
IN THE MATTER OF
CHEMICAL ASSOCIATES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(a) OF THE
CLAYTON ACT

Docket C-1826. Complaint, Nov. 27, 1970—Decision, Nov. 27, 1970***

Consent order requiring a Houston, Tex., distributor of cleaning compounds, polishes, shine kits and related products to cease fixing resale prices for its products, imposing customer, advertising and sales outlet restrictions on its distributors, discriminating in price between competing resellers, and participating in any successive recruitment of other participants in any multilevel marketing scheme; respondents are also required to affirmatively grant customers the right to determine their own resale prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C., Section 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 parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act and Section 2(a) of the Clayton Act, as amended, and it

* Consolidated complaint *In the Matter of Chemical Associates, Inc., et al.*, Docket No. C-1826 and *In the Matter of William O. Menefee et al.*, Docket No. C-1827, p. 1517 herein.

** Reported as amended by Commission's order of February 18, 1971, by amending Part III, paragraph number 1, of the order.

appearing to the Commission that a proceeding by it in respect thereto would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Chemical Associates, Inc., is a corporation organized on or about September 1964, and is existing and doing business under and by virtue of the laws of the State of Texas. Respondent Chemical Associates, Inc., maintains its home office and principal place of business at 1530 West Belt North Drive, Houston, Texas. On or about February 1965, respondents formed HomCare, Inc., as a subsidiary of Chemical Associates, Inc., which was also existing and doing business under and by virtue of the laws of the State of Texas. Subsequently, as of September 1, 1967, HomCare, Inc., was liquidated into its parent company, Chemical Associates, Inc., and is now the HomCare Division of Chemical Associates, Inc.

PAR. 2. Respondent John R. Frey is president of respondent Chemical Associates, and was one of its founders, and together with others instituted the marketing plan and distribution policies of said corporation. Respondent John R. Frey, together with others, has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent Chemical Associates, Inc. Mr. Frey's office address is the same as that of said corporation.

Respondent William O. Menefee is chairman of the board of respondent Chemical Associates, and was one of its founders, and together with others instituted the marketing plan and distribution policies of said corporation. Respondent William O. Menefee, together with others, has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent Chemical Associates, Inc. Mr. Menefee's office address is the same as that of said corporation.

Respondent Donald L. Shriver is vice president Central Region of respondent Chemical Associates, and was one of its founders, and together with others instituted the marketing plan and distribution policies of said corporation. Respondent Donald L. Shriver, together with others, has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent Chemical Associates, Inc. Mr. Shriver's office address is the same as that of said corporation.

Respondent William J. Southwell is vice president Eastern Region of respondent Chemical Associates, Inc., and was one of its founders, and together with others instituted the marketing plan

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and distribution policies of said corporation. Respondent William J. Southwell, together with others, has been and is responsible for establishing supervising, directing, and controlling the business activities and practices of corporate respondent Chemical Associates, Inc. Mr. Southwell's office address is the same as that of said corporation.

PAR. 3. Respondents are engaged in the purchase, distribution, offering for sale and sale of cleaning compounds, polishes, shine kits, air fresheners and related products, under the trademarks and names Swipe, Somthin' Else, HLD, Shineze, Swipe A-Shine and Sure Thing. The volume of sales of such products by respondent Chemical Associates, Inc., is currently in excess of 3 million dollars per annum. As of October 1966, the retail sales level was running at the rate of 24 million dollars per year.

PAR. 4. In the course and conduct of its business of distributing its products, the respondents ship or cause such products to be shipped from the State in which they are warehoused to distributors located throughout the United States who engage in resale to other distributors and to members of the general public. There are at the present time well over 8,000 distributors of their products, and there is now and has been for several years last past a constant substantial and increasing flow of such products in "commerce" as that term is defined in the Federal Trade Commission Act and in the Clayton Act.

PAR. 5. Except to the extent that actual and potential competition has been lessened, hampered, restricted and restrained by reason of the practices hereinafter alleged, respondents' distributors and dealers, in the course and conduct of their business in distributing, offering for sale, and selling of Chemical Associates' products are in substantial competition in commerce with one another, and corporate respondent and their distributors are in substantial competition in commerce with other firms or persons engaged in the manufacture or distribution of similar products.

PAR. 6. Respondents have formulated a distribution system involving distributors at wholesale and retail levels and they have published their marketing plan or distribution policies which are set forth in respondents' price lists, discount schedules, marketing manuals, sales bulletins, order forms, application and agreement forms, pamphlets and other materials and literature. To effectuate and carry out the aforesaid distribution system, policies or plan, respondents, together with their distributors, have entered into certain contracts, agreements, combinations and understandings pursuant to the acceptance by the distributors of said marketing plan and have adopted, placed in effect, and carried out, by various methods and

means, the marketing plan to hinder, frustrate, restrain, suppress and eliminate competition in the offering for sale, distribution and sale of cleaning compounds, polishes, shine kits, air fresheners and associated products.

PAR. 7. Corporate respondent's marketing plan is a distribution network which allows a potential distributor to enter at any one of four levels, *i.e.*, supervisor-distributor, key consultant, senior consultant and consultant. All distributors are independent contractors and all are permitted to, and do, sell or attempt to sell at retail. Except for the consultant, all also sell, or attempt to sell, at wholesale to other distributors who have been either recruited by them into the organization, or have been recruited by their own recruits. All distributors also attempt to recruit other persons into respondents' marketing plan and are themselves in a position to reach a higher level by both recruiting sufficient numbers of other distributors or by selling products in sufficient quantities, or by a combination of the two. The advantages of the higher levels are described in Paragraph Eight, part (6) hereof.

Distributors of respondents' products are recruited by the corporate respondent at periodic and regular "opportunity meetings," which are run by local distributors under the direct supervision and control of corporate respondent. At these meetings, little time is spent by corporate respondent in explaining the product, but a great deal of time is spent explaining the pyramid distribution concept of their marketing plan, and how member distributors can vastly increase their earnings by "multiplication," a term used to describe a virtually endless chain of recruiting other distributors who are in turn required to buy products either from the distributor who recruited them or from respondent company. The amount of product and the price required to be purchased by the prospective purchaser desiring to join in the marketing plan is determined according to which of the four levels is chosen; the higher the level, the lower the cost per unit, and the greater the number of units required to be purchased, and the greater the aggregate investment required. For example, entrants at the supervisor-distributor level are required to pay \$5,280 for merchandise, \$450 for sales aids, and \$750 for outright payments to other distributors involved in the recruitment process.

In addition to the price differential received on each unit of the product sold to a lower level distributor, each distributor also receives a sum of money from each new distributor he recruits, varying in amounts according to the level chosen by the new distributor,

with the higher amount paid by the higher level recruitee. This fee is ostensibly compensation for the group responsible for bringing the new distributor into the program to replace the people he in turn would have introduced had he joined the program at a lower level. These fees are paid by the recruited distributors as consideration for the right to recruit their own distributors and share in the fees required in turn of all of their recruits. Similarly, the recruited distributors agree to purchase greater numbers of units of respondents' products in consideration for the right to recruit other distributors and reap the added profits of supplying a larger pyramid or organization below them and thereby share in the profits of all sales to these distributors. In both instances the distributor is induced to continue a chain, the participants of which rely upon their faith in inducing others to join the marketing plan, thereby realizing both the return on their investment and expectant profits.

PAR. 8. Pursuant to, and in furtherance and effectuation of, the aforesaid agreements and planned common course of action, respondents have done and performed and are doing and performing the following:

(1) Respondent Chemical Associates, Inc., its agents and officials, have advised all distributors that failure to adhere to the marketing plan is the basis for cancellation of their distributorship, and all distributors have actually or impliedly agreed to abide by all rules and regulations established by Chemical Associates in furtherance of the marketing plan, and to all subsequent changes.

(2) Respondent Chemical Associates, Inc., has entered into contracts, agreements, combinations or understandings with each of its distributors whereby said distributors agree to maintain the resale prices established and set forth by respondent corporation, notwithstanding that some of such distributors are located in States which do not have fair trade laws.

(3) Respondent Chemical Associates, Inc., has entered into contracts, agreements, combinations or understandings with each of its distributors whereby said distributors agree to maintain the discounts, overrides, rebates, bonus schedules, finder's fees and release fees, between and among all other distributors, as established and set forth by respondent corporation.

(4) Respondent Chemical Associates, Inc., has entered into contracts, agreements, combinations or understandings with each of its distributors whereby said distributors agree to refrain from selling across the counter in any retail establishment.

(5) Respondent Chemical Associates, Inc., has entered into contracts, agreements and combinations with each of its distributors whereby said distributors:

(a) agree to refrain from displaying Swipe or HomCare product signs in any retail establishment; and

(b) agree that only the supervisor-distributor level of distributors may advertise in the yellow or white pages of the telephone directory; and

(c) agree that all forms of advertising will be submitted in writing to the respondent corporation for its approval.

(6) Discriminating in price, directly and indirectly, between different purchasers of its products of like grade and quality by selling said products at higher prices to some purchasers than it sells said products to other purchasers, many of whom have been and now are in competition with the purchasers paying the higher prices. More specifically, the supervisor-distributor purchases his products directly from respondent corporation at approximately a:

(a) 26.7 percent discount as compared with the cost to a key consultant;

(b) 37.1 percent discount as compared with the cost to a senior consultant; and

(c) 45 percent discount as compared with the cost to a consultant.

Additionally, respondent corporation agrees to pay the supervisor-distributor an amount equal to 2 percent of the sales volume (at the retail value fixed by respondents) when one of the distributors recruited by said distributor works up or buys in and becomes a supervisor-distributor himself. Thereafter, although both supervisor-distributors buy from respondent corporation, only the first will receive the 2 percent override from respondent corporation.

Additionally, respondent corporation agrees to pay the supervisor-distributor an amount equal to 1 percent of the sales volume (at the retail value fixed by respondents) when one of the distributors recruited by a supervisor-distributor who has been recruited by said distributor becomes a supervisor-distributor himself. Thereafter, although all three supervisor-distributors buy from respondent corporation, the first will receive the 2 percent override on the volume of the second and the 1 percent override on the volume of the third, the second will receive the 2 percent override on the volume of the third, and the third will receive no override unless and until he in turn can recruit a supervisor-distributor.

There are over 1,700 supervisor-distributors in the program.

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(b) The key consultant, who purchases his products indirectly from respondent corporation, and directly from a supervisor-distributor, purchases at approximately a 14.3 percent discount as compared with the cost to a senior consultant, and a 25 percent discount as compared with the cost to a consultant.

There are over 6,000 key consultants in the program.

(c) The senior consultant, who purchases his products indirectly from respondent corporation, and directly from a key consultant, purchases at approximately a 12.5 percent discount as compared with the cost to a consultant.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 9. The allegations of Paragraphs One through Eight are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 10. Respondents' multilevel marketing program has inherent in it and basic to its functioning predominant elements of chance. Additionally, it is an unfair practice in its total concept, and is also false, misleading and deceptive.

Said multilevel marketing program is based upon false assumptions. Essentially, respondents hold out to prospective distributors the lure of making large sums of money by recruiting other distributors into their program, and receiving commissions, overrides or other considerations on their sales and on their recruiting activities. A principal inducement to entering respondents' multilevel marketing program is the falsely represented potential or reasonable expectancy of earning substantial finder's fees, overrides, commissions, profits and other compensation based on the recruitment or sales performance of other distributors over and above the ordinary profit from wholesale and retail sales of the product. Respondents' multilevel marketing program contemplates a virtually endless recruiting of participants. Under such circumstances, it is unfair for respondents or their representatives to sell substantial quantities of merchandise, or to require the payment of substantial sums of money with respect to persons who desire to enter into their program.

Participants in respondents' multilevel merchandising program do not have the potentiality or reasonable expectancy of receiving large profits or earnings through finder's fees, commissions, overrides, and other compensation, arising out of the sale of respondents' products by others, or in the recruiting activities of other distributors by other participants in the program.

The number of recruits necessary to insure a participant the extremely large profits represented increases by geometrical progression while the overall number of potential investors remain relatively constant. Thus the participant may be, and in a substantial number of instances will be, unable to find additional investors in a given community or geographical area by the time he enters respondents' marketing program. This comes about because the recruiting of participants who came into the program at an earlier stage may have already exhausted the number of prospective participants.

Respondents have at various times, by and through the use of movies, brochures and pamphlets, demonstrated geometrical progressions of two, five, six and seven. Based upon a geometrical progression of two distributors, as employed by respondents or their representatives at their opportunity meeting sales presentations, the number of additional participants in their program at each stage of growth will be as follows:

Level:	Number
1 -----	2
2 -----	4
3 -----	8
4 -----	16
5 -----	32
6 -----	64
7 -----	128
8 -----	256
9 -----	512
10 -----	1024
11 -----	2048
12 -----	4096

It is obvious from the foregoing that as to the individual participant, respondents' program of recruiting must of necessity ultimately collapse when the market for distributors becomes saturated.

Additionally, respondents' merchandising program is in the nature of a lottery. Chance permeates the entire program. Participants may invest substantial sums of money on the chance that through the activities and efforts of others, over whom they exercise little or no control or direction, they will receive exceedingly high returns before the point of saturation is reached.

Therefore, the use by respondents of the aforesaid multilevel marketing program in connection with the sale of their merchandise is a practice which is contrary to established public policy of the Gov-

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ernment of the United States and was and is an unfair act and practice within the intent and meaning of Section 5 of the Federal Trade Commission Act and was and is false, misleading and deceptive.

COUNT II

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 11. The allegations of Paragraphs One through Ten are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. In the course and conduct of their business, and for the purpose of inducing the participation by others in their marketing program and of selling their merchandise, by and through oral statements and representations of respondents or their representatives, and by means of brochures and other written material, respondents or their representatives represent and have represented, directly or by implication to prospective participants, that:

1. It is relatively easy for distributors to recruit and retain persons who will invest in their program as distributors and/or as sales personnel to sell respondents' products.

2. Participants in respondents' marketing program have the potentiality and reasonable expectancy of receiving extremely large profits or earnings, and that a distributor who is faithful to the marketing program could earn two hundred thousand dollars per month by a chain of recruiting.

PAR. 13. In truth and in fact:

1. It is not as easy as respondents or their representatives represent to recruit and retain persons who will invest in respondents' program as distributors and/or as sales personnel to work home routes and sell respondents' products door-to-door.

2. For the reasons hereinabove set forth, participants in respondents' multilevel marketing program do not have the potentiality and reasonable expectancy of receiving large profits or earnings.

Therefore, the statements and representations as set forth in Paragraph Twelve hereof were and are false, misleading and deceptive, and are in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 14. The allegations of Paragraphs One through Eight are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 15. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among the respondents of others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of, fixing, maintaining and otherwise controlling the prices at which the products of Chemical Associates, Inc., are resold, in both the wholesale and retail markets.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute an unreasonable restraint of trade and an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT IV

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 16. The allegations of Paragraphs One through Eight are incorporated by reference in Count IV as if fully set forth verbatim.

PAR. 17. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of, restricting the customers as to whom the Chemical Associates' distributors may resell their products, where they may sell their products and in what circumstances they may advertise their business activities and products.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute an unreasonable restraint of trade and an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging violation of Section 2(a) of the Clayton Act, as amended, by respondents.

PAR. 18. The allegations of Paragraphs One through Eight are incorporated by reference in Count V as if fully set forth verbatim.

PAR. 19. The difference in net cost among the various distributors, each of whom is in competition with other distributors of respondents' products, results in substantial discriminations in the net prices for products sold to the non-favored customers, who are both direct purchasers and indirect purchasers of respondents' products.

In addition, the various fees, overrides, or other payments result in discriminations among the direct and indirect purchasing distributors who are in competition with one another. These monies are direct and indirect payments by respondent Chemical Associates, and in effect are discriminations in the net price of products to the various distributors.

The effect of respondent Chemical Associates' discrimination in net price as alleged herein may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which its favored purchaser is engaged, or to injure, destroy or prevent competition between the favored and non-favored purchasers or with customers of either of them, except to the extent that competition has been sterilized by the acts and practices alleged in Counts III and IV hereof.

The aforesaid acts and practices of respondent Chemical Associates, Inc., constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of Section 5 of the Federal Trade Commission Act, as amended, and with Section 2(a) of the Clayton Act, as amended; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, 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 Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Chemical Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1530 West Belt North Drive, Houston, Texas.

2. Respondents John R. Frey, and Donald L. Shriver are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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

ORDER

I

It is ordered, That respondents Chemical Associates, Inc., a corporation, its officers, agents, representatives, divisions, employees, successors and assigns, and respondents John R. Frey, and Donald L. Shriver, individually and as officers of Chemical Associates, Inc., their agents, representatives and employees, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale, or distribution of any goods or commodities in commerce, or in connection with any multilevel marketing program or any other kind of merchandising, marketing or sales promotion program in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Clayton Act, shall forthwith cease and desist, directly or indirectly, from:

1. Entering into, maintaining, or enforcing any contract, agreement, understanding, marketing system, or course of conduct with any dealer or distributor of any goods or commodities to do or perform or attempting to do or perform any of the following acts, practices, or things:

(a) Fix, establish or maintain the prices, discounts, re-

bates, overrides, commissions, fees, or other terms or conditions of sale relating to pricing upon which such goods or commodities may be resold.

(b) Require or coerce any person to enter into a contract, agreement, understanding, marketing system, or course of conduct whereby said person in turn requires or coerces third parties to adhere to a course of conduct which fixes, establishes, or maintains the prices, discounts, rebates, overrides, commissions, fees, or other terms or conditions of sale relating to pricing upon which such goods or commodities may be resold.

(c) Refrain from selling any merchandise in any quantity to any specified person, class of persons, business, or class of businesses, or through the facilities of any business, class of businesses, or other means of distribution: *Provided, however*, That nothing in this order shall be construed or applied to prohibit respondent from making bona fide unilateral selection of respondents' customers on the basis of their own criteria and judgment, or from recommending reasonable criteria and standards to their distributors for the selection of customers, said criteria and standards not violating the letter or spirit of any of the provisions of this order.

(d) Require or coerce any person to enter into a contract, agreement, understanding, marketing system, or course of conduct whereby said person in turn requires or coerces third parties to adhere to a course of conduct requiring, inducing, or coercing any distributor to refrain from selling any merchandise in any quantity to any specified person, class of persons, business, or class of business, or through the facilities of any business, class of business, or other means of distribution.

(e) Prevent any distributor or dealer of any of corporate respondent's products from advertising either his distributorship or said products, in any media of his choosing, or preventing any distributor or dealer from employing the trade name or any of the trademarks of corporate respondent in said advertising: *Provided, however*, Respondents may take such steps as may be necessary to protect its public image and rights under the trademark and copyright laws.

(f) Require or coerce any person to enter into a contract, agreement, understanding, marketing system, or course of conduct which discriminates, directly or indirectly, in the price of any merchandise of like grade and quality by selling to any purchaser, directly or indirectly, or causing to be sold to any purchaser, at net prices higher than the net prices charged any other purchaser, who competes in the resale or distribution of such merchandise with the purchaser paying the higher price.

2. Discriminating, directly or indirectly, in the price of any merchandise of like grade and quality by selling to any purchaser at net prices higher than the net price charged any other purchaser who competes in the resale or distribution of such products with the purchaser paying the higher price, or with customers of the purchaser paying the higher price: *Provided*, however, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacturer, sale or delivery: *And provided further*, That all other defenses available in law to a charge of price discrimination shall be available to the respondent company.

3. Discriminating, directly or indirectly, in the terms or conditions of sale of any merchandise of like grade and quality by selling to any purchaser upon terms or conditions of sale less favorable than the terms or conditions of sale upon which such products are sold to any other purchaser who competes in the resale of respondent's products with the purchaser who is afforded less favorable terms or conditions of sale: *Provided*, That all defenses available in law to a charge of discrimination in terms and conditions of sale shall be available to the respondent company.

4. Entering into, maintaining, or enforcing any contract, agreement, understanding, marketing system, or course of conduct with any dealer or distributor of any goods or commodities, or with any other person, to require any person to pay any sum of money to any other distributor or dealer or other person when not in exchange for any products or merchandise actually purchased.

5. Offering to pay or paying, or authorizing, suggesting or requiring the payment of any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other consideration or thing of value to any participant dealer or distributor, directly or indirectly, except for and in consideration

of bona fide services actually rendered to the respondent, participant, dealer or distributor paying for same, in connection with the sale or purchase of goods, wares, or merchandise, with the amount of compensation for such services rendered having a direct, actual and bona fide relationship to the services performed: *Provided, however*, That respondents may not pay, grant, suggest or authorize the payment of anything of value to any participant, dealer or distributor for recruiting participants, dealers or distributors except as follows:

(i) The amount of said payment or other consideration may be either a sum certain or an amount based upon actual and verified retail sales to the consuming public by the recruited distributor, not exceeding six (6) months in duration; and

(ii) The recruiting or encouragement of recruiting does not contravene any of the provisions of Parts II and III of this order.

6. Requiring any of its distributors to obtain the prior approval of respondents for any advertising or promotion of the product or his distributorship when the distributors use their own funds for advertising: *Provided, however*, That nothing contained herein shall prohibit respondents from furnishing its distributors with suggested forms of advertising which do not otherwise contravene the law or the letter or spirit of any of the provisions of this order: *And provided further*, Respondent may take such steps as may be necessary to protect its public image and rights under the trademark and copyright laws.

7. Engaging, either as part of any contract, agreement, understanding, or courses of conduct with any distributor or dealer of any goods or commodities, or individually and unilaterally, in the practice of:

(a) Publishing or distributing, directly or indirectly, any list, order form, report form, or promotional material which employs resale prices for such goods or commodities without stating clearly and visibly in connection therewith the following statement:

"The prices quoted herein are suggested prices only. All distributors and dealers are free to determine their own resale prices."

(b) Publishing or distributing, directly or indirectly, any sales manual or instructional material which employs sample resale prices for such goods or commodities without stating clearly and visibly in connection therewith that said

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price upon which such goods or commodities may be resold are not binding upon the distributor or dealer.

(c) Publishing or distributing, directly or indirectly, except as may be expressly provided herein, any override whether required, recommended or suggested, to be paid by one distributor or dealer or class of distributors or dealers to any other distributor or dealer or class of distributors or dealers.

II

It is further ordered, That the aforesaid respondents and their officers, agents, representatives, employees, successors and assigns, in connection with the advertising, offering for sale or sale of products, franchises or distributorships, or with the seeking to induce or inducing the participation of persons, firms or corporations therefor, in connection with any multilevel marketing program or any other kind of merchandising, marketing or sales promotion program, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly, from:

1. Operating or participating in the operation or suggested operation of any program or plan wherein the financial gains to the participants, other than remuneration from the retail sales of respondents' products, is or may be dependent in any manner and to any degree upon the continued, successive recruitment of other participants, except as expressly provided herein.

2. Requiring that prospective participants or participants in respondents' said programs pay any consideration, either to respondents or to any other person, other than payment for the actual cost of reasonably necessary sales materials, and for products actually purchased in reasonable quantities, in order to participate in any manner therein.

3. Requiring, suggesting, using or participating in any multilevel marketing program, or any other kind of merchandising, marketing or sales promotion program, either directly or indirectly:

- (a) Wherein any finder's fees, bonuses, overrides, commissions, cross-commissions, discounts, rebates, dividends or other compensation or profits inuring to participants therein are or may be dependent, in whole or in part, upon the element of chance dominating over the skill or judgment of the participants; or

- (b) Wherein no amount of judgment or skill exercised by the participant has any appreciable effect upon any or all

finder's fees, bonuses, overrides, commissions, cross-commissions, discounts, rebates, dividends or other compensation or profits which the participant may receive or be entitled to receive; or

(c) Wherein the participant is without that degree of control over the operation of such plan as to enable him to substantially affect the amount of any or all finder's fees, bonuses, overrides, commissions, cross-commissions, discounts, rebates, dividends or other compensation or profits which the participant may receive or be entitled to receive.

4. Representing, directly or by implication, that participants in respondents' multilevel marketing program, or any other kind of merchandising, marketing or sales promotion program, will earn or receive, or have the potential or reasonable expectancy of earning or receiving, any stated or gross or net amount, or representing in any manner the past earnings of participants, unless in fact the past earnings represented are those of a substantial number of participants in the community or geographic area in which such representations are made, accurately reflect the average earnings of these participants under circumstances similar to those of the participant or prospective participant to whom the representations are made, and actually resulted from predominant elements of skill and judgment rather than chance.

5. Representing, directly or by implication, that it is easy for participants to recruit or retain persons who will invest or participate in respondents' multilevel marketing program or other kind of merchandising marketing or sales promotion program, either as distributors, dealers, franchisees, wholesalers or sales personnel.

It is further ordered, That respondent Chemical Associates, Inc., shall continue to offer to buy back saleable and usable merchandise purchased by any of its distributors at not less than cost less 15 percent.

III

It is further ordered, That respondent Chemical Associates, Inc., within sixty (60) days from the effective date of this order shall:

1. Mail or deliver a conformed copy of this order to cease and desist to all present distributors, sales personnel or other persons engaged in the sale or distribution of respondents' products or services, or in the participation of respondents' merchandising programs.

2. Offer distributorships or dealerships to any former distributor or dealer who was terminated or suspended by respondent

corporation for the violation of any rule, regulation or policy which contravenes any of the provisions of this order.

It is further ordered, That respondents or their representatives shall orally inform all prospective participants in respondents' multilevel merchandising program or any other kind of merchandising, marketing or sales promotion program, and to provide clearly and conspicuously in all contracts of participation, that the contract may be cancelled for any reason by notification to respondents or its representatives in writing within five (5) working days from the date of execution of such contract.

It is further ordered, That the respondents herein shall within sixty (60) days of the effective date of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order, and subsequent thereto, for a period of three (3) years thereafter, provide the Commission with copies of all brochures, pamphlets, marketing plans, meeting scripts, film scripts, etc., that respondents may employ directly or indirectly in the promotion of their products.

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

IN THE MATTER OF

WILLIAM O. MENEFEE, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(a) OF THE
CLAYTON ACT