the medical community, CMO™ became available to the public. The beneficial effects of CMO™ have been so dramatic, it has inspired two books about the subject. Finally CMO™ has finished its 26 year long journey from the point of discovery to benefit the general public.

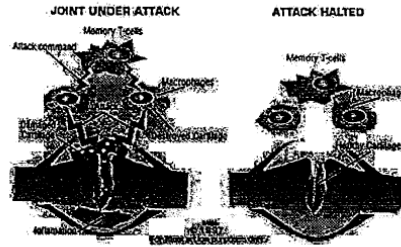


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Complaint Exhibits

HOW IT WORKS

<http://home.earthlink.net/~cmocure/cmocure/cm00002.htm>**HOW IT WORKS**

In their October 28, 1996 issue, Time magazine reported on the three most promising developments in arthritis research. The scientists participating in all three projects are intensely focused on intervening in the immune system's involvement in the arthritic process. According to doctors, that is exactly what CMO™ does. It corrects the disease at the source in the immune system. Dr. Len Sands the director of the San Diego Clinic says: "Unlike everything else made for arthritis, you don't have to take it over and over again. CMO™ is not a pain reliever, anti-inflammatory, cortisone or other steroid. CMO™ is an immunomodulator, it regulates your immune system. There's never been anything like it before for arthritis. Instead of treating the symptoms of pain and inflammation, CMO™ capsules act directly against the cause of arthritis, the memory T-cells in your immune system that create the attacks against your joints. Once the error in your immune system is corrected by CMO™, the attacks on your joints stop and the pain and inflammation should be relieved forever. Once the problems are corrected, they stay corrected and you no longer need CMO™ or other arthritis remedies."

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Complaint Exhibits

WHY IT'S DIFFERENT

<http://home.earthlink.net/~cmocure/cmocure/cm00003.html>**WHY IT'S DIFFERENT**

CMO™ is not a conventional product. There's never been anything like it before. It's not a pain reliever, herb or anti-inflammatory. CMO™ is a natural immunomodulator. It has the unique ability to normalize the immune system. CMO™ acts directly to regulate and normalize the malfunctioning immune system and stop the arthritic process itself. Once that occurs, the destruction stops, and the pain and inflammation are automatically relieved. Your body then has a chance to heal itself and return to normal.

We must emphasize that cetylmyristoleate is not CMO™, nor is CMO™ any sort of generic chemical designation. The trademarked designation "CMO™" applies exclusively to cerasomal-cis-9-cetylmyristoleate and to no other product.

Cetylmyristoleate oil is the injectable precursor of CMO™. Cetylmyristoleate was not developed for oral administration. Therefore, its effectiveness as an injectable does not apply to oral applications.

CMO™ powder was developed for oral administration. As a result, it is 40 - 200 times more easily absorbed. This makes it very effective. CMO is:

FAST**LASTING RELIEF IS JUST A FEW DAYS AWAY**

Most users report significant relief in two weeks or less. Even in severe cases it rarely takes longer than 21 days.

EASY**ONLY ONE SET OF ORAL CAPSULES**

Take three capsules in the morning and then again at night for 16 days, then say goodbye to the problems of arthritis. Only one bottle is all that is needed in most cases.

SAFE**NO SIDE EFFECTS**

CMO™ is not like the many medicines for arthritis that are toxic. CMO™ is not even like the several types of vitamins that are toxic at high levels. CMO™ has been tested and shown to have no ill effects whatsoever. To date thousands upon thousands of people have used CMO™ to relieve the symptoms of arthritis and there are no reported ill effects from anyone.

EFFECTIVE**IT WORKS FOR ALMOST EVERYONE**

It works for both osteoarthritis and rheumatoid arthritis. It works for all other types of arthritis except gouty arthritis. CMO™ has been effective on nearly everyone that does not have severe liver damage. CMO™ almost always provides relief of pain, swelling and return of mobility. In the clinical studies they found a few cases that only received 70% to 100% relief. Relief provided by CMO™ was invaluable and the subjects were able to return to a normal life.

NATURAL**DRUG FREE PAIN RELIEF**

CMO™ is the commercial name for cerasomal-cis-9-cetylmyristoleate. It is naturally derived from beef. Similar substances have long been used in common foods including

Complaint Exhibits

WHY IT'S DIFFERENT

<http://home.earthlink.net/~cmocure/cmocure/cm00003.htm>

cheese and chocolate. This treatment is accepted by the modern medical community. It is natural, drug free and non-toxic.

PERMANENT**TAKE CMO™ ONLY ONCE**

One bottle of capsules is all you should ever need for relief from the symptoms of arthritis for the rest of your life. Most affected persons need to take CMO™ for only a couple of weeks. No further treatment or medicines are needed, not even CMO™. Once CMO™ has done it's work stopping arthritis the benefits continue for long periods of time as your body repairs and reverses the damage done by arthritis.



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Complaint Exhibits

WHAT'S BEING SAID ABOUT CMO

<http://home.earthlink.net/~cmocure/cmocure/cm01000.html>**WHAT'S BEING SAID ABOUT CMO**

The medical community, users, books, television news, radio health talk shows, medical newsletters and scientific journals all report CMO™ to be a revolutionary breakthrough!

- [What do doctors say about CMO?](#)
- [What is the media saying about CMO?](#)
- [What are people saying about CMO?](#)



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Complaint Exhibits

What do doctors say about CMO?

<http://home.earthlink.net/~cmocure/cmocure/cm01001.htm>

What do doctors say about CMO?

Dr. Douglass wrote in his newsletter: "A New Miracle Cure for Arthritis ...now we have a new star on the horizon that promises as much (or more) than the old sure-cures."



Dr. Muller of Ferndale, Mich. says there's a cure. He knows, he's taken it. Dr. Muller had osteoarthritis for 30 years. Bravely he forged ahead into the naturopathic remedy and tried CMO™. Dr. Muller is no longer troubled by arthritis.

Dr. Hunt was so impressed by CMO™ he wrote a book called "Boom, You're Well". In that book he says: "...rheumatoid arthritis damages tissues, causes extreme suffering, and premature death. ...If you have rheumatoid arthritis, or you know someone who has it, then you know I am reporting a miracle ... A MIRACLE."



Dr. Sands the director of the San Diego Clinic knows there's a cure. He's taken it and now he says, "I was rescued from arthritis". In fact that is the name of his forthcoming book about CMO™. In that book he says, "The arthritic process can be halted. Arthritis can be reversed. The pain and inflammation can be relieved. And it's all been done without any harmful side effects."



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Complaint Exhibits

What is the media saying about CMO?

<http://home.earthlink.net/~cmocure/cmocure/cm01002.html>

What is the media saying about CMO?

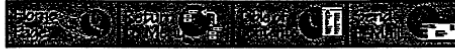


Books, Television News, Radio Health Talk Shows, Medical Newsletters and Scientific Journals all report CMO™ to be a revolutionary breakthrough!

Quotes extracted from: The Mark Scot Show, WXYT Radio Detroit, December 1996: "Hang on folks because if you haven't heard this before, it certainly is going to be an eye opener for you. ...Amazing is not the word for it. ...CMO™ gets to the source of the problem, it actually stops the arthritic process."

Quotes extracted from: The Don Bodenbach Show, KCEO Radio San Diego, August 1996 "...It may be what we consider almost a miracle cure for arthritis, and the form of arthritis doesn't matter. ...What is more impressive is once you undergo the appropriate treatment ...you are in most cases free from arthritis symptoms forever."

Quotes extracted from: The Nature of Health Magazine, Stop Arthritis Now! The Amazing Story of CMO™, September 1996 "CMO™ is a natural substance and is considered an immunomodulator. The reason for the enormous interest is the effect of CMO™ on both rheumatoid and osteoarthritis... The results of CMO™ are so impressive that nothing that mainstream or natural medicine has to offer can come close to the dramatic reversals in arthritis that have been observed. The link between CMO™ and arthritis was discovered at the National Institutes of Health... Standard medical treatment is aimed at symptomatic relief of pain and inflammation and has shown to actually accelerate the disease process... In contrast, the CMO™ protocol works rapidly and does not need to be continued in the vast majority of cases."



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Complaint Exhibits

What are people saying about CMO?

<http://home.earthlink.net/~cmocure/cmocure/cm01003.htm>**What are people saying about CMO?**

"It's a miracle! Ten years with arthritis ... three in a wheelchair ... and now I've got a completely normal life again. Just watch me make up for lost time."

"As crippled as I was, I hadn't worn out a pair of shoes in seven years. Now I'm out shopping for them again all by myself. My whole life has made a complete about face."

"Even as a doctor, I find CMO™ miraculous. It cured my knee problems, and it's performing every bit as well for my patients, too. I've seen several 'miracle cures' already."

"After nine years of crippling pain, I can't believe I'm actually skiing again. CMO™ is truly incredible."



"After two years in a wheelchair, I just can't believe that I'm taking care of myself and my family again."

"I am a trophy winning martial arts competitor and I had to quit three years ago because of my arthritis. I'm 100% now that I tried CMO™. I look forward to going to Australia next year to compete again."

"I couldn't even put on my own socks. My wife had to do it. Now after seven years of excruciating pain, I'm out golfing again."

"Before, I needed two hands just to lift a cup of coffee. Now I find myself rearranging furniture all by myself. Last week I even changed a flat tire on the car."



"I didn't even realize CMO™ had worked for me till I found myself moving a bunch of heavy junk out of the garage. The change was so smooth and natural I just took it for granted."

"Imagine my agony. I was a professional athlete all my life. CMO™ gave me back my life. Even knee surgery didn't do that for me. It's amazing how CMO™ ended up fixing all my joints."



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Complaint Exhibits

FREQUENTLY ASKED QUESTIONS

<http://home.earthlink.net/~cmocure/cmocure/cm02000.html>**FREQUENTLY ASKED QUESTIONS**

The following questions were answered by the doctors, staff and research associates of the San Diego Clinic. You can scroll down the page to view them all, or click on specific question to view the answer. Use "back to top" button to return to questions after viewing an answer.

- o [What makes CMO different from all the other remedies?](#)
- o [Does that mean a person takes CMO only once and that's it?](#)
- o [Does it work for both rheumatoid and osteoarthritis?](#)
- o [Does CMO improve joint mobility?](#)
- o [Does it stop arthritis pain?](#)
- o [Does CMO reduce inflammation?](#)
- o [How long before it takes effect?](#)
- o [Will it correct deformities?](#)
- o [What about really severe cases?](#)
- o [What about joints where the cartilage is completely worn away?](#)
- o [Does it work for everyone?](#)
- o [Can I continue with my usual medications while taking CMO?](#)
- o [Do I have to go on a special diet?](#)
- o [What about exercise?](#)
- o [Is it okay to exercise?](#)
- o [Is it expensive?](#)
- o [Is age a factor?](#)
- o [What causes arthritis?](#)
- o [How does CMO work?](#)
- o [Is it harmful in any way?](#)
- o [What is CMO? Where does it come from?](#)
- o [Is CMO used for any other ailments?](#)

What makes CMO different to other remedies?

CMO is not a pain reliever, nor is it a steroid or anti-inflammatory. It is an immunomodulator. There's never been anything like it before for arthritis. Instead of treating the symptoms of pain and inflammation, CMO act against the cause of arthritis – the erroneously programmed Memory T Cells of your own immune system that cause the attacks against your joints. Once the attacks on your joints are halted the symptom of pain and inflammation is promptly remedied.

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Does that mean a person takes CMO only once and that's it?

Yes. Most afflicted persons need to take the capsules for only a couple of weeks to be free of arthritis symptoms forever. No further medication is ever necessary, not even CMO.

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Does it work for both rheumatoid and osteoarthritis?

Both types respond equally well. It also works for most other types of arthritis such as those associated with Ankylosing Spondylitis, Reiter's syndrome, Behcet's syndrome, Sjogren's syndrome and Psoriasis.

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FREQUENTLY ASKED QUESTIONS

<http://home.earthlink.net/~cmocure/cmocure/cm02000.htm>

It has also been found to relieve various types of back pain of undetermined origin (probably arthritis related)

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Does CMO improve joint mobility?

Yes, it can! If the joint can be moved, joint mobility may be improved. But if the bones have fused and grown together, only surgery can help those particular joints.

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Does it stop arthritis pain?

Arthritis pain will disappear completely in almost every instance. In a few extreme cases pain was reduced by only 70% to 90%, which was still of such major benefit that it allowed the persons to function normally again.

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Does CMO reduce inflammation?

Yes, and it does so very effectively. The pressure in the joints caused by the inflammation is the major cause of stiffness and pain.

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How long before it takes effect?

Most people can begin to feel relief within a couple of weeks. Others may need several months.

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Will it correct deformities?

Yes. Deformed fingers and toes are often caused by inflammation which swells joints and pushes the bones out of place. Reduction of the swelling alone improves appearance dramatically and often allows the dislocated bones to return to their normal positions. Extreme cases may require some physical therapy.

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What about really severe cases?

Even most persons previously confined to bed or to wheelchairs have responded dramatically and are

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FREQUENTLY ASKED QUESTIONS

<http://home.earthlink.net/~cmocure/cmocure/cm02000.html>

now no longer dependent on others for care. A number of these cases received additional benefit from repeating the treatment one more time. A few others found that physical therapy or exercise programs also helped.

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What about joints where the cartilage is completely worn away?

Unless the bones have fused together, the usual problem is not lack of mobility, but pain. The majority of such drastic cases have responded favorably resulting in painless movement, even in the knees.

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Does it work for every one?

No. CMO has been able to help many individuals, but not everyone will see an improvement in their arthritic symptoms. We all have different bodies, lifestyles, eating habits, etc., therefore the results will vary. Digestive problems or liver function impairment, can sometimes interfere with success.

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Can I continue with my usual medications while taking CMO?

Yes, but after a few days you probably won't need them. However, it's best to avoid steroids if possible.

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Do I have to go on a special diet?

Alcohol, chocolate, and tea should be avoided. Some users find that avoiding or limiting other foods helps improve effectiveness. A recommended diet accompanies this product, but it only need be followed for a few weeks. Many people take digestive enzymes with CMO to help them absorb it. Afterwards, there are no restrictions.

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Will I have to exercise?

The absence of pain and return of joint mobility is so profound that normal activities will follow quite naturally. No special exercises are necessary. Actually, the usual tendency is to overindulge in the new found freedom, sometimes temporarily resulting in soreness of muscles previously unused.

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Is it okay to exercise?

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FREQUENTLY ASKED QUESTIONS

<http://home.earthlink.net/~cmocure/cmocure/cm02000.htm>

Yes. Many people want to lose weight and or rebuild strength once they are free to do so again painlessly. But, as with all sound fitness programs, it's best to do so gradually. Your body will need time to adjust.

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Is it expensive?

The cost of treatment is very modest. Most arthritis victims are already spending more on pain and anti-inflammation medications in just a few months. Since you usually need to take only one set of CMO capsules, it actually saves thousands of dollars in the long run.

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Is age a factor?

Not really. All ages respond well. Although arthritis becomes far more common with advancing age, even very young children are sometimes afflicted.

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What causes arthritis?

The numerous theories about what causes arthritis have filled hundreds of volumes. But one thing we do know is that the arthritic process is regulated by Memory T Cells which have been erroneously programmed, causing attacks on your own joints and cartilage.

In osteoarthritis, this faulty programming usually results from physical damage (like a fall, sports injury, vehicle accident, repeated operation of vibrating machinery, long-term strenuous physical work or sports activities, and continuous repetitive motions of certain joints) etc. The damage results in an immune response involving the memory T cells producing attacks against the affected joints. Unfortunately, there's no stop or end command given and the attack continues against healthy cartilage and joints as well. That's why arthritis is called an autoimmune disease, our own body is attacked by our own immune cells.

Although the various forms of rheumatoid arthritis are usually caused by some ineffective microorganism. Memory T cells is again involved in the same arthritic process. Without CMO it continues to worsen.

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How does CMO work?

CMO corrects the root cause of arthritis by erasing the memory of the badly programmed memory T cells. Once the destruction of your joints is halted, your body can begin its repair process without interference, and joints begin to normalize. Although the major benefits come promptly, minor improvements continue even for several months after finishing CMO. With the pain and inflammation relieved, the joints can function again quite normally. Despite minor physical damage to bones as a

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FREQUENTLY ASKED QUESTIONS

<http://home.earthlink.net/~cmocure/cmocure/cm02000.html>

result of long affliction, perfectly normal joint function usually returns regardless.

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Is it harmful in any way?

CMO studies began at the US National Institutes of Health more than 20 years ago. Recently, clinical applications studies were conducted in San Diego. No harmful short or long-term effects were ever observed in humans, or in laboratory animals even at extremely high doses. Similar substances have long been used in common foods including cheese and chocolate, and even in medicines and cosmetics. It is a perfectly safe and naturally derived substance.

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What is CMO? Where does it come from?

Cerasomal-cis-9-cetylmyristoleate is the biomedical name. CMO is the trade name. It is a completely natural substance found in certain animals such as cows, beavers, mice, and whales. As supplied in capsules, it is a naturally derived, highly purified and refined waxy ester prepared for oral administration.

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Is CMO used for any other ailments?

Current studies include CMO as a part of therapeutic protocol for other disorders with autoimmune components including multiple sclerosis, leukemia, lupus, emphysema, certain cancers, benign prostatic hyperplasia, silicon breast disease, and especially asthma. It also works for dogs, cats, horses and other animals.

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ORDERING

http://home.earthlink.net/~cmocure/cmocure/cm03000.htm

ORDERING

CMO™ now comes in 60 capsule bottles: Starting January 10th, we will offer the 60 capsule bottles of CMO™ for the introductory price of \$95.00 plus shipping and handling. This price is for a limited time only. Regular suggested retail is \$119.00.

100 capsule bottles: The new prices for 100 capsule bottles will be \$195.00 plus shipping and handling.



CMO™; Beware of imitations! Look for the accompanying trademark and graphic logo to be sure you are ordering from an authorized distributor. The testimonials and clinical studies quoted in this web site only apply to the real CMO™. A recommended diet accompanies this product to improve it's effectiveness, consult your physician before making any dietary changes. CMO™ is inexpensive compared to the thousands of dollars it costs for any ongoing arthritis treatment.



Book, Boom You're Well: By Dr. Douglas Hunt \$ 19.95.
Book, Rescued From Arthritis: By Dr. Len Sands, call for availability.

Feel free to call us if you have any questions about CMO™ or would like to place an order.

Toll free in the US: 1-800-909-CURE
Dial direct from overseas: 941-954-2100



Email Ordering

Free Pamphlets: We invite you to order any of our free pamphlets for you or your friends. There are email versions of the Clinical Studies, Case Histories and Questions & Answers. This web site is an electronic version of the "Arthritis Treatment Breakthrough" pamphlet which is only available through standard mail.

Free Tape: We invite you to order our free CMO™ Information Tape for you or your friends. This tape features interviews with Dr. Sands.

Form with fields for To, Subject, Name, E-mail Addr, Company, Address, City, State, Postal, Country, Home Phone, Home Fax, Work Phone.

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ORDERING

<http://home.earthlink.net/~cmocure/cmocure/cm03000.htm>

Work Fax:
 (submit this order)
 (clear this order)

Our Mailing Address

CMO Distribution Centers of America
5726 Cortez Road West Suite # 202
Bradenton, FL 34210 USA

Manufacturers Statement

Modestly speaking, CMO™ is a revolutionary new product. CMO™ is naturally derived, it is sold only as a dietary supplement not intended to treat, cure, or diagnose any disease. Therefore it is available without prescription. CMO™ is produced and bottled in the USA. The production facilities are state of the art and inspected by the California State Food and Drug Branch of Health Services.



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Decision and Order

DECISION & ORDER

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

The respondent, its attorneys, 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 draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated or that the facts, as alleged in the complaint, other than jurisdictional facts, are true; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person pursuant to § 2.34 of its Rules, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional finding and enters the following order:

1. Respondent QVC, Inc. is a Delaware corporation with its principal office or place of business at 1200 Wilson Drive, West Chester, PA 19380.

Decision and Order

ORDER

DEFINITIONS

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

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. Unless otherwise specified, "respondent" shall mean QVC, Inc., its successors and assigns and its officers, agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Cold-Eeze Zinc Lozenges, or any other food, drug or dietary supplement, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. will prevent users from contracting colds;
- B. will reduce the risk of contracting pneumonia;

Decision and Order

- C. will relieve or reduce the symptoms of hay fever or allergies;
- D. will reduce the severity of cold symptoms in children; or
- E. will prevent children from contracting colds;

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product can or will cure, treat, or prevent any disease, or have any effect on the structure or function of the human body unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

Decision and Order

IV.

Nothing in this order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

V.

IT IS FURTHER ORDERED that respondent QVC, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation, including videotapes of all such broadcast advertisements;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent QVC, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a

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signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request, make available to the Federal Trade Commission for inspection and copying, a copy of each signed statement acknowledging receipt of the order.

VII.

IT IS FURTHER ORDERED that respondent QVC, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondent QVC, Inc., and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal

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Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IX.

This order will terminate on June 14, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Leary not participating.