

to its contents nor permit respondent to call such witness in order to attack the reliability and trustworthiness of the document and its contents. Respondent states that for the Commission to delay decision will lead to unnecessary expenditure of time for all concerned.

Mere loss of time, however, is not a sufficient basis for Commission intervention in the trial of the proceeding in matters relating to discovery and evidence. On the precise issues before the Commission, *i.e.*, the requests for subpoenas to government officials, we rely as noted above, largely on the examiner's determinations. He has considered the requests in the light of the circumstances of the proceeding (although only provisionally on the request concerning the Bureau of Census) and has decided in essence that the material is not necessary for respondent's discovery needs. There has been no showing made which would justify the Commission rejecting his recommendations and we will therefore deny the requests. Our decision here, though concerning only the examiner's recommendations, is analogous to a holding that the hearing examiner did not abuse his discretion in the areas where he otherwise is given broad discretion; we are not ruling one way or the other on the specific points which may be in issue on cross-examination and the admissibility of evidence. See also our decisions ruling on motions for subpoenas directed to government officials in *Ash Grove Cement Co.*, Docket No. 8785, (order issued October 22, 1970 [p. 1660 herein]) and *Avnet, Inc.*, Docket No. 8775, (order issued simultaneously with the order issued herein [p. 1686 herein]). Accordingly,

It is ordered, That respondent's motion filed October 8, 1970, for the issuance of a subpoena *duces tecum* to Dr. Earl T. Hayes, Acting Director of the Bureau of Mines, United States Department of Interior, be, and it hereby is denied.

It is further ordered, That respondent's motion filed October 8, 1970, for the issuance of a subpoena *duces tecum* to Dr. George H. Brown, Director of the Bureau of Census, United States Department of Commerce, be, and it hereby is, denied.

STERLING DRUG, INC.

Docket 8797. Order and Opinion, Dec. 18, 1970

Order authorizing the issue of a subpoena *ad testificandum* to Mr. Reese R. Morgan, U.S. Department of Commerce.

ORDER AND OPINION RULING ON CERTIFICATION OF REQUEST FOR SUBPOENA FOR APPEARANCE OF GOVERNMENT OFFICIAL

This matter is before the Commission upon the hearing examiner's certification filed December 4, 1970, of complaint counsel's motion for the issuance of a subpoena *ad testificandum* addressed to Mr. Reese R.

Morgan, Chief, Chemical Section, Industry Division, United States Department of Commerce pursuant to Section 3.37 of the Commission's Rules of Practice.

The hearing examiner recommends that complaint counsel's application be granted. He made his recommendation apparently on the ground that respondent does not object to the granting of the motion and on the further ground that if, "as indicated in complaint counsel's application, * * * Mr. [Morgan's] testimony is limited to merely testifying as to the manner in which proposed CX 67 a-b was prepared, the hearing examiner finds no conflict with the provisions of 13 U.S.C.A., Section 9, as amended."

The whole question of the application of Commission Rule, Section 3.37 and the hearing examiner's responsibility thereunder has been dealt with in detail in two other decisions in interlocutory matters issued simultaneously herewith, namely, *Avnet, Inc.*, Docket No. 8775 [p. 1686 herein] and *Missouri Portland Cement Company*, Docket No. 8783 [p. 1688 herein].

In this instance, we will approve the issuance of the requested subpoena, but the hearing examiner is instructed to apply the principles set forth in the other matters referred to above. The hearing examiner should not base his determinations on questions relative to the scope of Mr. Morgan's testimony, either on direct or on cross examination, on the possible application, or lack thereof, of a confidentiality provision protecting the records of another agency; rather he should decide such questions on their own merits by reference to the procedural rules including the rules on the receipt of evidence applicable to Commission proceedings. Nothing herein stated however is to the prejudice of the examiner in exercising his broad discretion to determine the admissibility and the appropriateness of the testimony in all respects otherwise. Accordingly,

It is ordered, That the hearing examiner be, and he hereby is, authorized to issue a subpoena *ad testificandum* addressed to Mr. Reese R. Morgan, Chief, Chemical Section, Industry Division, United States Department of Commerce.

ASH GROVE CEMENT COMPANY

Docket 8785. Order and Opinion, Dec. 28, 1970

Order denying various respondent and third party appeals, vacating certain of the hearing examiner's orders, and remanding case to hearing examiner for appropriate action.

ORDER AND OPINION RULING ON INTERLOCUTORY APPEALS

The Commission has before it in this already much appealed proceeding further appeals which will be separately considered below.

I

Respondent on October 20, 1970, appealed from the hearing examiner's order filed October 9, 1970, conditionally granting a motion to quash in part and limiting subpoena *duces tecum* issued at the instance of respondent to third party, George W. Garrett, president, Stewart Sand and Material Company (Stewart) Kansas City, Missouri. The appeal was answered by Stewart as well as by complaint counsel.

The contentions made by respondent on this order of the examiner are (a) that the hearing examiner was too restrictive in limiting the return under Specification 1 to the materials concerning the "Kansas City area" and certain other records furnished by Stewart and (b) that the hearing examiner erred in granting Stewart's motion to quash specifications on the ground that respondent has not met the requirements of Rule 45 of the Federal Rules of Civil Procedure.¹

So far as this appeal concerns the hearing examiner's application of Rule 45 of the Federal Rules of Civil Procedure, it will be granted for the reasons stated in our order and opinion issued in this proceeding on October 22, 1970 [p. 1660 herein]. The matter will be returned to the hearing examiner for appropriate action consistent with the Commission's views therein expressed. This appeal in all other respects will be denied for the reason that no sufficient showing has been made as required by Section 3.35(b) of the Commission's Rules of Practice.

II

Respondent on November 12, 1970, appealed from the hearing examiner's order of October 30, 1970, denying motions and applications for third party discovery subpoenas *duces tecum*. Respondent attached to its appeal the affidavit of Norman A. Fordyce. Complaint counsel filed an answer to such appeal on November 20, 1970 and respondent filed a reply on November 24, 1970.

The order appealed from in this instance covers various requests for the issuance of subpoenas to third parties including Lone Star

¹ Stewart in its answer asserts among other things that respondent on more than one occasion has failed to timely serve it with important documents concerning subpoenas issued against it. Complaint counsel also makes the point in its answer that Stewart was not timely served in this instance. The record contains a certificate of service showing that Stewart on the 9th day of November 1970 was served various documents to complete the service concerning respondent's appeal. Thus, it appears that service has been completed and that there has been sufficient time for Stewart to have further answered if it had desired to do so. In the circumstances we will consider the appeal, although in the future, failure to comply with the Commission's rules relating to the timely service of documents may require appropriate corrective action.

Stewart's further charge that respondent was late in filing this appeal is without substance. Respondent was not served with the examiner's October 9th order until October 13th; therefore, respondent's filing of its appeal on the 20th of October was timely under the Commission's rules.

Ready Mix Concrete Company, Geiger Ready Mix Company and twenty "certain concrete manufacturers." Respondent argues that the examiner's denial of the requested discovery is arbitrary, capricious and violative of its due process rights.

The examiner in his order states that respondent has shown no actual need for the subpoenas sought in this instance and that if during the course of the presentation of complaint counsel's case-in-chief respondent's need for any such subpoenas to prepare for its defense becomes apparent, it will be given the opportunity to renew its request. In discovery matters, the hearing examiner has broad discretion and no showing has been made here to justify a review of his decision by the Commission at this stage of the proceeding. Moreover, no sufficient showing required by Section 3.35(b) of the Commission's Rules of Practice has been made. Thus, this appeal will be denied.

III

Finally, we have before us cross appeals by respondent and jointly by two third parties named in subpoenas from the orders of the hearing examiner filed October 21, 1970, and November 10, 1970.

Respondent filed an appeal pursuant to Section 3.35(b) on October 27, 1970, from the examiner's order of October 21, 1970, which order granted the motions of third parties Monarch Cement Company (Monarch) and Concrete Materials, Inc., (Concrete Materials) to quash subpoenas issued to them at the instance of respondent.² The examiner upon an application by Monarch and Concrete Materials to reconsider their motions, filed his second order on these subpoenas on November 10, 1970. Therein he referred among other things to the Commission's order and opinion filed October 22, 1970 and he denied the motion for reconsideration and the motions to quash in their entirety.

Respondent, in this instance, argues that the hearing examiner erred in applying Rule 45 (b)(2) and (c) of the Federal Rules of Civil Procedure and in requiring the advance payment of witness fees and costs. The question on the use of Rule 45 was dealt with by the Commission in its order and opinion issued herein October 22, 1970 and the principles there mentioned apply equally here. However, respondent's appeal is moot in this instance because of the examiner's subsequent order filed November 10, 1970, denying the motions to quash in their entirety. The appeal will be denied to dispose of the matter for the record.

Monarch Cement Co. and Concrete Materials, Inc., on November 24, 1970, jointly appealed from that part of the hearing examiner's order

² The subpoenas were issued to Vernon Barlow, vice president, the Monarch Cement Company and to Robert C. Brown, vice president, Concrete Materials, Inc.

filed October 21, 1970 which denies confidentiality "Mississippi River treatment" to the information sought and from the portions of the orders filed October 21, 1970, and November 10, 1970, denying motions to limit certain specifications of the subpoenas to the "Kansas City area." Their arguments are (a) that the denial of confidential treatment will result in the disclosure of trade secrets giving respondent a competitive advantage and (b) that certain specifications of the subpoenas extend beyond the relevant geographic market.³

So far as the appeal of Monarch and Concrete Materials takes issue with the examiner's rejection of their request for confidential treatment (*i.e.*, treatment like that granted in the matter of *Mississippi River Fuel Corporation*, Docket No. 8657, sometimes referred to as the Mississippi River treatment) our views are set forth in our order and opinion issued November 19, 1970 [p. 1671 herein] in this matter, concerning a similar appeal. For the reasons therein stated, we will grant the appeal to the extent that it involves the examiner's denial of petitioners' request for confidential treatment, vacate the examiner's orders and direct him to take appropriate action consistent with our views expressed in such prior order.

The appeal of Monarch and Concrete Materials is denied in all other respects for the reason that no sufficient showing is made required by Section 3.35(b) of the Commission's Rules of Practice. Accordingly,

It is ordered, That respondent's appeal from the hearing examiner's order filed October 9, 1970, be, and it hereby is, granted to the extent set forth in this order and opinion and otherwise denied.

It is further ordered, That respondent's appeal from the hearing examiner's order of October 30, 1970, be, and it hereby is, denied.

It is further ordered, That respondent's appeal from the hearing examiner's order filed October 21, 1970, be, and it hereby is, denied.

It is further ordered, That the joint appeal of Monarch Cement Co. and Concrete Materials, Inc., from the hearing examiner's orders filed respectively on October 21, 1970, and November 10, 1970, be, and it hereby is, granted to the extent indicated in this order and opinion and it is otherwise denied.

It is further ordered, That the hearing examiner's orders filed respectively on October 21, 1970, and November 10, 1970, be, and they hereby are, vacated.

³ These appellants on October 28, 1970, and again on November 19, 1970, asked for an extension of time for filing their cross appeal and answer. Since they have filed their appeal which is here being considered and since respondent's appeal is mooted by the examiner's subsequent order, thus eliminating the need for an answer, no further action is required on the time extension requests.

It is further ordered, That this matter be, and it hereby is, remanded to the hearing examiner for appropriate action consistent with the Commission's views expressed in this order and opinion and to the extent applicable in its prior orders and opinions issued herein respectively, on October 22, 1970, and November 19, 1970.

ADVISORY OPINION DIGESTS*

No. 399. Plan for Merchandising by Lottery.

The Commission issued an advisory opinion relative to proposed weekly drawings for wigs.

The wigs are purchased at \$5 each wholesale and retailed to consumers at \$50. None have ever been sold at retail below this price. It is proposed to establish a method by which each buyer of a wig would be assured of a wig at a price of \$50 or less. The method of operation would be as follows: Customers would be divided into groups of 10. Each week, each such customer in each such group would pay \$5, and a drawing would be had, the winner to receive a wig. The next week, the nine remaining persons in the group of 10 would each pay \$5, and one of them would receive a wig. This process would continue, until finally the last person in the group would pay the full price of \$50 for the wig.

The Commission expressed the view that the proposed course of action would constitute a scheme to sell merchandise by means of a lottery or game of chance, a sales device long held to be illegal under the Federal Trade Commission Act, Section 5. The mere fact that each participant receives a thing of value for his contribution does not negate the existence of a lottery nor change the plan's essential nature as an appeal to the public's gambling instincts. Clearly, the participants in this drawing would be motivated by the chance of receiving something of more value than the amount they contributed. Hence, the nature of the appeal is unmistakable. (File No. 703 7051, released Jan. 19, 1970.)

No. 400. Labeling of Imported Magnetic Recording Tape.

Modifying the position announced in Advisory Opinion Digest No. 366 [76 F.T.C. 1103] (16 C.F.R. § 15.366), the Commission advised that:

Tape accompanying an imported tape recorder, if packaged to show country of origin, is not required to express quantity of contents as

*Prior to October 29, 1969, in conformity with the policy of the Commission, advisory opinions were confidential and available to the public only in digest form. Digests of advisory opinions were published in the Federal Register. The policy was changed on October 29, 1969, to provide for publication of advisory opinions and requests therefor, including names and details, when rendered, subject to any limitations on public disclosure arising from statutory restrictions, the Commission's rules, and the public interest. The policy was again changed on December 22, 1971, to provide for the placement in the Commission's public record of advisory opinions and requests therefor, including names and details, immediately after the requesting party has received the Commission's advice, subject to any limitations on public disclosure arising from statutory restrictions, the Commission's rules, and the public interest.

described in Advisory Opinion Digest No. 366 (16 C.F.R. § 15.366), provided the description of contents does not constitute an unfair or deceptive practice which would violate the Federal Trade Commission Act.

Cartridge tapes may be expressed in terms of playing time in lieu of a linear measurement.

Imported packaged magnetic recording tapes may continue to be distributed provided the country of origin is appropriately shown.

This action was taken to conform the opinion with the Commission's Statement of General Policy and Interpretation, Status of specific items under the Fair Packaging and Labeling Act, 16 C.F.R. § 503.2. (File No. 703 7055, released Jan. 19, 1970.)

No. 401. Designation of Landscaping Material by Volume on Containers.

In a previous advisory opinion the Commission advised that to designate the contents on containers of landscaping material by cubic measurement rather than by weight would be objectionable under Section 5, Federal Trade Commission Act.

The proposal considered involved the marketing of a processed clay material in physical form varying from pieces of approximately 2 inches down to $\frac{1}{4}$ of an inch in diameter for use as a landscaping material, particularly around shrubs, trees, walkways and other non-grassed areas. Because the density of the product by volume is less and the area of coverage by weight greater than competing materials used for the same purpose it was represented that it would be more beneficial and informative to consumers to stipulate the container contents in cubic measurement instead of by the traditional contents by weight designation. Specifically, the Commission was asked:

May the product be marketed by showing the contents of the bags in which it is contained by way of cubic measurement and not by weight, leaving off all reference to weight?

Also, may the area the material will cover in square inches, feet, or yards to a specified depth be shown on the bags?

The Commission expressed the view that the product, being used mainly for ground covering purposes, is classified as a type of lawn and garden commodity and as such is not considered a "consumer commodity" as defined by the Fair Packaging and Labeling Act. Whether the proposed labeling would be an unfair or deceptive act must, therefore, be tested against the criteria of Section 5, FTC Act. Controlling in matters of this nature is whether the proposed course of action is fair to consumers according to recognized principles, not that it might be unfair according to tradition and the morals of the market place. The concept of "Unfair or deceptive acts or practices"

stresses business integrity, encourages legitimate trading, and protects consumers against commercial spoliation.

The Commission expressed the view that it would be more beneficial and informative to consumers if the contents were designated on the product containers by both weight and volume. Although not essential, it would also be beneficial and informative to consumers if the extent of area coverage to a predetermined depth by weight and by volume were included in such content designation.

The Commission further advised that its opinion is confined to so much of the request as falls within its jurisdiction and the extent, if any, to which another governmental agency, either local, State, or Federal, may be concerned is a matter to be determined by reference to that agency. (File No. 703 7037, released Jan. 19, 1970.)

No. 402. Marking of Shoe Soles Composed of Ground Leather.

The Commission issued an advisory opinion in regard to the proper marking of a material to be used in the manufacture of shoe soles.

The material in question is not leather but a man-made fibrous leather material bonded with an adhesive. It will be manufactured and sold in its natural form to manufacturers for use as shoe soles and/or heels. Shoe manufacturers will in all probability dye or stain the material so as to give it the appearance of leather or any other material as desired. Under no circumstances will the manufacturer of the material have any control over its appearance once it has been sold to shoe manufacturers.

Specifically, the following questions were raised in regard to the proper marking of the material:

(1) When the material is used for shoe soles and/or heels but does not have the appearance of natural leather, need there be any marking or labeling whatsoever?

(2) In those instances where the material is used for shoe soles and/or heels and does have the appearance of natural leather, is it necessary to mark or label the material with a designation indicating that it is not natural leather?

(3) In all cases where the answer to question 2 is in the affirmative and assuming that the material is easily visible, is it sufficient to mark the shoe part made from this material with its trade name?

(4) If the answer to question 3 is in the negative, what would constitute adequate and sufficient disclosure of the nature of the material?

In regard to the first question, where a manufacturer produces a leather-type product for use in shoes and knows or has reason to believe that after processing it will look like leather, the manufacturer must label the product as indicated in question 2.

Second, when the material is used for shoe soles and does have the appearance of leather, it is necessary for the shoe manufacturers to mark or label such materials with a designation which clearly discloses either: (1) The material is simulated or imitation leather, or (2) the general nature of the material in such manner as to show it is not leather or split leather. This requirement is imposed by Guide II of the Shoe Guides, but it should be noted that heels are specifically exempted from the marking provisions thereof.

Third, marking the shoe soles with the trade name would not be sufficient to remove the deception created by the false impression where the material is finished to have the appearance of leather. In short, there is nothing in the use of the trade name alone which would meet the requirements set forth in answer to question 2.

In response to the fourth question, Guide VI of the Shoe Guides sets forth a number of terms which would be acceptable in describing the nature of the material when it is finished to have the appearance of leather. Those terms are as follows: "simulated leather," "imitation leather," or that it is "ground, pulverized or shredded leather" (as the case may be). There are a variety of ways in which this objective could be accomplished and the foregoing quoted language is merely suggestive of some ways in which this could be done. (File No. 703 7041, released Feb. 4, 1970.)

No. 403. Union-Employer Agreement To Cease Importing a Competitive Product.

The Federal Trade Commission rendered an advisory opinion in regard to the legality of labor unions entering into collective bargaining agreements with their employer manufacturers whereby the manufacturers will agree to cease importing products of the type they manufacture.

It is alleged that the unions have made such a proposal to their employer manufacturers because of the increased imports which have resulted in decreased domestic production, increased domestic unemployment, loss of wages, etc. It is contemplated that penalties will be assessed against any manufacturer who violates the proposed agreement.

The Commission concluded that the immunity afforded to labor unions for certain labor activities is lost if the union combines with non-labor groups to effect a restraint of trade not intimately related to wages, hours, and working conditions and otherwise prohibited by the antitrust laws or Federal Trade Commission Act. (File No. 703 7045, released Feb. 4, 1970.)

No. 404. Franchise Sales Promotion Plan With Pyramiding Franchises and "Functional Override" Commission Implications.

In a previous advisory opinion the Commission advised that a violation of Section 5 of the Federal Trade Commission Act would result from the adoption of the following proposed franchise sales promotion plan.

The plan centers around the sale of a fruit juice drink through franchise independent businessmen who will assist in the franchisor's growth by training additional franchisees. For such performance an original franchisee will be paid a "Functional Override," or commission, of 1 percent of the gross sales of those they recruit and train (direct franchisees) and one-half of 1 percent of the gross sales of those recruited and trained by direct franchisees (indirect franchisees). In addition, original franchisees will be granted loan credits and cash bonuses for persons proposed and accepted as franchisees.

Although the plan was not intended to have "pyramid sales" implications and the "Functional Override" was to stop with the indirect franchisees insofar as an original franchisee is concerned, a direct franchisee may become an original franchisee and indirect franchisees may become direct, and subsequently original, franchisees by sponsoring other persons as franchisees. This being so the "Functional Override" continues throughout the chain down to the last indirect franchisee recruited who would be unable to derive any benefits from the plan for the reason that the continually expanding pyramid of franchisees would prevent the later franchisees from successfully recruiting still other participants.

A tabulation distributed through an operations manual to potential franchise purchasers indicates that an original franchisee may, in theory, benefit from the effort of at least twenty (20) other franchisees. This in the Commission's judgment is somewhat beyond the realm of possibility since an original franchise purchaser does not know the number of prior franchise purchasers nor the degree to which an available market has been saturated with franchises. The return to any given franchise participant will unquestionably be a great deal less than the theoretically achievable amount set forth. No single franchise participant can be certain what his return will be, if any, beyond perhaps that from his first few direct franchisees. Any further amount he might receive would accrue to him sheerly through chance. (File No. 703 7057, released Feb. 4, 1970.)

No. 405. Disclosure of Imported Fabric Used in American Flags.

The Commission issued an advisory opinion with regard to the manufacture of American flags made from imported cloth that it

would be necessary to clearly and conspicuously disclose the foreign country of origin of the printed fabric used in the production process under Section 4(b)(4) of the Textile Fiber Products Identification Act.

According to the facts considered in this opinion the printed fabric will originate in either Japan or Taiwan, depending upon where the best price can be obtained. The fabric will be shipped into the United States in a finished state in rolls of 50 to 100 yards per roll. Thereafter, it will be cut, hemmed on the side where cut, grommets attached, assembled, and packaged. The cost of the imported printed fabric or flag material will represent approximately 25 percent of total production costs. The remaining 75 percent will represent domestic labor and material costs. The latter consisting primarily of a pole upon which to hang the flag.

Section 4(b)(4) of the Textile Fiber Products Identification Act provides, among other things, that an imported textile fiber product shall be misbranded if it is not labeled so as to show the name of the country where the product was processed or manufactured. (File No. 703 7050, released Feb. 18, 1970.)

No. 406. Origin Labeling on Kits Containing Imported Beads.

The Commission rendered an advisory opinion concerning the proper labeling of a product line of craft kits containing imported glass beads.

Under the facts considered, the box containing the various items in the craft kit would be marked "Manufactured by * * *" with the name of an American company and its address although some of the items representing 20 percent of the total cost will consist of glass beads imported from Japan and Czechoslovakia. Additionally, loose beads in glass bottles will be offered for sale, the imported beads here representing about 40 percent of the total cost. Advice was requested as to whether each bottle should be marked with the name of the country from which the beads were imported, such as "Made in Japan," "Made in Italy," or "Made in France" as the case might be.

The Commission's advisory opinion reaffirmed the rule that "Made in U.S.A." markings are permissible only on products entirely of domestic origin. Therefore, "Manufactured by * * *" with the name of the American company and its address, being synonymous, would be improper since 20 percent of the components of the kits consist of imported beads. However, in the absence of any affirmative representation as to the origin of the kits and their contents, the Commission ruled that such failure to mark or mention the origin of the components on the outside of the box would not be regarded as deceptive. This ruling will not prevail as to the glass beads being offered for sale

to the public separately from the kits. In such circumstances, the country of origin of such items must be fully disclosed. (File No. 703 7060, released Feb. 18, 1970.)

No. 407. Association Discussion Limited to Voluntary Standardization Not Violative of Outstanding Cease and Desist Order.

The Commission issued an advisory opinion in which an association of librarians was advised that contemplated meetings with various publishers for the limited purpose of discussing standardization of forms, definitions and cataloging would not be violative of Commission administered statutes or the terms of an outstanding cease and desist order prohibiting the publishers from meeting for the purpose of discussing industry selling practices and procedures. Because of the provisions of the order the publishers had heretofore refused to meet as a group.

The Commission considered assurances that the proposed discussions would not involve matters of discounts, freight and other allowances, and other elements of price, and the fact that members of the association of librarians were book purchasers with a vital interest in the preservation of competition in the industry and the prevention of price fixing.

The association was further advised that Commission approval was based upon an understanding that any agreements reached at such meetings are to be entirely voluntary actions of each party involved without compulsion in any form. (File No. 703 7073, released March 20, 1970.)

No. 408. Debt Collection Forms and Envelopes Which Simulate Government or Other Official Documents.

The Commission advised sellers of skip tracer and debt collection forms that a proposal to use forms simulating Government and other official documents would be regarded as violative of an outstanding cease-and-desist order and Commission administered statutes.

In rejecting the proposal to use certain envelopes and forms, the Commission pointed out that:

(1) The general appearance of the proposed forms, when considered with numerous references to "Washington," "National," "Federal," Federal courts, and to the Federal Trade Commission, cause the forms to simulate Government or official documents.

(2) The forms do not disclose in a prominent place, in clear language and in type at least as large as the largest type (exclusive of captions) either that the sole purpose is to collect a debt, or that the U.S. Government is in no way connected with the request for payment.

(3) The forms do not disclose in a prominent place, and in clear language, the identity of the creditor to whom the debt is allegedly owed.

(4) The forms contain only a general statement of the rights of a creditor under state law to attach the real or personal property, income, wages, and other property of the debtor; the statement is misleading and inaccurate because, while it will be sold and used in many states, it does not set out the many variations in state laws, particularly the exemptions and restrictions.

(5) The forms represent by implication that the Federal Trade Commission and a federal court of appeals have approved them.

(6) The brown window envelope in which the forms are to be mailed simulate, by their general appearance and by reference to "Washington" and "Federal," envelopes used by the Federal Government for official purposes.

(7) Because of the similarity to envelopes used by the Federal Government and references to "Washington D.C." and "Federal," the envelope seems to come from a party other than the creditor. (File No. 713 7023, released April 13, 1970.)

No. 409. Labeling of Reconditioned Automotive Parts.

The Commission issued an advisory opinion with respect to labeling requirements applicable to used automotive engine accessories such as alternators, generators, starters, and similar parts which will be marketed in the United States after having been reconditioned in Taiwan with some new American or Taiwanese components such as wire and diodes.

It was proposed that scrapped and otherwise used automotive parts would be acquired in the United States and shipped to Taiwan for reconditioning with such new materials as might be necessary, and then returned to the United States for final assembling and marketing. No information was available as to what percentage of total costs would be accounted for by shipping, foreign labor, components of a foreign origin, domestic parts, or domestic labor.

Under these circumstances the Commission advised in general terms that:

(1) Labeling the reconditioned automotive parts "Made in U.S.A." would be a deceptive act or practice violative of Section 5, Federal Trade Commission Act.

(2) The Commission would not object to a full disclosure of all relevant facts to purchasers of the merchandise; and

(3) Insufficient information had been supplied to permit an informed decision as to whether all reference to origin or place of work done may be omitted entirely from labels on the commodities.

The Commission added that the United States Bureau of Customs should be consulted for applicable regulations affecting such activities. (File No. 703 7065, released Feb. 18, 1970.)

No. 410. Speed Ratings and Safety Claims for Tires.

The Commission advised that the proposed advertising of speed rating and safety claims for foreign made automotive tires would be considered deceptive and in violation of Section 5, Federal Trade Commission Act.

The statements to be used in advertising and promotional materials included: "The (tire) has an HR* speed rating—this means it has survived tests at 130 MPH for 24 hours straight." "The (tire) is rated at 130 MPH for 24 hours straight." At the bottom of the page would appear this asterisked footnote: "*Internationally-recognized speed rating of the European Tyre and Rim Technical Organization. Established in supervised tests by professional drivers. Not intended to encourage high-speed driving."

In a policy statement of June 3, 1969, entitled "F.T.C. Will Challenge Misleading Speed and Safety Representations in Automobile Tire Advertising," the Commission announced that "* * * it intends to challenge automobile tire advertising which misrepresents the overall speed and safety performance capabilities of tires. Examples of current advertising claims are '* * * built low and wide like a racing tire. Tested at 130 mph', '* * * all new, wide tire made especially for the young crowd and today's high performance cars', '* * * certified safe at 100 mph. So you're safe at 60, 70, or 80', 'Safety tested at over 100 mph * * *', 'Stamina so great we safety tested them at 130 mph', and 'stops 25% quicker'."

In the policy statement the Commission took the position that "There is reason to believe that claims of this type may be deceptive and misleading as to tire safety. The speed tests do not reveal how the tires will perform at such speeds under all road conditions encountered in normal driving at various stages of the life of the tires. Specifically, the tests do not reveal whether the tires at such speeds during normal use would withstand various road hazard impacts, the sustained flexing to which tires would be subjected, and whether the tires would remain seated on the rim of the wheel under such conditions." (File No. 703 7058, released Feb. 18, 1970.)

No. 411. Tripartite Promotional Plan Involving Use of "Cents Off" Coupons.

The Commission rendered an advisory opinion concerning a tripartite promotional plan involving use of "cents off" coupons redeemable after purchase of certain products sold in retail grocery stores.

It was proposed that the promotion, designed to ultimately cover a single large metropolitan trading area, would be operated in a small portion of the area for 30 days and then moved to an adjoining area for another 30 day period until the entire metropolitan area had been covered. The value of each coupon will depend upon the product purchased and will be attached on the shelf where the product is displayed. Each package of the promoted product will bear a sticker which the shopper removes and places on the "cents off" coupon as proof of purchase.

Participating manufacturers will pay a fixed fee for each retailer serviced, plus the value of the redeemed coupons, plus 2 cents to be passed on to cooperating retailers for services rendered. Each such supplier will be cautioned to notify his retail customers that the plan is available to them. Notice of the availability of the promotional plan will be made to retailers through wholesale distributors, local trade associations, advertising in the trade press, and through the buying offices of cooperatives and chain stores. In addition, spot checks of retail grocery stores in an intended area will be made by personal contact or telephone to determine whether they have knowledge of the program and that it is available to them.

The Commission expressed the view that implementation of the proposed course of action in the manner described would be unlawful unless (1) the plan is offered to all competing sellers of the supplier's products regardless of the type of store or location of the seller and (2) the value of the "cents off" coupon is accurately and adequately made known to the prospective purchaser prior to the purchase of the product to which the coupon relates. (File No. 695 7018, released March 20, 1970.)

No. 412. Country of Origin Labeling on Imported Textile Fiber Garments.

The Commission issued an advisory opinion concerning the requirements for noting the country of origin on labels of certain nylon or acrylic knit garments to be imported in the greige and thereafter dyed and finished in the United States.

One garment, made of nylon, has an f.o.b. price of \$13.50 per dozen and the other garment, made of polyester, has an f.o.b. price of \$23 per dozen. The cost of dyeing and finishing the garments in the United States is between \$8 and \$12 per dozen, an approximate increase of 50 percent in value. After dyeing and finishing, the garments become merchantable wearing apparel and will be appropriately identified as to fiber content and the RN number.

The Commission noted that Rule 34(a) of the rules and regulations issued as required by the Textile Fiber Products Identification Act

provides that: "Where the form of an imported textile fiber product is not basically changed, the country where such product was originally manufactured or processed shall be set out in the required information. As for example, a fabric imported into the United States in the greige but finished and dyed in this country must show the country where the fabric was manufactured or processed."

The Commission advised that the failure to mark the imported garments as to their country of origin would be violative of the Textile Fiber Products Identification Act. (File No. 703 7077, released March 20, 1970.)

No. 413. Country of Origin Labeling on Boxes Containing Imported Bearings.

The Commission rendered an advisory opinion concerning the proper marking of boxes containing metal bearings imported from Japan.

It was proposed that the bearings, manufactured in Japan, will have the term "Made in Japan" etched into the metal of each bearing. Catalog advertising describing these bearings will bear the legend "Made in Japan."

The Commission expressed the view that unless the box bears any representation that the content is a product of United States manufacture, the failure to mark thereon "Made in Japan" would not be deceptive. (File No. 703 7075, released March 20, 1970.)

No. 414. Uniform Warranty and Warranty Service System.

The Commission rendered an advisory opinion concerning a "Zip" Warranty and Warranty Service System to be offered farm and industrial machinery manufacturers for use in connection with sales of their equipment.

Under the proposed plan an equipment manufacturer, in warranting his merchandise, would supply (1) a geographically convenient replacement parts depot from which repair and replacements parts would be readily available to dealers and users; (2) a central means for receiving and handling equipment deficiency reports and complaints; (3) an incentive award program for employee-assemblers of individual troublefree equipment; (4) a comprehensive, uniform warranty on all equipment; (5) a cash award program for employee-assemblers based on annual sales of troublefree equipment. The heart of the seventeen (17) page warranty and service plan is a series of cash and other awards intended to encourage purchasers to report equipment deficiencies and to encourage service personnel to strive towards the goal of zero defects.

The Commission advised that use by farm and industrial equipment manufacturers of the submitted warranty plan would be unob-

jectionable except for the possible adoption by competitors of a warranty common to both. The Commission was of the view that it would be preferable for any participating supplier to establish the terms and conditions of his own warranty program without reference to the terms and conditions of a competitor's warranty program. (File No. 703 7076, released April 13, 1970.)

No. 415. Country of Origin Labeling on Crates Containing Unfinished Imported Raincoats and on Garments After Being Finished in the United States.

The Commission rendered an advisory opinion with respect to (1) its requirements for foreign origin disclosure in the labeling on containers of unfinished "Dacron" polyester and rayon raincoat bodies and raincoat carry-bags to be imported from the Orient and (2) the necessity for disclosing the foreign country of origin on labels of the finished garments and bags which are to be sold as a unit to consumers at the retail level.

Under the proposed operation various sized raincoat bodies will be imported without collars, buttons or buttonholes. Material for the carry-bags, cut to size, will also be imported without buttons or buttonholes. After importation, American made buttons and various styled American made collars will be sewn onto the coat body, and the buttonholes cut out and bound. American made buttons will be sewn onto the carry-bags and the buttonholes cut out and bound. The estimated costs in the operation are \$2 as the f.o.b. value of the unfinished garment body and bag material and \$1.23 as the cost of domestic labor and material.

The submittal of facts disclosed that the Bureau of Customs would consider importer-finishers as the ultimate purchasers of the unfinished raincoats and bags within the meaning of the amended Tariff Act of 1930, and that an exception from the marking of the country of origin requirement on each individual raincoat body and carry-bag would be granted so long as the containers in which the unfinished material will be imported are legibly and conspicuously marked as to indicate the foreign country of origin of the contents and so long as Customs Officers at the Port of Entry are satisfied that such containers will reach the ultimate purchasers unopened.

The Commission advised, based on its understanding of the factual submittal, particularly in light of the provisions of Section 4(b) (4) of the Textile Fiber Products Identification Act and the labeling exception granted by the Bureau of Customs, that (1) no additional marking on the containers or unfinished materials therein will be required beyond that requirement imposed by the Bureau of Customs; (2) that the raincoats to be sold to consumers at the retail level after

having been finished in the United States must be labeled so as to clearly and conspicuously disclose the foreign country of origin of the imported fabrics; and (3) in the absence of any affirmative representation that the finished raincoat carry-bag is made entirely in the United States it will not be necessary to disclose the foreign country of origin of the imported fabric thereof. (File No. 703 7079, released April 13, 1970.)

No. 416. Meaning of Phrase "Leave Your Pocketbook At Home."

The Commission rendered an advisory opinion concerning the proposed use of the phrase "Leave your pocketbook at home" in light of the requirements of the Truth in Lending Act, Section 144, and Regulation "Z", promulgated thereunder (12 C.F.R. § 226.10(d)(2)).

The phrase in question would be used in television and mail circular advertising by sellers of clothing at retail on installment sales contracts. It was presented that customers may make the first payment at some future time and that "The customer may take the clothing with him at the time the purchase is made rather than wait until the first payment has been made. In ninety-nine out of a hundred cases, the purchaser does take the clothing with him at the time the purchase is made."

The Commission advised it had concluded that the proposed phrase is equivalent to, or synonymous with, a "no down payment" claim. Under these circumstances it would be improper to use the proposed phrase without disclosing the specific credit terms required by Section 226.10(d)(2) of Regulation "Z". Specifically, the advertising must disclose the following credit information whenever no down payment claims are made:

- (1) The cash price,
 - (2) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended,
 - (3) The annual percentage rate, and
 - (4) The deferred payment price of the article offered for sale.
- (File No. 703 7082, released April 13, 1970.)

No. 417. Use of Term "Manufacturer."

The Commission rendered an advisory opinion as to whether producers of electronic display systems may be referred to as "manufacturers" of such equipment in informational materials furnished the press.

It was submitted that such firms produce and sell electronic display systems and related equipment to those interested in obtaining current transactions on the stock exchange. In order to produce such equipment, various components such as electronic parts, motors, pumps, frames, and related materials are purchased from many sources and

assembled into a completed unit at a manufacturing plant in the northeastern States. Some of these components are stock items, others are made to specification and in some instances machine work is necessary in order to properly assemble the basic components into completed units.

On the basis of the information supplied, the Commission concluded that such producers, because they shape basic materials and components into finished products by hand-labor and by machinery, are the manufacturers of electronic display systems and related equipment. In the premises, the Commission advised that it would not object to references of such producers as the manufacturer of the systems in informational materials sent to the press. (File No. 703 7085, released April 13, 1970.)

No. 418. Four Point Tripartite Promotional Advertising Plan.

The Commission responded to a request for an advisory opinion regarding the legality of a proposed four point three-party promotional advertising program to be offered suppliers and retailers in the grocery field.

Under the program as presented for consideration, the first point involves contracting with retailers for the use of one or more mass display areas in their stores by suppliers. (A mass display area is defined as that space set aside for the display of merchandise of the same manufacturer, usually at the end of an aisle.) Suppliers would be charged and retailers remitted (less 15 percent agency fee) one-half cent per display area for each person entering the store each week, the number to be determined by the number of sales slips run through each cash register. Supplier's customers would be notified of the program's availability through bulletins included in suppliers' and wholesalers' mailing, through letters to direct buyers, and directly by mail to any other of the suppliers' customers. Suppliers would be limited to 10 percent of the available mass display areas in a given market during a calendar year.

The second point involves the offer of a plan to suppliers for making funds available to retailers for the advertising of suppliers' product as a supplement to each mass display. Suppliers would be charged and retailers remitted (less 15 percent agency fee) one-fourth cent per person entering the store (as determined by cash register sales slips) per week for inclusion of the supplier's product as a feature in the body of the retailer's newspaper advertising. Retailers would also qualify for this allowance through distribution of handbills and/or mailers reasonably covering his trading area. Supplier's customers would be notified of the program's availability through bulletins included in suppliers' and wholesalers' mailing, through letters to direct

buyers, and directly by mail to any other of the supplier's customers.

The third point involves arranging radio/television commercials for suppliers announcing that their products are available at named retail outlets. The commercials would supplement the mass display promotions. Time requirements for spot commercials would be pooled so as to obtain the best "frequency rate." Each customer of a participating supplier would receive at least one commercial without cost. The total number of commercials furnished a customer would be computed by dividing an amount computed by multiplying the retailer's customer count (as determined by cash register sales slips) by one-eighth cent per person and dividing by the cost per commercial.

Under the fourth point it was proposed to supply to retailers and suppliers a sales survey which would include consumer reaction to a product, reasons for consumer purchases of a product, and when possible, a reaction to the product after use, and with retailer co-operation, comparison of sales with competing products.

The Commission advised it was of the view that were the program, other than the proposed sales survey under point four, implemented in the manner described no law administered by the Commission would be violated. The sales survey in point four of the plan, which calls for the exchange of price or quantity sales information among retailers, or between retailers and suppliers, might be used in such manner as to lessen competition and since the legality of any such survey depends on the manner of its implementation, the Commission is unable to advise on this aspect of the plan. (File No. 703 7083, released May 4, 1970.)

No. 419. Tripartite Promotion Based on Television Game Show.

The Commission rendered an advisory opinion relative to the legality of a television game entitled "Your Name's a Winner" sponsored by a local retailer and national food suppliers.

It was proposed that a television game show type program be produced and sponsored primarily by a local grocery retailer at a contract price determined by the number of "game pieces" (resembling Bingo cards) distributed by that retailer to customers for the play of the game. Home viewers cross off the letters of their own names on a game piece against those flashed on the television screen and receive all prizes appearing in the squares of the crossed-off row, including a hidden prize. The show producer would sell each square as advertising space to national manufacturers and suppliers, some of whom will be suppliers to the sponsoring retailer. The products involved in each advertising space would be prominently displayed during the course of the game show, and the suppliers of each would be featured at all times.

The Commission expressed the view that insofar as a supplier to a retailer-sponsor is an advertising contributor to the game show problems under the amended Clayton Act would be present. The advertising rights of a national supplier purchasing a square constitutes a payment of something of value to or for the benefit of a customer within the meaning of that Act. On the other hand, if the advertising rights to all such squares are sold to non-suppliers of the sponsoring merchant so that a supplier-customer relationship would not exist, the Act's prohibitions are not applicable.

The Commission advised, because the proposed program contemplates that some of the advertisers would be suppliers to a sponsoring retailer, implementation and production of the television game show "Your Name's a Winner" in the manner outlined would raise serious questions under Sections 2(d) and 2(e) of the amended Clayton Act and Section 5 of the Federal Trade Commission Act. (File No. 703 7081, released May 4, 1970.)

No. 420. Multiple Foreign Origin of Parts Disclosure on Partially Imported Toys.

The Commission rendered an advisory opinion concerning a proposed country of origin labeling on the containers of sets of toy racing cars and tracks. The labeling would include the following language:

Contents made in Great Britain and/or U.S.A. and/or Canada, as specified therein.

Box printed in Great Britain.

Seven different sets of toy racing cars would be sold through retail stores to the general public, with the most expensive set retailing at \$22.50. At present, it is not known what percentage of the parts would originate in Great Britain, Canada or the United States. The plastic track would be made either in the United States or Canada, and the metal cars would originate in Great Britain. The paper container would also be made in Great Britain. The imported parts will be clearly and conspicuously marked as to their foreign country of origin. The cars and tracks will be packaged in a container which can, and normally would be opened for inspection by prospective purchasers prior to the purchase thereof.

On the basis of the presentation, the Commission advised that it would interpose no objection to the proposed language being printed on the toy containers. (File No. 703 7092, released May 4, 1970.)

No. 421. Origin Disclosure on Imported (9 Percent to 15 Percent) Air Filter Parts.

The Commission responded to a request for an advisory opinion regarding a foreign country of origin marking on aquarium valves and filters.

According to the presentation the merchandise in question is a two-three-, or four-outlet gang valve connected by a plastic tubing to an air filter. The entire device is mounted on a plastic bracket designed to be hung over the top edge of an aquarium. All parts of the assembly are manufactured in the United States except for the bracket and filter which are produced in and imported from Hong Kong. These parts are identical and represent about 15 percent of the total cost of the two-way gang valve, about 11 percent of the total cost of the three-way gang valve, and about 9 percent of the total cost of the four-way gang valve. The filter, including the filtration material with which it is filled, is designed for use for the life of the gang valve and in ordinary use it is not replaced.

The Commission expressed the view that in the absence of any affirmative representation that the product is made in the United States or any misrepresentation that might mislead the purchasing public as to the country of origin of the bracket and filter, under the facts presented, the failure to mark the origin of the products would not be regarded as deceptive. (File No. 703 7086, released May 4, 1970.)

No. 422. Preticketing of Imported Candles.

The Commission responded to a request for an advisory opinion with respect to the legality of importers affixing preprinted labels bearing a retailer's discount selling price on packages of prepriced imported candles.

It was proposed that importers of packaged and prepriced candles would affix onto each individual package a pressure-sensitive label printed with a retail-customer's discount selling price. For example, the package as imported may bear a preprinted retail price of 41 cents and a retailer's discount selling price of 34 cents. Two questions were asked on the basis of this presentation:

(1) Is it permissible for importers of record to affix a discount operator's price label on the packages?

(2) If so, may this be done in the country of origin?

The Commission expressed the view that the affixing by importers of a retailer's price on the package would not in and of itself be violative of the laws administered by this agency and that the place where this operation is performed would not be determinative of its legality. The Commission cautioned, however, that the contemplated arrangement is a preticketing scheme which must comply with the requirements of Section 5, Federal Trade Commission Act. (See Commission's Guides Against Deceptive Pricing (16 C.F.R. Part 233).) Should the contemplated price saving claim as represented by the retailer's discount price label have the tendency and capacity to deceive and mislead the consuming public, then the importers as knowing participants in

the preticketing arrangement would share responsibility for such deception.

Further, if the service of affixing an individual customer's pricing labels on packages is not generally available on proportionally equal terms to all other of an importer's customers competing in the resale of imported candles, the providing of such a service to one customer may constitute a violation of Section 2(e) of the amended Clayton Act. (File No. 703 7093, released June 8, 1970.)

No. 423. Availability of Tripartite Promotional Advertising on Shopping Carts.

The Commission rendered an advisory opinion concerning the advertising of food and nonfood products on shopping carts in retail grocery stores.

The program submitted for Commission consideration involved two plans. Plan A related only to the advertising of food items. Seller-advertisers would be charged a rate commensurate with the number and length of time shopping carts are used to display his advertising and the estimated number of in-store shoppers exposed to such advertising. Participating retail grocers would be paid for the use of his shopping carts based on the number and length of time his equipment is used for supplier advertising and the estimated number of shoppers exposed to such advertising. Stores without shopping carts will be offered placards or shelf-markers without cost and will be paid on the basis of the number of customers exposed to the advertising. All competing retail grocers would be informed of this plan by personal solicitation, advertisements in trade journals and direct mailing to all in business at least 6 months prior to the start of the plan.

Under Plan B nongrocery items not available for resale by participating retail grocers would be advertised only in those stores which have shopping carts. The rates and payments to advertisers and participating retailers would be the same as in Plan A.

The Commission advised it would interpose no objection to the implementation of Plan A provided the following conditions were met:

(1) If the advertised grocery products are being handled by other than grocery stores, the other stores must also be notified of their right to participate in the plan, provided they compete with the favored retail grocery stores. Moreover, all competing customers must be notified of the plan, regardless of whether they purchase direct from the supplier or through some intermediary.

(2) Payments to smaller participating stores with shopping carts should be made on the same terms as those to the smaller stores without shopping carts.

(3) Since the plan calls for performance of certain obligations which are normally performed by a supplier, Guide 13 of the Commission's Guides for Advertising Allowances should be consulted.

The Commission advised further that Section 2(d) or 2(e) of the amended Clayton Act would not be applicable to that part of the program described as Plan B. This conclusion is based upon the statement that the nongrocery items, which are to be advertised only in retail grocery stores with shopping carts, would not be available for resale in such stores. However, the Commission cautioned, if the advertising on the shopping carts indicate the name of any particular dealer where the advertised products may be purchased, then the advertising should also indicate the names of all competing dealers. (File No. 703 7097, released June 8, 1970.)

No. 424. Tripartite Promotional Program Using Trash Receptacle Panels for Advertising.

The Commission responded to a request for an advisory opinion concerning a proposal to offer advertising panels on trash receptacles to advertisers of products and services.

Under the program trash receptacles would be placed in public service areas where permission is obtained from the property owner, city government, or the person who controls the premises. Advertising thereon would be sold to producers on a yearly contract basis, the rates to be determined by the location and pedestrian traffic in the area. Product advertising will only advertise the product and will not indicate where it is available, however, service advertising will probably direct potential customers to the service.

Physical servicing of the receptacles would be handled in many ways. Where they are placed on city streets, arrangements would be made with the city government to empty them and to report their condition. Where the receptacles are placed at motels, hotels, service stations, and like locations, arrangements would be made with persons who normally service such areas. Where the receptacles are placed in shopping centers or shopping malls, arrangements would be made with merchants within such areas to empty them and report on their condition. A fee would be paid to those rendering these services.

The Commission expressed the view that payments to a merchant to service trash receptacles which may display advertising of products that he sells would be objectionable under Section 2(d) of the amended Clayton Act. The proposed program would be unobjectionable under this Act where payments for servicing the receptacles are made to anyone other than merchants engaged in the sale of the advertiser's products. (File No. 703 7089, released June 8, 1970.)

No. 425. Combining Advertising for Mailing Purposes.

The Commission rendered an advisory opinion concerning a proposal to combine manufacturer and retailer advertising into one mailing piece. The intended program involves the attaching of packets containing direct-to-consumer redeemable coupons and other advertising material prepared for various manufacturers and service organizations to the tabloid or booklet type mail advertising of national or regional retailing organizations. The purpose of the proposed program is to minimize mailing costs for the participating organizations. As each party to the arrangement would pay a proportionate share of the preparation, postage and other mailing costs, the mailing expenses for each would be reduced about one-half.

The Commission expressed the view that to the extent a participating retailer will realize a saving in mailing costs because the advertising material of one or more of his suppliers is inserted in the packets prepared by the other participant who is under contract with such suppliers, a discriminatory promotional allowance will have been accorded by such supplier to that retailer. However, the same result will not pertain where the packet contents are limited to those products and services not available from the participating retailer.

The Commission advised that so long as precautionary measures are taken as will insure that the packet contents are limited to the advertising of those products and services which are not available from or through a participating retail organization, implementation of the proposed program in the manner outlined will raise no questions under Section 2 (d) or (e) of the amended Clayton Act. (File No. 703 7095, released June 8, 1970.)

No. 426. Quality Designation on Jewelry of Identical Construction.

The Commission responded to a request for an advisory opinion concerning a proposal to use the quality designation "Yellow Gold or White Rhodium Electroplated" on jewelry of identical construction which may be electroplated with either metal.

The view was expressed by the Commission that although there may be some instances where a consumer might be able to properly interpret such a quality designation, the vast majority of consumers would be confused through use of any dual designation. Moreover, if the use of such a dual designation were to be approved, it would logically follow that approval would have to be given to the use of triple, quadruple, etc., designations. The end result would be utter chaos for the vast majority of consumers who would be thrown into a jungle of quality designations from which they could not intelligently extricate themselves.

Under these circumstances, the Commission advised that it cannot give its approval to such dual quality designation because the use thereof would probably serve to confuse and deceive prospective purchasers in regard to the quality of the products being bought. (File No. 703 7071, released June 8, 1970.)

No. 427. Guarantee Advertising for Refrigerator Compressors.

The Commission rendered an advisory opinion regarding the proposed advertising of a 10-year guarantee for compressors used in refrigerators.

The proposed advertising, which would appear as a 30-second television commercial, would guarantee the compressors for 10 years in writing and if they do not last that long a new compressor will be given the customer free, and further, for the first 5 years the manufacturer will pay labor charges and the customer will pay for pickup and delivery.

The Commission advised that the proposed advertising is not in harmony with the language used in the submitted guarantee or with Guide 1 of the Commission's Guides Against Deceptive Advertising of Guarantees in three important aspects.

(1) The advertising offers a replacement for any compressor found to be defective, whereas the guarantee provides that any defect will be repaired or replaced. Thus, the advertising is inconsistent with the actual provisions of the guarantee. Either the advertising should be revised to conform with the guarantee and include the disclosure of a possible repair job or replacement, or the guarantee should be changed and made consistent with the proposed advertising. If an election is made to change the advertising, it should also disclose whether the guarantor or the purchaser has the option of repairing or replacing.

(2) The guarantee provides that the manufacturer will repair or replace any parts he finds defective. The fact that the manufacturer alone makes the determination as to whether or not a part is defective is a material limitation and should be disclosed in advertising.

(3) The guarantee provides that the customer will pay an "analysis charge for determining defects." This is a material limitation on the 10-year guarantee which could be a significant factor in the purchaser's selection of a refrigerator, and therefore the fact that an analysis charge is imposed should be disclosed in the advertising. (File No. 703 7094, released June 8, 1970.)

ADVISORY OPINIONS WITH REQUESTS THEREFOR*

**Use of word "jewel" in connection with the sale and advertisement
of a synthetic stone. (File No. 703 7098)**

Opinion Letter

May 19, 1970

Dear Mr. Langston:

This is in response to your request in behalf of Zale Corporation for an advisory opinion.

The Commission understands that the applicant proposes to advertise and sell a synthetic diamond under the name "Flare-Jewel." The applicant wishes to know whether the use of the word "jewel" in connection with the sale and advertisement of a synthetic stone would be in violation of any law administered by the Federal Trade Commission.

The Commission is of the view that the use of the term "Flare-Jewel" to refer to synthetic stones without clearly disclosing that such stones are not natural stones or natural jewels would be in violation of the Federal Trade Commission Act, Section 5.

By direction of the Commission.

Letter of Request

March 18, 1970

Gentlemen:

I represent a jewelry concern who in the very near future intends to manufacture and sell various synthetic stones.

My client anticipates advertising and selling one of the stones, a synthetic diamond, under the name "Flare-Jewel." It is my understanding that it is an unfair trade practice to use the word "gem" in reference to a synthetic diamond.

I would very much appreciate receiving your advice and opinion as to whether the word "jewel" falls into the same category as the word "gem" and whether the use of the word "jewel" in connection with the sale and advertisement of a synthetic stone would put my client in vio-

*See footnote on page 1696 herein.

lation of any rule or regulation of the Federal Trade Commission. I shall await your reply.

Yours truly,

/s/

H. A. Langston, Jr.

Attorney at Law

**Obligation of FTC to enforce the standard of flammability in
DOC FF-1-70 for carpets and rugs, as applied to rental mats.
(File No. 703 7105)**

Opinion Letter

June 2, 1970

Dear Mr. Ehrlich:

Reference is made to your letters of April 21 and May 19, 1970, requesting an opinion as to whether or not the Commission will be obligated to enforce the standard of flammability in DOC FF-1-70 for carpets and rugs, as applied to rental mats, which form the basis of services rendered by the Institute of Industrial Launderers and the Kex National Association.

The Commission has given careful consideration to this matter. It has concluded that the mats in question come within the scope of Sec. 3(a) of the Flammable Fabrics Act and must therefore conform to the applicable flammability standard. The Commission is also of the opinion that the practice in question would come within the provision of Sec. 5 of the FTC Act.

By direction of the Commission.

Supplemental Letter of Request

May 19, 1970

Gentlemen:

This letter is submitted as a supplement to my letter dated April 21, 1970, with reference to the applicability of the above Standard to entrance mats.

In my previous letter, I did not discuss the possibility of the application of Section 5 of the Federal Trade Commission Act to entrance mats once the Standard is effective. Since it occurs to me that such a question might arise, I would like to take this opportunity to present my views on that question.

It seems to me that Section 5 is inapplicable and that to attempt to apply Section 5 to entrance mats would be highly discriminatory.

Apparently it is not contemplated that Section 5 will be applied to hotel-keepers. Nevertheless, a hotel-keeper rents rooms to customers, including carpeting. The carpeting may be washed enough times to remove or destroy its flame-resistant properties. There seems to be no intent to test the hotel carpeting even at periodic intervals, much less to test the hotel carpeting each time it is rented to a customer. Indeed, to do so would be rather absurd.

On the other hand, it would be highly discriminatory to hold that although a hotel-keeper is not subject to Section 5 each time he rents a room and carpet, the laundry is subject to Section 5 each time it rents an entrance mat.

This becomes even more apparent when the purpose of the Standard is considered. The Standard, in general, is for the purpose of giving some degree of protection to the user. Hotel carpeting is used in foyers, halls and rooms where, if fire occurs, the carpeting is in close proximity to other furniture, drapes and beds. An entrance mat, as already pointed out in some detail in my previous letter, is generally a small mat and by its very nature and purpose, is used at the entrance door to a building, where there is normally little, if any, fire hazard. To hold that a hotel-keeper who rents out rooms and carpeting is a user not subject to the Standards or to Section 5, but that laundries which rent out entrance mats are not subject to the Standards but are subject to Section 5, would be not only discriminatory, but discriminatory against the one which presents the least hazard.

In addition, to hold entrance mats subject to Section 5 would impose severe and needless economic hardships upon the entrance mat industry. I assume that after the Standards are effective, the entrance mat industry will be able to purchase only mats which have been treated to be fire-resistant, since the Standards will apply to all manufacturers at the time of the original sale. This will substantially increase the original cost of its mats to the industry. But, if the industry were held to be subject to Section 5, the only course the industry could follow would be to test the mats for fire-resistance each time the mats were picked up from a customer and before renting them out again. This would not only impose a substantially higher original cost, but a continuing increased cost of operating. No distinction can be drawn, as a practical matter, between mats. There is no practical method, short of destruction, for testing mats to determine the extent to which they have lost fire-resistant properties. This would depend primarily on the extent of use and the number of washings between uses. Since mats are handled in batches of hundreds at a time, the industry would be compelled to add a fire-resistant treatment to every mat every time it is washed between uses. This would add a substantial expense to the least hazardous item.

As far as the users of the mats are concerned, this additional and substantial cost would be passed on to them, needlessly increasing the cost to consumers on items of minimum hazard.

To draw a parallel again, obviously no hotel-keeper is going to be compelled to treat his carpeting with a fire-resistant treatment in between each room rental or risk being in violation of Section 5. But applying Section 5 to the entrance mat industry would essentially require such a treatment between each rental and require it in the case of the item which presents the minimum hazard.

Under all of the circumstances set forth herein, as well as in my previous letter of April 21, 1970, it is urgently requested that the Federal Trade Commission issue a ruling that rental entrance mats are not subject to the above Standard or testing under the Standard and not subject to Section 5 of the Federal Trade Commission Act, once they have been bought in compliance with the Standard.

Respectfully,
/s/ Bernard H. Ehrlich

Letter of Request

April 21, 1970

Gentlemen:

This letter is being written because of serious problems created by the above Standard for members of two associations which I represent, if the Standard is held to be applicable to them.

Prompt attention to this matter is urgently requested for the reason that if the Standard is not ruled to be inapplicable, the time is already running for taking this question to the United States Circuit Court of Appeals.

The two associations are the Institute of Industrial Launderers and the Kex National Association. These associations have as members over 750 laundry plants, whose total volume of business is in excess of 800 million dollars. These companies, among other services provided to the public, rent "entrance" mats to commercial concerns, government and business establishments.

A study of the above Standard suggests that its primary aim is to control the flammability of those pile floor-coverings, both in the private and public sectors, which are permanently installed for esthetic effects or functional benefits. More basically, the Standard seems designed to protect a housewife and her family when she buys and uses a carpet as well as eliminating the installation or use of carpeting in such places as hotels, when the carpeting may be dangerously flammable.

It should also be noted that the purpose of the Standard, as stated in

the Notice, is to protect the public against unreasonable risk of the occurrence of fire arising from the hazards of rapid flash burning or continuous or slow burning or smoldering and that the Standard "is *limited* to carpets and rugs" which currently present such unreasonable risks. The rental entrance mats do not present such unreasonable risks, as other carpets or rugs may. Their very name describes their function. They are normally comparatively small, used just inside the entrance to hotels, office buildings or other establishments, to remove dust from the shoes of people entering the building. They are not used throughout the building as are other carpets and rugs. They are normally not in contact or proximity to drapes and other furnishings.

It is the purpose of this letter to present certain problems of the entrance mat industry under the above Standard which indicate that the Standard is not applicable to this industry.

During 1962, the rental industrial laundry industry introduced to its customers a rental mat (rug), treated with a chemical, that was placed in building entrances for the express purpose of collecting and holding dust from shoes when people walked across the mat surface. The item became so popular that it was and is, used throughout buildings to police traffic lanes and to improve the buildings overall cleanliness level. This development was so successful that building owners and maintenance managers are conditioned to demanding entrance mats in their establishments. A new concept, a new industry, sprang from that development that took place only eight years ago.

Obviously, these mats become soiled and must be cleaned. Representatives of the industrial laundry have prescribed schedules, usually weekly, for picking up soiled mats and leaving clean ones at the point of use. The soiled ones are returned to the laundry where they are washed at temperatures of 200° F., with heavy alkali and detergent charges to remove the collected soil and the dust collecting chemicals. Then, after many rinses, fresh dust collecting chemical is added, the mat is dried and is rolled for delivery to the customer.

The basic product used by industrial laundries in meeting the demand for "entrance" or "dust control" mats is a tufted mat having a cut-pile cotton surface, a heavy duck backing and a highly skid-resistant latex back-coating. This product is made in various dimensions to meet various demands.

Other mats have a pile made from synthetic fibers, for example, nylon, polyesters and acrylics and these pile yarns are tufted into various supporting backing fabrics, such as glass scrim, polyester non-wovens and cotton duck. As a final backing, the assembly is fused into a vinyl chloride film usually about 100 mils thickness.

It must be assumed at the outset that after the effective date of the Standard, all mats purchased by the laundries will be in compliance with the Standard because the obligation of meeting the Standard is placed on the manufacturer at the time of sale. It is my view that it is only at that point that the obligation is imposed.

The laundry should be considered the ultimate consumer of the rugs and therefore not subject to the Standard.

It is quite obvious that neither the Flammable Fabrics Act nor the Standard applies to consumers.

For example, a housewife buys a rug, properly treated to conform to the Standard. But, being a very fussy housewife, she washes or shampoos her rug every day. It may be that, after a period of time, she has washed away the fire-retardant qualities of her rug. It is quite clear under these circumstances that neither she, nor the manufacturer who originally and properly sold her the rug, is liable for a violation of the Act or the Standard.

Similarly, a hotel may buy and lay a rug which complied with the Standard when sold to it by the manufacturer. Over a long period of time, the rug may be washed or shampooed on many occasions. It may reach the point where it will not meet the Methenamine pill test, either with or without the 10 pre-test washings. Nevertheless, it is quite clear that under those circumstances, neither the original manufacturer or seller nor the hotel keeper, is in violation of either the Act or the Standard.

This is obviously because the Act and the Standard do not attempt to follow the rug for its lifetime in the hands of the ultimate consumer, under all and varying conditions of use and care. It seems to be clear that the Act and the Standard cease to apply when the rug has reached the hands of the consumer.

This is supported by two factors which I consider to be conclusive as to the applicability of the Standard.

1. The Notice of Standard, as published in the Federal Register, in the final paragraph, sets up an "effective date" and provides that all

** * * carpets and rugs, manufactured for sale on or after that date shall comply with the Standard. (Emphasis supplied)*

2. I have been advised by the office of the General Counsel of the Department of Commerce that it was neither its design nor intent to formulate a Standard to be applied other than at the time of manufacture and sale and that the Standard is neither designed nor intended to apply to the rental "entrance" mat industry.

In our view, the laundry is the consumer. The mat or rug is purchased by the laundry for use in its business, not for resale. It remains the property of the laundry until it is worn out and discarded.

The business of the laundry is renting out these rugs temporarily. At various times the rug may be in storage at the laundry, not rented out and not in use. At times the rug will be in the process of washing at the laundry or on the laundry truck. At other times, it is temporarily in use at the premises of a customer, but still belongs to the laundry as a part of its business or business service.

In many way, this situation is analagous to that of the housewife who is not covered by the Standard or the Act. Nevertheless, she may well lend her rug to a neighbor. She may give it to her daughter. Or, as very frequently happens, she may rent her house to a tenant, furnished, including the rug, without any requirement that the rug must then meet the Standard. The rug having complied with the Standard at the time of purchase, she is freed of any responsibility in her later transactions, including rental of her house, furniture and rug.

Similarly, the laundry purchases a rug which must, at the time of purchase, comply with the Standard. The laundry is the consumer, purchasing the rug for use in its business, just as the hotel keeper is the consumer, using the rug in its business. The hotel keeper rents rooms to customers, including the furniture and rug, just as the laundry rents the rug to customers. There seems to be no difference between renting a rug to a customer and renting a room, furniture and rug to a customer. Yet each time a hotel keeper rents a room and rug to a customer, he is not required to see to it that his rug, originally bought in compliance with the Standard, will still meet the test prescribed by the Standard.

As another illustration, suppose the owner of an office building, instead of renting an entrance mat, makes an outright purchase of the mat. Thereafter, the responsibility for washing, cleaning and processing for dust attraction becomes his. Any such purchase he makes must comply with the Standard at the time of purchase. But it is quite clear that he has no further responsibility under the Act or the Standard, as a consumer, to see that for the life of the rug, no matter how much he washes it, it must always be in condition to meet the test prescribed in the Standard. There is no essential difference whether he buys the rug and cleans it himself, or rents one from a laundry which cleans it for him.

Nowhere is there any statement as to when the test should be applied to see whether a rug meets the Standard, except the statement in the Notice of Standard that it must meet the test when manufactured for sale. Obviously, the rug must meet the Standard when it is sold by the manufacturer. But after that, when it is in use on a hotel floor, for example, must it still meet the test? And for how long? One month? Five years? Ten years? In varying periods the rug, once in

use, may never have been washed or may have been washed fifty times. It is impossible to conceive that the Standard contemplated that when a rug has been on a hotel floor for five years, inspectors may then come along and cut eight samples out of the rug, give them 10 more washings in addition to whatever number it already had on the floor and then subject the samples to the pill test.

And just imagine an inspector showing up at Mrs. Brown's house five years after she bought a rug for her living room, cutting eight samples out of her living room rug, and then testing them!

The very fact that at any time after the manufacture and sale, mere testing for compliance compels destruction, again indicates that such future testing is not contemplated. It is one thing to apply a test at time of manufacture when a sample may be drawn from a run. It is entirely different to try to apply a test at a later time. Even if a rug is still in a retail store, for sale, to test at that time would be to destroy the rug by cutting out all the necessary samples. The same would be true of testing a rug or carpet on a living room or hotel room floor. It seems absurd to say that a Standard applies at a time when testing involves destruction. Rather than destroy in order to test, the carpet or rug might just as well be thrown out without testing.

All of the above problems and illustrations inescapably compel the conclusion that one test and only one test is contemplated and that test is at the time of sale by the manufacturer. Indeed, as already mentioned, this has been confirmed to me by the Department of Commerce.

It may be that at some future date, a determination may be made that rental entrance mats should be covered by a Standard. If so, a Standard can then be drawn to cover the industry and to cope with its problems, which was not even attempted in the present Standard, and designedly so.

Nevertheless, the mere enactment and publication of a Standard, without specific exemption of the rental entrance mat industry, has created confusion and raised doubts on the part of members of the industry, which can only be put to rest by a ruling that this Standard is not applicable.

For all of the above reasons, it is urgently requested that the Federal Trade Commission issue a ruling that rental entrance mats are not subject to the above Standard or testing under the Standard, once they have been bought in compliance with the Standard.

Again may I stress that your prompt action will be greatly appreciated since the time for appeal to the Court is already running.

Many thanks for your kind cooperation.

Respectfully,

/s/ Bernard H. Ehrlich

Suppliers advertising in a customer's proposed catalog. (File No. 703 7108)

Opinion Letter

June 4, 1970

Dear Mr. Walter:

This is in response to your request of April 30, 1970 for an advisory opinion.

The Commission is of the view that the proposed course of action is subject to the requirements of the Clayton Act, section 2 (d), as amended. Thus, the proposed payments by suppliers to you for advertising would be unlawful ". . . unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities." Were you "knowingly to induce or receive" a payment made in violation of the Clayton Act, Section 2 (d), as amended, the Federal Trade Commission Act, Section 5 would be violated also.

By direction of the Commission.

Letter of Request

April 30, 1970

Dear Sirs:

We request an advisory opinion on the legality, as it pertains to your agency's scope, of the following new venture that we are considering.

We propose to purchase products from manufacturers for resale to consumers. Sales of these products, by us, would be generated through dissemination to prospective customers of a publication consisting solely of catalog pages featuring the products that we stock.

Manufacturers of the products we stock and sell would be offered advertising space within this catalog at the rate of \$3000 for one-half page, \$6000 for a full page. They could use this space for any purpose. These manufacturers could purchase as much advertising space in this catalog as they wished, regardless of the volume of their sales to us.

Manufacturers who do not sell to us would not be eligible to advertise in this publication.

We ask for your opinion as to whether this type of marketing firm would violate any laws or regulations enforced by the FTC.

Cordially,

ELECTRONIC DISTRIBUTING & MARKETING

Edward J. Walter

Publisher

Tripartite advertising promotional plan using grocery shopping carts. (File No. 703 7096)

Opinion Letter

June 10, 1970

Dear Mr. Graham:

This is in further response to your letters of March 26 and April 10, 1970 requesting an advisory opinion regarding a tripartite advertising promotional plan whereby National In Store Advertising Company would lease advertising space on bascart (grocery shopping carts) or similar equipment from supermarkets and other stores and establishments.

The Commission has carefully considered the plan as outlined in your letters and concluded that implementation of the proposed plan would probably violate Section 2(d) of the amended Clayton Act.

By direction of the Commission, with Commissioner Elman not concurring.

Supplemental Letter of Request

April 10, 1970

Dear Mr. Steinbach:

It is my understanding that the above matter has been assigned to you for consideration and appropriate handling.

After I wrote to Mr. Shea on March 26, 1970, requesting an advisory opinion as to the Plan of our client, National In-Store Advertising Co., I had some further discussion with our client concerning Guide 7 of the Commission's Guides (May 29, 1969). Our client wants to make certain that it will be complying with this Guide and it has authorized me to advise you that it will inform all competing customers that if they take part in the plan, they will receive the larger of either:

(A) Four (4) Dollars per year for each bascart used or sign placed (or some other specified amount to all competing customers), or;

(B) One-percent (1%) of the total amount paid by said competing customer to any third party whose product is advertised in said plan.

Our client hopes that this will comply completely with Guide 7. If not, please let us know and our client will attempt to amend its plan to comply.

Sincerely yours,
Donald K. Graham

Letter of Request

March 26, 1970

Dear Mr. Shea:

This firm represents the National In-Store Advertising Company, Inc. which is incorporated under the laws of the State of Mississippi. Our client is planning to enter into a tripartite promotional plan and the purpose of this letter is to request an advisory opinion from the Commission concerning the validity of this plan.

The basic plan of our client is to lease advertising space on bascart or similar equipment from supermarkets and other stores and establishments. Our client would pay to the supermarket and other competing customers \$1.00 per 13 weeks period for each bascart upon which our client's advertising appears. The amount paid by our client would be the same to all lessors, i.e. \$1.00 for each bascart. Our client would furnish to the lessors advertising signs which would be affixed by the lessors to their bascart. In the event a store or other establishment which desires to participate in the plan does not use bascart or similar equipment, it would be given an opportunity to lease equivalent space to our client on a counter or wall of its premises. The size of such signs would be the same size as the signs on the bascart and the amount paid to the lessor would be the same, i.e. \$1.00 for each such sign. After our client has leased this advertising space, from a supermarket or store, it would rent such space to third parties for the advertising of their products. The lessors and such third parties would have no direct relationship and there would be absolutely no financial arrangements between them with respect to the advertising by our client.

It is the intention of our client to give all competing supermarkets, stores and other such establishments the opportunity to participate in the plan on proportionally equal terms to the extent possible. Any competing customer desiring to participate in the plan would be permitted to do so and our client would pay each customer the same amount for each advertising sign placed on a bascart or elsewhere on the premises. No special allowances would be made to any customer.

Our client will take reasonable action to inform all competing customers of the availability of its plan. Notice of the availability and essential features of the plan will be placed periodically in publications of general distribution in the trade in each area where our client offers its plan. In the event competing customers do not elect to participate in the plan at its inception, they will be permitted to participate at any later time if they so desire. Our client also will attempt to contact competing customers directly to the extent possible. This will be done by mail and by direct personal contact by salesmen where pos-

sible. If these methods of notification prove inadequate, other methods will be utilized.

As indicated above, all supermarkets and other stores and outlets which have bascart may participate in the plan. However, all other competing customers may also participate even though they do not use bascart. Such customers will be permitted to lease advertising space to our client on the same terms as the customers using bascart. No competing customer will be excluded from the plan by our client and no customer will receive more favorable terms than any other.

Our client will inform all competing customers of the details of its plan and in so doing will provide them with sufficient information to give a clear understanding of the exact terms of the offer, including all alternatives, and the conditions upon which payment will be made. Our client will take reasonable precautions to see that services it is paying for are furnished. This will be done by periodic checks of the premises of the supermarkets and other competing customers leasing advertising space to our client.

Our client intends to operate its business on a national basis. It will offer its plan to all competing retailers in any area where the plan is put into effect.

In entering into lease agreements our client will make every effort to comply with Guide 13 of the Guides for Advertising Allowances and Other Merchandising Payments and Services which was promulgated by the Federal Trade Commission on May 29, 1969.

Please let us know if additional information concerning this plan is required and we will see that you receive it promptly. In the event the member of the Commission's staff who reviews this plan finds any objection to it, we would greatly appreciate his contacting us and giving our client an opportunity to revise the plan in order to eliminate the objection.

We hope that this request for an advisory opinion can be given prompt attention and we will look forward to an early reply.

Sincerely yours,
Donald K. Graham

Statistical reporting program implemented through a national institute. (File No. 703 7107)

Opinion Letter

June 10, 1970

Dear Mr. Conner:

Reference is made to your request for an advisory opinion governing a proposed statistical reporting program to be implemented through the National Plant Food Institute.

The plan you have submitted and accompanying papers are incorporated by reference herein.

In summary, however, the Commission understands your proposed plan to be as follows:

Those industry members who are members of National Plant Food Institute will be invited and urged to participate in the program. Industry members who are not members of National Plant Food Institute will also be invited and urged to participate in the program. Individual companies will confidentially provide specified data to a third party. The third party, preserving the confidentiality of the data as to individual companies, will assemble the information received and will derive therefrom specified ratios and aggregate figures. These ratios and aggregates will be made freely available on a non-discriminatory basis to all who may have need of them. No projections or estimates as to the future are contemplated.

There is nothing inherently unlawful in what you propose and the Commission would not object if you were to implement your plan. You are cautioned, however, that an unlawful trade restraint would result if you were through concerted action improperly to use the gathered information in a way which would restrict the freedom of action of those who buy and sell.

By direction of the Commission.

The Proposal as Submitted

July 15, 1969

TO: Members, NPMI Executive Committee

FROM: E. M. Wheeler

Gentlemen:

A preliminary proposal for a financial data project was approved by the Board at its June meeting. Since then, the Controller Committee has met and has made a few modifications in the proposal. These are minor but, since this is a new project—and one which we consider very important—I would like you to examine it carefully.

After receiving the Executive Committee's suggestions and approval, we will consult with counsel and secure any governmental approval deemed necessary to insure ourselves we are not running into antitrust problems. Completion of this step then takes us into a sales-ratification position with not only our own members but anyone else in the industry who desires to participate. *Unless we have broad support of the industry this effort will be meaningless.*

Since coming into the industry I have been impressed by two things:

One. A dearth of meaningful financial and statistical guide lines on which sound management decisions can be reached.

Two. An intense expressed desire by management to do a better job for its customers, stockholders and employees.

The proposed Fertilizer Industry Financial Report is designed to help the industry to attain the desired goal as outlined in "Two" above. I urge your approval and support.

Attached is the outline of the proposal prepared by the Controller Committee. This outline is a condensation of many hours of work by a top-notch group of men in our industry. Undoubtedly, some of your own personnel have contributed to it. (See attached committee list.)

As is done with the Fertilizer Index, all individual company data will be handled in a strictly confidential manner by a highly reputable accounting firm. Twice yearly the data will be prepared and a public report in dollars (Exhibit "A") will be released together with the aforementioned ratios as outlined in detail on pages 7 and 8.

Simultaneously, your own company data will be converted to ratios and returned only to you for individual company study and action.

We have discussed this project with three of the top eight national firms. Estimates thus far indicate that the cost of the project is well within our budgeted item of \$15,000.

I look forward to getting your response on this by Thursday, July 31.

SUBJECT: *NPFI FERTILIZER INDUSTRY FINANCIAL REPORT*

I. Purpose and Primary Criteria

A. The Fertilizer Industry Financial Report has the objective of assisting management in decision making by providing :

1. Individual companies with key ratios and other other data which will enable closer scrutiny and more effective management of the industry's financial condition, as well as enabling a company to compare its data with those of the industry.

2. Information such as that concerning profit levels and returns on investments that can be useful in :

- (a) Improving the industry's image with financial and other public groups.

- (b) Providing protective evidence in objection to additional taxation or other regulatory controls.

B. The following additional criteria are observed :

1. The data from which this information is obtained must be available or obtainable with minimum effort.

2. The information must be in keeping with the competitive structure of the industry.

3. The statistical information for the industry may be made available to the public.

4. The individual company reports to the tabulating organization will be kept *strictly confidential* and should never be sent to the NPFI.

5. The cost of tabulation and distribution will be borne by the NPFI.

6. All U.S. and Canadian companies in the industry may participate whether or not members of NPFI.

7. No information will be reported for a Class Where no more than three companies report or where one company's data represents more than 50% of the data reported for that Class.

II. Operating Detail

A. Reporting Companies:

1. Prepare the NPFI Fertilizer Industry Financial Report (See Exhibit A) for the 12-month period ended June 30 and the 12-month period ended December 31.

2. Mail the June 30 report to arrive at the Tabulating Bureau no later than August 15, and mail the December 31 report to arrive by February 15.

B. National Plant Food Institute:

Provide liaison between Tabulating Bureau and reporting companies.

C. Independent Tabulating Bureau (Selected from one of Big 8 CPA firms):

1. Supply reporting companies with list of companies participating in each category.

2. Summarize reporting company statistics into industry totals.

3. Compute ratios, trends and analyses for:

(a) Each reporting company

(b) Total industry

4. Provide each reporting company with its analysis and an analysis for the total industry.

5. Provide NPFI with industry data only.

D. Fertilizer Industry Financial Report Format—Line Caption Definitions:

NOTES.—1. Money items are reported in thousands of dollars.

2. Reported data is restricted as closely as possible to those related to the fertilizer business (data for other agricultural products may be included if they are an integral part of the fertilizer business and do not materially distort the data.) *Exclude* industrial chemicals.

3. Where related data such as sales or receivables are unavailable, both are ignored for ratio analyses.

1. Cash and Marketable Securities—Cash and marketable securities necessary to the efficient operation of the company's plant food business. (Line 1)

2. Trade Receivables, Net—Total amount of notes and accounts receivable from the sale of products and services collectible within one year. (Line 2)

3. Inventories—

(a) Plant Food Products—Cost of all fertilizer materials produced or purchased for resale or to be consumed in the manufacture of fertilizer products for sale. (Line 3)

(b) Other Agricultural Products—Cost of all other agricultural products produced or purchased for resale or to be consumed in the manufacture of other agricultural products. (Line 4)

(c) Supplies (Line 5)—

(1) Supplies used in the manufacture of finished goods but not becoming part of the finished product.

(2) Supplies which become a part of finished goods but which costs are not significant to the product value.

(3) Spare parts and small tools.

4. Other Current Assets—Current assets necessary for the normal operation of the fertilizer business not included elsewhere. (Line 6)

5. Total Current Assets—Total of all current assets used in the fertilizer business. (Line 7)
6. Property, Plant & Equipment—Includes cost of land, land rights, buildings, equipment, patents, trademarks and goodwill. (Line 8)
7. Accumulated Depreciation & Depletion—The accumulated charges to operations for depreciation and depletion of tangible assets and amortization of intangible assets. (Line 9)
8. Other Assets—All non-current assets common to the fertilizer business not included elsewhere. (Line 12)
9. Total Assets—All assets used in the ordinary operation of the plant food operations. Excludes long-term investments in non-plant food businesses. (Line 14)
10. Sales, Plant Food in Tons—Report total tons of all plant foods sold. (Line 15)
11. Sales, Net—
 - (a) Plant Food—All sales of plant food products and services, less discounts and allowances. Include export sales. (Line 16)
 - (b) Other—All sales of other products and services complementary to the plant food business and which are more or less common to the industry, less discounts and allowances. (Line 17)
12. Cost of Sales—
 - (a) Plant Food—As defined in reporting company accounts. (Line 19)
 - (b) Other—As defined in reporting company accounts. (Line 20)
13. Gross Profit—Total sales less total cost of sales. (Line 22)
14. Selling, General & Administrative Expense—
 - (a) Research & Development—Basic research in new plant food process and product development. (Line 24)
 - (b) Advertising & Promotion—(Line 25)
 - (c) Other Selling, General & Administrative Expenses—All S. G. & A. not reported in Research & Development or Advertising & Promotion. Includes all Home Office allocations directly identifiable to the plant food portion of the company's business and offsite warehousing expenses. (Line 26)
15. Interest Income—Notes Receivable. (Line 29)
16. Service Income—Accounts Receivable—Finance charges to customers on open account. (Line 30)
17. Other Income (Expense), Net—Financial and other income and expense items not included in another caption. NOTE: Interest on long-term debts and federal taxes on income is excluded from this report. (Line 31)
18. Net Income, Before Interest & Taxes—Computed before interest on long-term debts and federal taxes on income. (Line 33)
- E. Fertilizer Industry Financial Report Format—Columnar Heading Explanations (Report one Class only).
 1. Basic Potash Producers (Column I)
 2. Basic Integrated Company—One which produces one or more N-P-K products and sells these products wholesale and/or retail. May or may not also purchase other plant foods for production and resale. (Column II)
 3. Non-Basic Integrated Company—One which buys plant food products for resale at wholesale and retail levels. (Column III)
 4. Intra-Industry Sales Elimination—Avoid duplication of sales and cost of sales by eliminating sales to other companies participating in the Cooperative I Information System. A list of other reporting companies which should be eliminated will be provided by the tabulating service. (Column IV)

5. Supplementary Statistics—

(a) Retail Operations—Defined as sales to the ultimate consumer, e.g., farmers, gold courses, fruit growers, etc. (Column VI)

(1) Sales, Net—Plant Food—Total sales of products and services, less discounts and allowances. (Line 16)

(2) Cost of Sales—Plant Food—Laid—in cost of materials to the retail outlets. On-site costs for labor, equipment (including depreciation), etc. are excluded from this caption.

(b) Plant Food Inventory—Report plant food inventory at the end of each month. (Column VIII)

(c) Trade Receivables, Net—Report receivables from sale of all agricultural products at the end of each month. Include receivables from all sales reported on line 19. (Column IX)

(d) Number of Employees—Report number of employees on the payroll at the end of each month. Include temporary help. (Column X)

(e) Total Payroll Expense—Report all direct compensation such as salaries, wages and commissions, unemployment compensation, social security, vacation pay, insurance and other such payroll expenses. (Column XI)

F. Formulae for Various Possible Ratios and Other Statistics.

1. Net Income Before Interest & Taxes	=	Line 34
Total Assets	=	Line 14
2. Total Sales	=	Line 18
Total Assets	=	Line 14
3. Plant Food Inventory Turnover	=	Line 19 Average of Column VIII
4. Receivables Turnover	=	Line 18 Average of Column IX
5. Total Assets Per Employee	=	Line 14 Average of Column X
6. Capital Expenditures, Net	=	Line 11 end of current year Less Line 11 end of preceding year
7. Capital Expenditures, Gross	=	Line 8 end of current year Less Line 8 end of preceding year
8. Gross Profit to Sales	=	Line 22 Line 18
9. Net Income to Sales	=	Line 34 Line 18
10. Research & Development as a percentage of Sales	=	Line 24 Line 18

- | | | |
|---|---|--|
| 11. Advertising & Promotion as a percent-
age of Sales | = | $\frac{\text{Line 25}}{\text{Line 18}}$ |
| 12. Payroll Expenses as a percentage of Sales | = | $\frac{\text{Total of Column XI}}{\text{Line 18}}$ |
| 13. Financial Cost of Total Assets (Prime
Rate) | = | Line 14 $\times$ (Prime Rate) |
| 14. Financial Cost of Total Assets (Effective
Rate) | = | Line 14 $\times$ (Prime Rate—80%) |

**Disclosure of origin of imported parts of a seam ripper which is
assembled in the United States. (File No. 703 7111)**

Opinion Letter

June 11, 1970

Dear Mr. Ament:

This reply is in response to your request for permission to label your Arrow Seam Ripper as "Made in USA."

According to the Commission's understanding of the facts, the blade is made in West Germany and the plastic handle and sheath are made in the United States. After assembly in the United States, the seam ripper is attached to a display card for resale to the general public.

The Commission has given careful consideration to this matter and has concluded that it would be improper to label the seam rippers as "Made in USA." It is also of the opinion that a clear and conspicuous disclosure of the country of origin of the imported blade should be made on the front panel of the display card. If you desire, you may disclose the domestic origin of the handle and sheath.

By direction of the Commission, Commissioner Elman not concurring.

Letter of Request

April 16, 1970

Attn: Mr. Paul A. Jamarik
Attorney-Adviser

Dear Sir:

Today, we have been advised by Mr. Hugh B. Helm, Chief Division of Advisory Opinions, that our inquiry regarding the labeling of our Seam Rippers has been forwarded to your offices.

Enclosed please find a card which illustrates this item.* In case there

*The illustration is not reproduced herein.

should be a question, please be kind enough to contact us, and we shall gladly furnish you with any information you still might require.

Looking forward to receiving your favorable decision,

Very truly yours,
HERMAN AMENT, IMPORT-EXPORT
Norman L. Ament

Disclosure of origin of imported treble hooks used in the manufacture of fishing lures. (File No. 703 7101)

Opinion Letter

June 16, 1970

Dear Mr. Boehm:

This reply is in response to your request for an advisory opinion in regard to the question of whether it is necessary to disclose the foreign country of origin of imported treble hooks used in the manufacture of fishing lures.

According to information which you have supplied to the staff, the hooks will be imported from Norway and Sweden. They will represent less than 10% of the cost of producing the finished product, with the remaining 90% representing the cost of American-made components used in the manufacture of the fishing lures.

In the absence of any affirmative representation that the fishing lures are made in their entirety in the United States, or any other misrepresentation that might mislead purchasers as to the country of origin, the Commission is of the opinion that, under the facts as presented, the failure to mark the origin of the imported hooks will not be regarded by the Commission as deceptive.

By direction of the Commission.

Letter of Request

April 3, 1970

Gentlemen:

Many of our members manufacture fishing lures, the component parts of which are all made in the United States with the exception of the fishhook which is imported. For clarification purposes, we would very appreciate an advisory opinion from you as to how these products should be marked.

Thank you for your help.

Very truly yours,
A. J. Boehm
Executive Director

**Franchise program for automobile replacement glass business.
(File No. 703 7102)**

Opinion Letter

June 16, 1970

Dear Mr. Rudnick:

This is in response to your recent letter requesting an advisory opinion with regard to the proposed franchise program of the Globe Glass Company.

The Commission understands that the program will operate as follows: Globe proposes to franchise qualified persons (principally existing automobile replacement glass businesses) to conduct an automobile replacement glass business, incorporating Globe methods and procedures including the mobile installation service, under Globe's trade names and trade and service marks. Among the provisions of the franchise agreement outlined in your letter, we note that Globe will place no restrictions on the franchisee's pricing policies, operating territory or customers to be served. Globe further proposes to charge an initial franchise fee, an advertising fee to be spent for advertising and promotion, plus a royalty and service fee for the use of its trade names and trade and service marks, in addition to various training, consulting, accounting and other services to be rendered by Globe to its franchisees. Globe states that franchisees will be completely free to purchase part or all of the glass requirements from other sources, provided minimum specifications are met.

However, we note that "Globe proposes to reduce the royalty and service fee payable by a franchisee in proportion to the volume of his purchases of replacement glass from Globe. The proportionate reduction in royalty and service fees will be available to all franchisees on the same basis, though it is not intended that these reductions be based on any 'cost justification' formula."

The Commission has carefully considered your proposal and is of the view that its implementation in the manner described would be in violation of Section 3 of the Clayton Act, and possibly of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. Provisions in the franchise agreement whereby the franchisee is precluded from dealing freely in the goods of competitors under pain of higher royalty and service fees are subject to Section 3 of the Clayton Act, and, insofar as such royalty and service fees are reduced to certain purchasers, a price discrimination under Section 2 of the Clayton Act, as amended, may result as to competing customers.

By direction of the Commission, with Commissioner Elman not concurring.

Letter of Request

March 19, 1970

Dear Mr. Secretary:

In accordance with Section 1 of the Procedures and Rules of Practice of the Federal Trade Commission, we hereby request an advisory opinion of the Commission with respect to the legality under Section 5 of the Federal Trade Commission Act, Section 3 of the Clayton Act and Section 2 of the Robinson-Patman Act of the franchise program described herein.

Globe Glass Company ("Globe") is a large installer of replacement automobile glass purchased from several manufacturers and processors. Automobile glass replacement is a highly competitive business with many individual business units in varying in size from annual volumes of \$50,000 to \$10,000,000. At the present time Globe operates through approximately 13 company owned stores, all of which offer a mobile service (i.e., damaged automobile glass is replaced at the customer's home or place of work). Globe proposes to franchise qualified persons (principally existing automobile replacement glass businesses) to conduct an automobile replacement glass business, incorporating Globe methods and procedures, including the mobile installation service, under Globe's trade names and trade and service marks.

Globe proposes to offer to sell to its franchisees at competitive prices part or all of their requirements for replacement automobile glass. The franchisees would be completely free to purchase part or all of their glass requirements from other sources, provided minimum specifications are met. Globe further proposes to charge an initial franchisee fee for the grant of the franchise and a royalty and service fee for the use of its trade names and trade and service marks and various training, consulting, accounting and other services to be rendered by Globe to its franchisees on a continuing basis. Globe may also charge an advertising fee to be spent by it for advertising and promotion.

Globe anticipates that it will earn a profit on sales of replacement glass to its franchisees sufficient to reimburse it in part for the services to be rendered to them. Globe desires to earn a reasonable fee for its services to its franchisees and does not desire to collect a full royalty and service fee in addition to its profit on sales of replacement glass. Accordingly, Globe proposes to reduce the royalty and service fee payable by a franchisee in proportion to the volume of his purchases of replacement glass from Globe. The proportionate reduction in royalty and service fees will be available to all franchisees on the same basis, though it is not intended that these reductions be based on any "cost justification" formula.

The undersigned believes the proposed plan is distinguishable from the Brown Shoe case by reason of the franchisee's complete freedom of choice: he can pay for the services to be received as a franchise by payment of a full royalty and service fee and purchase his requirements of replacement glass from any source whose products meet minimum specifications; or he can purchase glass from Globe in sufficient quantities and pay a proportionately reduced royalty and service fee.

No restrictions will be placed by Globe on the franchisee's pricing policies, operating territory or customers to be served.

The franchise program described herein is not presently in effect (i.e., Globe has granted no franchises as of the date hereof and has no existing agreements or arrangements with any automobile replacement glass business other than its own stores). Globe is not presently the subject of any investigation or other proceeding by the Commission or any other Government agency.

Globe will appreciate having the Commission's advisory opinion at the Commission's earliest convenience. We will promptly supply any additional information that the Commission deems to be required to render its advisory opinion.

Sincerely,
Lewis G. Rudnick
for RUDNICK & WOLFE

Publication by consultants of monthly bulletin on a subscription basis to suppliers of metal fabrications. (File No. 703 7112)

Opinion Letter

June 23, 1970

Dear Mr. Reynolds:

This is in response to your request for an advisory opinion.

The Commission understands that you propose to publish a monthly bulletin for circulation on a subscription basis to suppliers of metal fabrications. The publication would list the original equipment manufacturer's name, the name of his purchasing agent, a brief description of his requirements for metal fabrications for the month including sizes, shapes, quality, quantity, engineering difficulty or sophistication and closing dates for accepting quotations on these requirements.

The Commission is of the view that implementation of the proposed course of action in the manner described would not violate any law administered by the Commission.

By direction of the Commission.

May 19, 1970

Attention: Mr. Henry Williams

Dear Mr. Williams:

Please consider this letter and the contents herein as being in lieu of our letter of May 11, 1970.

We are anticipating the publication of a monthly activities report, similar to the Dodge Report in the building industry.

Using this report as an example, we would like to describe in detail what our intentions and plans are. The Dodge Report is a publication which goes to subscribers of its services who are interested in the construction and building industry. These interested parties would be contractors, soils and structural engineers, architects, mechanical contractors, construction suppliers and developers. The publication *circulates* to its *subscribers* every *contemplated building project* that it has listed with its service. The interested parties named above are, therefore, in a position to make their availability known to the building or project owner, to offer their services in their respective fields or to submit bids on different phases of the construction.

By the same token, our proposition is of a similar nature, but will be directed toward metal fabrication manufacturers in Ohio.

We have been engaged by, for and with manufacturing for 15 years, serving in our capacity as consultants. In these years of experience, we have seen a need for a greater communications tool between the original equipment manufacturers and the metal fabrication suppliers to know one another's needs and capabilities, respectively.

As an example * * * XYZ Corporation manufacturers (or assembles) finished kitchen ranges. In order to produce these finished ranges, fabricated metal parts must continually be purchased from outside sources (the metal fabrication supplier). Most original equipment manufacturers (the finished range manufacturer) deals with or purchases his fabricated metal parts, from only a small number of metal fabrication manufacturers.

This is due, many, many times, to a lack of exposure of *other* metal fabrication manufacturers who could *also* be in a position to offer their facilities to this range manufacturer.

By the same token, the range manufacturer may quite often have a requirement for a metal fabricated part that is more difficult to produce than his normal requirements. His present suppliers perhaps are not equipped to supply him with his requirement . . . so the manufacturer (XYZ Corp.) must quickly locate another source . . . but

this is difficult to do because of inexperience of himself and of his many possible suppliers.

Our solution to the problems I have mentioned and many more related problems is to produce a monthly publication, circulated to subscribers only.

This publication would list the Original Equipment Manufacturer's name, the name of their Purchasing Agent, a brief description of their requirement for the month, including sizes, shapes, quality, quantity, engineering difficulty or sophistication, and the opening and closing dates for accepting quotations on these requirements.

This publication would be circulated to our metal fabrication supplier subscribers, who would study the listings . . . determine what they are or are not capable of producing . . . and then submit quotes directly to the Purchasing Agent on the parts that they are capable of producing.

This would provide the metal fabrication supplier with an equal opportunity to bid or submit quotes, and would supply the original equipment manufacturer with a wider range of facilities, capabilities and prices.

As we see it, this would fill a supply and demand need on a much larger scale, and on a more competitive basis to both the original equipment manufacturer and the metal fabrication supplier.

Our concern at this point is whether the law provides for such a publication?

Are the purchasing needs of a publicly held corporation public knowledge?

Does this violate any trade regulations? Or, are there any regulations with which a publication of this nature must comply?

Again, we wish to state that our main concern is to provide a greater opportunity for small metal fabrication suppliers to bid or submit quotes on original equipment manufacturers' requirements, and to provide the original equipment manufacturer with a greater variety of suppliers from which to choose.

We see a definite need and wish to use our experience in filling that need.

Your prompt reply to our inquiry will be most appreciated. We shall await word from you.

Sincerely,

JOHN E. REYNOLDS, INC.

John E. Reynolds

President

Letter of Request

May 11, 1970

Gentlemen:

We are anticipating the publication of a monthly activities report, similar to the Dodge Report in the building industry.

This publication, however, would be listing the needs of Original Equipment Manufacturers in the area of metal fabrication.

As we see it, at present, original equipment manufacturers are accepting quotes or bids from only a small number of suppliers for their metal fabrication requirements. This, we feel, is because the original equipment manufacturer is not fully aware of the many metal fabrication suppliers who have the facilities and knowhow to quote on their requirements.

By the same token, the metal fabrication suppliers are not aware of the many original equipment manufacturers who have a definite need for their products at any given time.

We propose to approach all of the original equipment manufacturers in Ohio to request from them what their monthly needs are in the metal fabrication field.

Our next step would be to tabulate their individual needs in the same manner as Dodge Report, and then publish and put on the market, the results of these tabulations.

This would allow any interested metal fabrication supplier, his salesmen or representatives to purchase this report monthly at a very low dollar amount. This, in turn, would provide the metal fabrication supplier with an equal opportunity to bid or submit quotes to the original equipment manufacturers in Ohio.

As we see it, this would fill a supply and demand need on a much larger scale, and on a more competitive basis to both the original equipment manufacturer and the metal fabrication supplier.

Our concern at this point is whether the law provides for such a publication?

Are the purchasing needs of a publicly held corporation public knowledge?

Does this violate any trade regulations?

Are there any regulations with which a publication of this nature must comply?

Is there such a service to the best of your knowledge?

Again, we wish to state that our main concern is to provide a greater opportunity for small metal fabrication suppliers to bid or submit quotes on original equipment manufacturers' requirements, and to

provide the original equipment manufacturer with a greater variety of suppliers from which to choose.

For your information, we have been in metalworking market research for fifteen years and are well aware of this communications problem and, we feel this would be a fair and equitable approach to solving it.

Your prompt reply to our inquiry will be most appreciated. We shall await word from you.

Sincerely,
JOHN E. REYNOLDS, INC.
John E. Reynolds
President

Sale of denture cleanser to grocery wholesalers and related outlets at higher prices than product is now being sold to drug wholesalers. (File No. 703 7115)

Opinion Letter

July 22, 1970

Dear Mr. Millane:

This is in further reference to your request of June 12, 1970, for Commission advice concerning your proposal for selling denture cleanser to grocery wholesalers and related outlets at higher prices than the product is now being sold to drug wholesalers.

As the Commission understands your submittal, the product is now being sold directly to drug wholesalers with suggested consumer and retail prices published in the Drug Topics' *Red Book* and the American Druggist's *Blue Book*. You intend to expand distribution by selling to wholesale grocers and others through brokers while continuing your direct sales to drugwholesalers. Because of the difference in selling costs as between direct and brokerage house sales you propose other than drug wholesalers, such increase to reflect and include only the fees paid to brokerage houses for their services in selling your product.

The Commission is of the view that to the extent the higher prices to be charged grocery wholesalers and related outlets include an amount paid brokers by your firm for their services in connection with the sale of your product an unlawful discount or allowance in lieu of brokerage will have been accorded drug wholesaler recipients of the lower prices.

Accordingly, the Commission is of the opinion that institution of your proposed pricing program would expose your firm to charges of

granting unlawful discounts or allowances in lieu of brokerage to drug wholesalers in violation of Section 2(c), amended Clayton Act. Under the circumstances of your presentation your direct buying customers, the drug wholesalers, would be exposed to charges of receiving or accepting an unlawful discount or allowance in lieu of brokerage in violation of Section 2(c), amended Clayton Act.

By direction of the Commission.

Letter of Request

June 12, 1970

Dear Mr. Helm:

We manufacture a denture cleanser presently in distribution only in Orange County, California. We sell directly to the drug wholesalers without the use of brokers and/or agents. Our suggested consumer and retail prices are published in the Drug Topics' *Red Book*, and the American Druggist's *Blue Book*.

We intend to expand our sales and distribution into the grocery and related outlets, and to utilize the services of brokers. We will continue to service the drug wholesalers direct, at least in the Southern California Area.

We are confronted by the problem of different selling costs between direct sales and brokerage sales and the restrictions of the Clayton Act. We wish to raise the wholesale price to the grocery and related wholesalers, over what we now charge the drug wholesalers. The amount of the increase would directly reflect the increase in selling costs.

We believe that Paragraph 2(a) of the Clayton Act allows us to increase the price as outlined above, and would appreciate your comments and opinion.

Thank you for your cooperation, and are anxiously awaiting your reply.

Very truly yours,
NORVAL COMPANY
Arthur J. Millane

Tripartite promotional plan in the grocery field. (File No. 703 7106)

Opinion Letter

August 3, 1970

Dear Mr. Miller:

This is in response to your further request in behalf of Mobile Advertising, Inc. for an advisory opinion.

The Commission has carefully studied your letter of April 16, 1970, as amended by your letter of April 22 and 27, 1970, and as further amended by your letter of June 12, 1970.

With the understanding that the alternatives, as proposed in the revised plan, must be truly of equivalent value and appropriately communicated to the retailers, the Commission is of the view that implementation of the proposed course of action in the manner described would not violate the laws administered by the Commission.

By direction of the Commission.

Third Supplement to Letter of Request

June 12, 1970

Attention: Henry Williams, Esq.

Re: Mobile Advertising, Inc. File No. 703 7106

Honorable Sir:

Reference is made to the application for an advisory opinion set forth in the letter of the undersigned dated April 16, 1970 (as amended by the letters of the undersigned dated April 22, 1970 and April 27, 1970) and the response to said application contained in the recent letter of the Secretary of the Commission. In light of the comments of the Commission, the applicant has reformulated the portion of its plan found to be objectionable and hereby amends its plan in the following respect:

Retailers who elect to participate in the applicant's plan shall be required initially to select one of two available methods for determining the amount of payment to which they shall be entitled.

Under the first alternative, participants with an annual gross volume over \$150,000 will receive an aggregate per annum payment from the applicant at the rate of \$43 per \$100,000 of the participant's annual gross volume and participants with an annual gross volume of \$150,000 or less will receive an aggregate per annum payment from the applicant at a rate of \$60 per \$100,000 of the participant's annual gross volume, with a minimum payment of \$60.

Under the second alternative, payments to participants shall be computed on the basis of the case purchases made by the participant of the products advertised (e.g. \$.10 per case). A different value shall be assigned to each particular product advertised; however, the value shall be consistently applied to determine payments to retailers electing this method of computation, subject to one exception: retailers whose annual gross volume is \$150,000 or less shall have a value assigned to the products which they purchase which shall be 40% greater than that applied to the purchases of participants whose annual gross volume is over \$150,000 (e.g. \$.14 per case).

In all instances, retailers which have trucks available to be utilized under the plan shall earn their payments by carrying the applicants advertising frames thereon. In all other instances (in which trucks are not available), the participants shall earn its payments by performing alternative services referred to in the plan as originally submitted which it is able to perform; the amount of such services to be proportionally comparable with those performed by truck operators.

The applicant's plan, as previously submitted, shall in all other respects remain unchanged.

At this time I respectfully request that the applicant's plan, as modified, be examined by the Commission and that an advisory opinion be rendered.

I offer you any assistance which I may be able to render in facilitating this matter.

Respectfully submitted,
Michael Miller

Second Supplement to Letter of Request

April 27, 1970

Attention: Henry Williams, Esq.
Re: Mobile Advertising, Inc.
Honorable Sir:

As General Counsel to the above captioned corporation and on their behalf, the undersigned hereby submits this additional amendment to its letter of request for an advisory opinion dated April 16, 1970 (as previously amended by letter dated April 22, 1970).

In the last paragraph of page two of the aforementioned letter of request, the applicant states that in the instance of an operator who is a wholesaler, the revenue to be distributed will equal 35% of the gross advertising revenue generated by the frames viz: 10% to be retained by the wholesaler-operator and 25% to his customers i.e., independent retailers.

Please be advised that the 25% figure is a maximum allowance and is to be disbursed only in exchange for services rendered by such independent retailers, such as in-store signs, handbills, local advertising, etc. The amount of services to be performed will be comparable to those performed by competing retailers who operate trucks and participate in the plan. The nature of the services to be performed will be those which a retailer is able to provide. The disbursement is to be made only on proof that the required services have been rendered.

Respectfully submitted,
Michael Miller

First Supplement to Letter of Request

April 22, 1970

Attention: Henry Williams, Esq.

Re: Mobile Advertising, Inc.

Honorable Sir:

As General Counsel to the above captioned corporation and on their behalf, the undersigned hereby submits, at your request, this amendment to its letter of request for an advisory opinion dated April 16, 1970.

In the first paragraph of page three of the aforementioned letter, the applicant refers to cash allowances to be paid to entities desiring to participate in the applicant's proposed plan who are unable to do so. It is not stated in the letter how the *total* amount of the cash allowance is to be computed.

Where the entity desiring to participate in the plan is an operator of leased trucks whose lessor will not consent to the operators' participation in the plan, applicant will give such operator a cash allowance (for services rendered) equal to the amount such operator would have received had it participated in the plan. To compute such figure, applicant will assume that the rate of "fill" (i.e., number of signs with advertising thereon) for the entity's trucks is equal to the rate of fill in the marketing area in which such entity is located.

Where the entity desiring to participate in the plan is a retailer whose wholesaler does not participate, applicant will give such retailers a cash allowance (for services rendered) equal to the amount they would have received had the wholesaler participated. Once again, the computation of such figure will be based upon the number of trucks the wholesaler operates and assuming a rate of fill experienced in the wholesaler's marketing area.

The relative distributions of such cash allowance will be made as stated in the April 16th letter and will be in exchange for the services enumerated therein.

Respectfully submitted,
Michael Miller

Letter of Request

April 16, 1970

Attention: Henry Williams, Esq.

Re: Mobile Advertising, Inc.

Honorable Sir:

As General Counsel to the above captioned corporation and on their behalf, the undersigned hereby submits this request, in lieu of letters

of request submitted to you dated March 20, 1970 and March 30, 1970, for an advisory opinion with respect to a proposed plan of said corporation.

I. THE PROPOSED PLAN

The applicant proposes to lease rights from operators of food store chains and grocery product wholesalers to install advertising frames on their trucks. The leases are to be for a period of five years. It is intended that each truck involved be equipped with eight frames, four on each side of the truck.

The advertising frames will each measure 2'6" in height by 6' in width. The applicant will install, maintain and service (change advertisements) the frames which are to be supplied by the applicant. If the operator so elects, he will install, maintain and service the frames, which will be supplied by the applicant, and the operator will be reimbursed for the expenses of such services up to the following maxima:

Installation-----	\$100 per truck.
Maintenance and servicing-----	\$30 per truck per month.

Advertising will be sold to food and grocery store products manufacturers. The rate for advertising will be a uniform \$30 per frame per month.

The applicant intends to offer the benefits of this plan to every food products distributor, including chain stores, cooperative wholesalers, voluntary wholesalers and unaffiliated independent groceries.

The participating operators of trucks will be paid for the lease of the rights they grant to the applicant in the form of a percentage of the gross advertising revenue generated from the frames on its trucks. In the instance of an operator which owns its own retail food outlets, such operator will receive 25% of the gross advertising revenue from the frames installed upon its trucks. Since the rate of advertising will be \$30 per month per frame, such operator will receive \$7.50 per frame per month ($\$30 \times 25\%$) as his revenue for permitting the installation upon his trucks of the frames. Clearly, this rate will be utilized by the chain stores and the cooperative wholesalers since in each instance the operator of the truck is also the owner of the retail outlets. Each such operator will be required to verify that it does not receive any benefits of the Plan in the form of payments from participating wholesalers with whom it deals.

In the instance of an operator who is a wholesaler selling products to retail food outlets which it does not itself own, the revenue to such operator will be 35% of the gross advertising revenue generated from the frames on his truck, or \$10.50 per frame per month ($\$30 \times 35\%$). In this case the operator of the trucks will be required, as part of his

contract with the applicant, to covenant and certify to the applicant that he will distribute an amount equal to 25% of the gross advertising revenue from the frames on his trucks to his customers (independent retailers). In other words, such operator retains 10% of the gross advertising revenue for administering the plan and distributed 25% of the gross advertising revenue to the retailers who are in competition with the chain stores and cooperative wholesalers who are also receiving 25% of the gross total revenue from frames for their participation in the plan. In distributing the proceeds to his customers, the wholesaler will be required to make such distribution upon the basis of the relative dollar amounts of purchases by the independent retailers from the operator to be computed upon the basis of a period to be determined and consistently applied and limited to purchases of the products advertised.

In instances where a potential participant communicates to applicant a desire to participate in the plan but cannot because either it is a retailer whose wholesaler does not participate or it is an operator whose truck lessor will not consent, such entity will be given a cash allowance to be utilized for services it is able to provide, such as in-store signs, handbills, local advertising, etc. The relative amounts of such allowances will be based upon the relation of each recipient's volume in the products advertised to the total volume of all participants in such products.

Assignments of advertising to the participants' trucks will be in the exclusive control of the applicant. In instances where the advertiser has not purchased complete market coverage (i.e., his ad is not on every truck in the market) the applicant will apportion the advertising among the participants' trucks to be utilized by allotting each participant the percentage of the trucks needed for the ad that his trucks bear to all participating trucks in the market.

Upon approval of this plan by the Commission, the applicant intends to implement the plan throughout the United States on a region by region basis. In each region the applicant will engage specialized direct mail houses to distribute announcements to the headquarters of every food chain, every cooperative wholesaler, every voluntary wholesaler, every grocery wholesaler, and each and every individual independent grocery retail outlet and their owners which have been in existence for six months or more. Further, the applicant will advertise in appropriate trade journals and shall also release publicity statements to appropriate trade and financial publications.

II. DISCUSSION

It is clear from the above-proposed plan that payments received by the applicant from manufacturers which are disbursed by applicant

to truck operators in the food distribution business are advertising allowances subject to Section 2(d) of the Robinson-Patman Act. The following discussion relates the applicant's proposed plan to the Guides For Advertising Allowances And Other Merchandising Payments and Services, promulgated by the Commission on May 29, 1969 (hereinafter called "Guides").

An analysis of the applicant's proposed plan as it relates to the Guides will be facilitated by a general discussion of the market to which the applicant will offer such plan. Essentially, there will be four types of enterprises participating: Chain stores ("chains"), retailer-owned cooperatives ("cooperatives") and wholesalers ("wholesalers") selling to independent retailers ("independents"). It is clear that individual Independents cannot participate on their own, since in almost all cases these entities do not own the trucks necessary to effectuate the plan. (They do, however, receive the same benefits as their competitors as shown below.)

Of these four types of enterprises, three are deemed to be operating at the retail functional level of distribution, viz: Chains, Cooperatives and Independents. The remaining type, i.e., Wholesalers, are deemed to be operating at the wholesale functional level of distribution. (See *FTC v. MEYER*, 390 U.S. 341, 19 L.Ed. 122, 88 S. Ct. 904; and Guide 3, including definition therein of "Competing Customers" and *Example 2*.) However, the individual Independents who are customers of the Wholesalers are operating at the retail functional level of distribution. (*Ibid*)

Therefore, Chains, Cooperatives and Independents (herein in the aggregate "Retailers"), are "competing customers" of the advertisers and the applicant's plan must be equally available to them upon proportionally equal terms (Guides 3 and 12). On the other hand, Wholesalers are not "competing customers" of the Retailers and the terms offered to the Wholesalers need not be proportionally equal to those offered to the Retailers (*FTC v. MEYER, supra*; and Guide 3). However, the terms offered to competing wholesalers must be proportionally equal (Guide 12).

Although the applicant is proposing to offer only one plan, there are adjustments in the terms to afford proportional equality to all competing customers. When the plan is offered to a Wholesaler, the plan provides that such operator shall receive 35% of the gross advertising revenue generated by the frames on his trucks. Ten percent of the gross advertising revenue is to be retained by the Wholesaler and 25% of the gross advertising revenue is to be distributed to the Independents who are his customers. Therefore, 25% of the gross advertising revenue is distributed at the retail functional level of distribution. When the plan is offered to a Retailer (Chains or Coop-

eratives), the plan provides that such operator shall receive 25% of the gross advertising revenue generated by the frames on his trucks. Once again, therefore, there is a distribution of 25% of the gross advertising revenue at the retail functional level of distribution.

According to the terms of the plan, therefore, all competing Retailers are given equal terms and the plan itself does not discriminate in favor of any particular class of customer (Guide 12). This also holds true for the application of the plan with respect to all competing Wholesalers. The disparity of offering 25% to Retailers and 10% to Wholesalers is permitted by the holding in *FTC v. MEYER, supra*.

The aforementioned equality of terms would be a useless gesture in attempting to offer proportional equality were it not for the existence of a natural market phenomenon: There is a direct relationship between the volume of business generated by a store and the number of trucks required to service its needs. A large chain store retail outlet will require the same number of trucks to service its needs. A large chain store retail outlet will require the same number of trucks to service its needs as such number of competing Independents which have, in the aggregate, the same volume as such chain store outlet.

The applicant's research indicates that each trailer truck handles approximately \$1,700,000 in volume per annum. A sample of the data compiled by applicant follows:

Name of entity	Number of trucks	Volume
Loblaw, Inc.	152	\$248,000,000
P. & C. Food Markets, Inc.	52	87,000,000
S. M. Flickenger Co., Inc. (wholesaler)	140	240,000,000
Victory Markets, Inc.	61	105,000,000
Acme Markets, Inc.—Buffalo	41	62,000,000
Acme Markets, Inc.—Syracuse	52	76,000,000

Therefore, the greater the volume of an entity the greater its number of trucks; the more trucks it has, the greater the service it provides for advertisers (i.e., reach and frequency). This relationship in the number of trucks to the store's volume effectuates a natural proportional equality when added to the equality of terms offered by applicant's plan.

To further insure a proportional equality of terms to competing Independents, the applicant is requiring the participating Wholesaler to distribute the retail portion of the gross advertising revenue upon the basis of the relative dollar volumes of its customers during a specific period to be determined and consistently applied, and limited to the purchases of products advertised.

Taking all of the factors discussed above into consideration, it becomes reasonably apparent that applicant's proposed plan provides proportionally equal terms required by Guide 7.

Guide 9 mandates that a plan ". . . should in its terms be usable in a practical business sense by all competing customers." There is no question about the usability of the plan by competing Wholesalers since they are all required by the nature of their business to operate trucks. At the retail level, this plan is clearly usable by the Chains and the Cooperatives which operate their own trucks as a part of their business operations. The only entities at this level not able to participate in that are the Independents. However, these entities are the recipients of the economic benefits of the plan upon proportionally equal terms with their competitors through the participation of their Wholesalers.

Guide 9 further provides: "With respect to promotional plans offered to retailers, the seller should insure that his plans or alternatives do not bar any competing retailer customers from participation whether they purchase directly from him or through a wholesaler or other intermediary." On its face the plan effectuates the intendment of this clause. The plan is "functionally available" to all competitors insofar as all share equally the benefits of participation . . . whether they own trucks or not. The excellent economic incentives provided for in the plan (highly profitable passive income to participants) almost insures participation by most Wholesalers. Further protection is afforded to the Independent by the provision in the plan that proportionally equal cash allowances will be given to Independents whose Wholesalers do not participate in exchange for services they are able to provide, i.e., in-store signs, handbills, local advertising, etc. Also, the applicant believes that the offer of its plan to the Retailers through Wholesalers will create a situation similar to that referred to in *Example 5* of Guide 8, viz: The Independents will request the Wholesaler to participate in the plan and receive from the applicant 10% of the gross advertising revenue for administering the plan. In the instance of an operator who desires to participate but cannot because he leases his trucks and cannot obtain his truck lessor's consent, the same cash allowance will be offered in exchange for the services enumerated above. The entire effect of all these provisions of the plan is to effectuate the availability of the plan to all competing customers in accordance with Guide 9.

The applicant proposes to utilize an alternative provided for in Guide 8, i.e., Its notification will include a summary of the essential details of the plan and the method to contact the applicant, either for more information or for participation. The notice will state that the

plan is available to all entities desiring to participate. The applicant will be in charge of informing prospective participants of the existence and terms of the plan and the applicant's contract with the advertisers will so covenant pursuant to Guide 13. The applicant will also undertake to verify the effectiveness of its notifications and will require the Wholesalers to distribute and certify such distribution made to the Retailers. These undertakings will be made by the applicant pursuant to Guide 13 and will be adequate to meet the standards of Guide 8. (See Proposed Plan for the details of notification.)

III. GENERAL

The proposed course of action described herein is not currently being followed by the applicant and is not the subject of a pending investigation or other proceeding by the Commission or any government agency.

The undersigned and the applicant undertake to amend and supplement the information described herein at your request prior to submission to the Commission for approval. Please be so kind as to contact the undersigned prior to submission to the Commission of any problems or disqualifications of the proposed plan herein described.

At this time I respectfully request that approval of this proposed plan be expedited to the extent that you are able in order to permit the applicant to embark upon its proposed plan at the earliest possible date.

I offer to you any assistance which I may be able to render in facilitating this matter.

Respectfully submitted,
Michael Miller

Tripartite promotional plan involving the placing of pictures of advertised products on shelves of retail stores. (File No. 703 7117)

Opinion Letter

August 7, 1970

Dear Mr. Gomon:

This reply is in response to your request for an advisory opinion in regard to the legality of the proposed promotional plan outlined in your letters of May 13 and June 11, 1970. The plan will involve the placing of pictures on shelves in retail stores handling the sale of those products.

The Commission has given careful consideration to your request and has concluded that it would interpose no objection thereto, provided the following three conditions are met:

plan is available to all entities desiring to participate. The applicant will be in charge of informing prospective participants of the existence and terms of the plan and the applicant's contract with the advertisers will so covenant pursuant to Guide 13. The applicant will also undertake to verify the effectiveness of its notifications and will require the Wholesalers to distribute and certify such distribution made to the Retailers. These undertakings will be made by the applicant pursuant to Guide 13 and will be adequate to meet the standards of Guide 8. (See Proposed Plan for the details of notification.)

III. GENERAL

The proposed course of action described herein is not currently being followed by the applicant and is not the subject of a pending investigation or other proceeding by the Commission or any government agency.

The undersigned and the applicant undertake to amend and supplement the information described herein at your request prior to submission to the Commission for approval. Please be so kind as to contact the undersigned prior to submission to the Commission of any problems or disqualifications of the proposed plan herein described.

At this time I respectfully request that approval of this proposed plan be expedited to the extent that you are able in order to permit the applicant to embark upon its proposed plan at the earliest possible date.

I offer to you any assistance which I may be able to render in facilitating this matter.

Respectfully submitted,
Michael Miller

**Tripartite promotional plan involving the placing of pictures of
advertised products on shelves of retail stores. (File No.
703 7117)**

Opinion Letter

August 7, 1970

Dear Mr. Gomon:

This reply is in response to your request for an advisory opinion in regard to the legality of the proposed promotional plan outlined in your letters of May 13 and June 11, 1970. The plan will involve the placing of pictures on shelves in retail stores handling the sale of those products.

The Commission has given careful consideration to your request and has concluded that it would interpose no objection thereto, provided the following three conditions are met:

1. Since the proposed plan calls for your performance of certain obligations which are normally performed by the supplier, Guide 13 of the "Guides for Advertising Allowances" (see enclosed copy) must be complied with by you and by all participating suppliers.

2. If the cooperatives referred to in your plan are retailer-owned cooperatives, you may compensate the headquarters of such cooperatives for the services they perform in connection with the plan. However, you may not compensate directly the retailers who own the cooperative because this would amount to double compensation and be discriminatory against those who purchase directly or through jobbers or wholesalers. (See example 2 of Guide 3.)

3. To avoid any possible misunderstanding, it is suggested that the free offer and option to pay actual costs of the pictures be clearly explained in all promotional literature so that the exact terms and conditions will be understood by all prospective participants of the plan. In this connection, please see Guide 6 (d) and Guide 10.

By direction of the Commission.

Supplemental Letter of Request

June 11, 1970

Dear Mr. Jamarik:

In reference to your letter of June 9, 1970 and our phone conversation of June 11, 1970 the following is a complete list of the methods by which Frank Gomon Associates intend to do business:

1. FGA will make a national offering, on an equal basis to all retailers by direct mail, of the free service which supplies pictures of those products which the retailer has authorized for display and sale on metal hooks and/or gondola shelving. This offer is ultimately for the retailers in the grocery, variety, drug, hardware, stationery, discount and department store fields.

2. Some retailers are afraid of "FREE" offers. For those we will make this service available on a cost basis to them. All who wish to pay will be charged on an equal basis, example:

a. Retailer "X" signs up for the free service—his bill—"NO CHARGE".

b. Retailer "Y" signs up for the service on a cost basis—his bill for 100 pictures at 5¢ each—\$5.00.

c. Retailer "Z" wants the same as "Y" except he takes 200 pictures at 5¢ each—his bill will be \$10.00.

3. Retailers will be notified that the major source of revenue comes from the suppliers.

4. Initially we may limit our marketing to each state, with national coverage our ultimate objective.

5. We intend to seek permission from the retailers to send these pictures by mail to each store and pay the retailer a fair and reasonable sum of money to install them. All retailers will be offered the same amount of money per picture they install, example:

a. Retailer accepts and installs 100 pictures. We send him a check for $\frac{1}{2}$ of 1¢ per picture or 50¢.

6. In return for making our offer known, on an equal basis, to all their accounts and forwarding all picture orders to us for ultimate distribution, each jobber, wholesaler, intermediary, voluntary and/or cooperative will be offered the same amount of money that we pay each account for the installation of our pictures. This payment is in return for securing the orders. Any and all offers of money to the above mentioned organizations will be on an equal basis.

Yours truly,
Frank Gomon

Letter of Request

May 13, 1970

Dear Mr. Helm:

This is an urgent request for an advisory opinion.

Mr. Rufus Wilson's advise to me, based on our long distance telephone conversation on Wednesday, May 13, 1970, was to stress the fact that time is of essence.

Frank Gomon Associates will offer to all retailers on an equal basis, the free service of installing pictures on only those products which are authorized for display and sale on metal pegs by the retailers.

To get this service for free, the retailers in the Grocery, Variety, Drug, Hardware, Department, Stationery, and Discount fields nationally will be asked to sign the enclosed agreement.

If the retailers wish, they may purchase this service.

All retailers will be charged equally, based on the number of products they wish represented, and the number of stores they have.

All testing in this area indicates that the retailer will accept this service if it is approved by the F. T. C. These retailers questioned indicated that they are afraid of any new program, in light of the recent problems with the F. T. C.

The retailers are also aware that the major source of revenue comes primarily from the suppliers of those products represented on the Metal Pegs only.

A rapid response will be greatly appreciated.

Very truly yours,
Frank Gomon, Associates

Distribution of weekly magazine through retail outlets in the New York metropolitan area. (File No. 703 7116)**Opinion Letter*

August 12, 1970

Dear Mr. McCann:

This is in further response to your letters of April 28 and May 5, 1970, relative to an advisory opinion with respect to the distribution of a weekly magazine through retail outlets in the New York metropolitan area.

The Commission has given careful consideration of this matter and is of the view that implementation of the proposed course of action in the manner described would be in violation of the statutes administered by it for the reason that the plan is not considered functionally available to all classes of customers competing in the distribution of the advertisers' goods.

By direction of the Commission.

Supplemental Letter of Request

May 5, 1970

Dear Mr. Helm:

On April 28, 1970, I filed with you, on behalf of the above reference Company, a request for an Advisory Opinion with respect to the business of the Company and its status under the Clayton Act, as amended by the Robinson-Patman Act.

As supplemental information to that request the Company has asked me to advise you that the magazine to be published by the Company will be made available to all retail grocery stores in the New York metropolitan area on the basis of one magazine per \$1,000 in annual retail sales. It is our understanding that the practice among distributors in the industry is not to break down a case of any product for particular retailers. Since the Company's magazines will be distributed in cases of not less than 250 magazines per case, it is likely that retailers with less than \$250,000 in annual sales will be unable to obtain the magazines from their distributors. For these retailers the Company will establish central distribution points from which magazines and appropriate allowances can be obtained by those retailers desiring to participate in the Company's program.

As stated in our letter of April 28, 1970, the Company will be unable to make this program available to all retailers in the New York metropolitan area until the beginning of the third quarter of its operation

*See 78 F.T.C. — for Opinion Letter of March 22, 1971, on revised plan submitted in letter of request dated January 15, 1971.

because of the scarcity of independent printing facilities in this area. Therefore, the commitment expressed in the preceding paragraph is qualified by this restriction.

Should you desire any further information or have any other questions, please feel free to call Mr. Arbour or myself at your convenience.

Very truly yours,
Joseph J. McCann, Jr.

Letter of Request

April 28, 1970

Dr. Mr. Helm:

I am counsel to a number of individuals who have formed a corporation under the name of In-Store Publications, Inc. to engage principally in the business of publishing a weekly magazine and in distributing it free to the consuming public through the distribution channels of large retail businesses, with the only source of income to the company coming from advertising revenues. The individuals promoting the business of the company have become concerned that the distribution of such a magazine may present possible violations of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. As you suggested in our telephone conversation, I am writing to request an Advisory Opinion with respect to the business of the company and its status under the Clayton Act.

The concept for the company ("the Company") is to take advantage of the vast patronage of several consumer-oriented retail establishments, selling the same or unrelated products, for the distribution of a popular, free magazine and to use this large potential audience to encourage consumer industries to advertise regularly and extensively in the magazine. The founders of the Company believe that such a concept on such a scale is novel in the publishing industry. Since the Company will receive no money for the distribution of the magazine, the success of the concept will depend entirely upon the consistency and size of advertising. The Company believes that its ability to insure an advertiser of a large distribution of the magazine will encourage potential advertisers to advertise in the magazine.

The Company's plan of operation, therefore, is initially to negotiate and enter into a series of agreements with wholesale distributors of grocery products and retail sellers of grocery products that act as their own wholesalers in the New York metropolitan area for the distribution of a television weekly magazine free to the consuming public. If the Company's business is successful, it will eventually expand its program to a national distribution. The Company has selected the retail grocery business and the New York metropolitan area as its initial market because it believes that this would be the area of its largest and

most consistent distribution. The agreements would contemplate the publishing and distributing by the Company to the wholesalers, at no charge, of a weekly television magazine containing a complete seven day television schedule, syndicated columns and feature articles and advertisements. Magazines would be distributed on the basis of one magazine per \$1000 of annual sales in the New York metropolitan area. This figure has been arrived at by allocating the estimated saturation point of four million magazines for the approximately eight million television homes in the New York metropolitan area among the total annual grocery sales in this area.

The magazine for all customers of the Company would be basically the same. However, because a wider, more economic distribution to the consuming public can be achieved through large volume retail customers, the Company intends to also offer those retail customers whose annual retail sales in the New York metropolitan area are in excess of \$75,000,000 their own individually stylized cover that identify the magazine as that of the customer (such as "A&P's T.V. Plus"), up to one-half of the contents page for advertisements or information that such customer might wish to insert, one full four-color page advertisement for one of the customer's private brand products, and the option of using four full center-fold sides in black and white for advertisements or other information that the customer may wish to insert or of receiving \$.0025 per copy of each issue of the magazine distributed by such customer. For retail customers with less than \$75,000,000 but more than \$50,000,000 in annual retail sales, the Company will provide a standard cover for the magazine with such customer's name stamped on it, will provide such customer with the option of using the four centerfold sides or of receiving \$.0025 per copy distributed, and, in lieu of the one-half of the contents page and the full page in color provided to retail customers with sales in excess of \$75,000,000, \$.000625 per copy distributed. Retail customers with less than \$50,000,000 in annual retail sales will receive a standard cover and magazine and, in lieu of the pages provided the larger retailers, \$.003125 for each copy distributed. Wholesalers who distribute magazines and appropriate allowances for the Company to independent retailers and who secure their agreements to distribute the magazines to the consuming public will receive \$.0005 per copy distributed to the independent retail customers. In addition, if a wholesaler distributing to independent retailers shall have annual sales in the New York metropolitan area to such retailers in excess of \$50,000,000, after deducting the sales of those retailers with sales in excess of \$50,000,000, he shall be entitled to use the four center sides of the magazines to be distributed to independents with less than \$50,000,000 or receive \$.0025 per copy distributed to such retailers. If such sales to such independents with less than \$50,000,000 in annual

sales in the New York metropolitan area are in excess of \$75,000,000, he shall also be entitled to use the one four-color page for an advertisement of one of his private brand labels in each of the copies to be distributed to such retailers or to receive \$.000625 for each such copy distributed. The stated annual sales figures have been determined on the basis of what approximate volume of magazines published in one format it becomes economically possible for the Company to change the format. The expense and time involved in changing pages within a particular issue mitigates against granting each customer certain pages for his exclusive use. In analyzing this cost, as against the possible revenues that might be able to be derived from these pages, the Company has determined that a run of 50,000 magazines is the approximate point at which certain pages can be stylized to suit a particular customer. At about 75,000 magazines, additional pages can be changed.

With the exceptional of the alternatives stated above, a customer of the Company will have no control over the content or stylization of the magazine. In return for publishing the magazine and distributing it to the wholesaler, the Company will obtain the wholesaler's agreement to (a) distribute copies of each issue free to his retail customers on the basis of one magazine per \$1000 of annual sales, (b) distribute to or credit in an appropriate manner his retail customers any allowances that may be due them under the Company's plan, (c) obtain the agreement of his retail customers to distribute one copy of each issue free to each of their customers, and (d) certify to the Company distribution figures of the magazine by the retailers and their appropriate allowances.

Based on its investigation of independent printing facilities available in the New York metropolitan area, the Company feels that the maximum possible distribution of its magazine for the first quarter of operation will be 2,000,000 copies per week. The Company, therefore, will not be able in the first quarter to offer the magazine to the estimated 4 million saturation point. It anticipates, however, that by the third quarter of its operation, it will be able to so extend the offer. For the first quarter (which is expected to commence with the beginning of the television season in September of 1970), the Company has offered the magazine to six grocery chains who are also their own wholesalers and to one grocery chain that acts as wholesaler for its own chain of retail stores and for a number of independent stores. The six chains that act as wholesalers only for themselves, will receive, if they accept the Company's offer, the additional benefits described above that accrue to a customer with annual sales in the New York metropolitan area in excess of \$75,000,000. The Company will treat the other chain as two distributors. The magazine with the individually stylized cover, etc. will be published for the distributor's own stores, since these stores have

annual retail sales in excess of \$75,000,000, while the independent stores purchasing from the distributor will receive the standard cover magazine and the allowances that accrue to retail stores with less than \$50,000,000 annual sales.

These particular distributors were selected because it was felt that they would present the easiest vehicle for introducing the magazine to a cross section of retail grocery stores and because of their reputation for flexibility in introducing new ideas.

While agreements are being negotiated with the grocery industry, the Company intends to offer advertising space in the magazine to consumer industries. The rate to be charged for space will be the same for all advertisers and will be comparable to that at which space is sold in magazines having a national distribution. It is expected that advertisers will consist not only of those whose products may be sold through food stores, but also of those whose products are not sold through grocer stores. Also, though the basic magazine may appear in a number of different grocery stores, it is possible that an advertiser's products may be sold exclusively through only one of the many grocery stores distributing the magazine. Except for their advertisements, advertisers will have no control over the contents or stylization of the magazine.

A proposed form of Agreement, a copy of which is enclosed for your assistance, has been submitted to those wholesalers in the New York metropolitan area that have their own retail stores and have annual sales in the New York metropolitan area in excess of \$75,000,000. It is expected that serious negotiations will begin with these companies shortly. Discussions have also been commenced with a number of potential advertisers. These later discussions have and will involve only Company personnel and at no time will a distributor of the magazines be permitted to take part in these negotiations. Potential advertisers will be informed, however, who the proposed distributors of the magazine will be.

The Company respectfully submits that its proposed plan of operation, as stated above, will not place it in danger of violating the provisions of Section 2 of the Clayton Act, as amended. Representatives of the Company will be pleased to discuss its proposed business with you or your representatives at your conveniences and are, of course, prepared to submit such further information as you may request.

Should you have any questions, please call collect the undersigned at 212-344-8900 or John G. Arbour, President of the Company, at 203-227-7291.

Very truly yours,
Joseph J. McCann, Jr.

Marking of origin of packaged ball bearings where only bearing races in unfinished form are imported from Japan with all other parts and components produced in the United States. (File No. 713 7001)

Opinion Letter

August 14, 1970

Dear Mr. Yamashige:

This is in reply to your request for an advisory opinion on behalf of NTN Bearing Corporation of America relative to the proper marking of the country of origin of packaged ball bearings where only the bearing races in unfinished form are imported from Japan with all other parts and components produced in the United States. In addition, all grinding, finishing and assembly of the packaged bearings will be done in the United States. You have supplied projected bearing production cost analyses indicating the race material and forming represents 22.5 percent of the production cost of the completed bearings.

The Commission has given careful consideration to this matter and is of the opinion that in accordance with the facts as outlined (a) the packaged bearings may not be marked as "Made in U.S.A." since such marking would constitute an affirmative representation that the finished product was made in its entirety in the United States, which is contrary to fact; and (b) in the absence of any affirmative representation that the bearings are made in the United States, or any other representation that might mislead the public as to the country or origin, and in the absence of any other facts indicating actual deception, the failure to mark the origin of these packaged bearings will not be regarded as deceptive.

By direction of the Commission.

Supplemental Letter Relative to Request

April 8, 1970

Dear Mr. Steinbach:

In reply to your letter of March 24, 1970, requesting more detail on the cost breakdown of the finished bearings to indicate the ratio of the cost borne in United States, we are still endeavoring to obtain this information at this time. Soon as we have more detailed information, we will furnish them for your consideration. Thank you.

Very truly yours,
George K. Yamashige

Letter of Request

January 9, 1970

Dear Sir

We respectfully request for your opinion on marking the country of origin as "Made in U.S.A." on the ball bearings machined and assembled in United States with its unfinished component parts imported from Japan.

The processing from the time of importation to the final finished bearing is as follows:

1. Bearing races in unfinished form imported from Japan.
2. Steel balls, retainers(cage), seals and shields imported from Japan.
3. Bearing races to be ground and polished in United States with American labor.
4. Steel balls, retainers, U.S.-made grease, seals or shields and the inner and outer races to be assembled in United States with American Labor.
5. The finished bearing to be sold in the U.S. market and for export.

In other words, majority of the final finished cost will be borne in United States after computing the costs of machining process, labor, engineering, grease operational overhead, transportation, U.S. customs duty, etc.

Also, we want to stress that the steel ore itself used for the unfinished bearing races, steel balls, retainers and shields to be brought in from Japan were originally exported to Japan from the United States.

From the standpoint of the ratio in the manufacturing process itself, majority of the work to complete the bearing will be done in United States.

It is hereby respectfully requested that your approval be given to mark the country of origin as the United States for our proposed product for the reason stated above.

Very truly yours,
George K. Yamashige
Assistant to the President

**Tripartite promotional plan involving in-store audio advertising.
(File No. 703 7109)**

Opinion Letter

August 28, 1970

Dear Mr. Apperson:

This is in response to your request in behalf of Hall, King, Stanfill Agency, Inc., for an advisory opinion relative to a promotional plan involving in-store audio-advertising.

It is the Commission's understanding of this matter that Hall, King, Stanfill Agency, Inc., as promoter will promote to participating retail outlets in-store audio-advertising through the use of taped background music with intermittent commercial announcements regarding products of the advertising manufacturer or supplier found in the store. There is involved in this promotional plan a "basic plan" wherein compensation to each store will be a net cash sum computed on the basis of a formula based on a fixed sum per 1000 persons (customers) exposed to the promotional announcement, less a determinable portion of the expenses in producing the announcements. The scale of expenses is based upon a formula per thousand persons plus fixed expenses of monthly charges for audio equipment, servicing, tapes and music.

The promoters herein offer two alternative plans to retailers. The Alternate Plan #1 is designed to take care of those outlets already providing background music, or who want a different music system. Alternate Plan #2 is designed to make the plan functionally available to all competing retail outlets by providing them with in-store promotional material such as window banners, posters, handbills and shelf displays, as well as the assistance of merchandising specialists.

Under the various plans offered compensation to each store or retail outlet will be a net cash sum computed on the basis of a formula composed of a fixed sum for each 1,000 persons exposed to each promotional announcement, less a determinable portion of the expense for producing the promotional announcement or providing the merchandising aides. In addition, the provisions for making the plan, with alternates, functionally available to all competing retailers have been set forth in substantial detail.

The Commission has given full consideration to this matter. With the understanding that the complete details of the basic plan and the alternates have been fully and appropriately communicated to all competing retailers, the Commission is of the view that implementation of the proposed course of action in the manner described would not violate the laws administered by the Commission.

By direction of the Commission.

Letter of Request

May 5, 1970

Dear Mr. Helm:

By letter of April 28, 1970, addressed to Mr. Joseph W. Shea, we requested the opinion of the Federal Trade Commission as to the conformity of a proposed tripartite promotional plan with Sections 2(d) and 2(e) of the Robinson-Patman Act, on behalf of our client, Hall, King, Stanfill Agency, Inc. (Promoter) an advertising agency in Memphis, Tennessee.

Pursuant to a telephone conference this date with Mr. Henry N. Williams of your office, we submit herewith a revised request which we desire to be considered in lieu of the original letter request, which may be disregarded.

The proposed plan will include Promoter, various manufacturers and suppliers of retail grocery store type products, and the various participating retail outlets for such products. Promoter will contract with the manufacturers and suppliers, or their representatives, for the promotion of their products at the point of purchase, including audio and other types of promotion, merchandising aides to check and advise on shelf layout, position and consumer response.

Promoter will furnish to the participating retail outlets, in-store audio-advertising through the use of taped background music with intermittent commercial announcements regarding the manufacturer's and supplier's products found in the store, as well as the assistance of merchandising aides.

It is anticipated that the program as constituted will relate primarily to grocery store type products such as bread, milk, canned goods, soaps, cigarettes, etc.

Promoter is not at the present time following the plan, and to the best of Promoter's knowledge the same course of action is not under investigation and is not subject, and has not been the subject of a current proceeding, order or decree by the Commission.

BASIC PLAN

Promoter will contract with various retail outlets for the exclusive right to furnish all audio advertising in the outlet. The contract will be of indefinite duration, with the right of either party to cancel on 30 days notice. Pursuant to the contract. Promoter will install in the outlet a tape recorder and sufficient speakers to enable the contents of the tape to be heard throughout the entire shopping area of the outlet, or, if desired, only in that part of the store where the grocery type products are sold.

Promoter will supply the outlet weekly with a long playing tape containing instrumental background music for use on the tape recorder. The tape will be approximately four hours in length and capable of continuous play throughout the business hours of the outlet, without manual rewinding.

The tape will also contain spot promotional announcements or advertisements of various products sold in the store. The announcements will usually be no longer than 15 seconds in length and no more frequent than one announcement every two minutes.

The selections of products advertised on any particular tape may easily be altered so that normally a tape furnished to a particular store will not carry announcements pertaining to grocery store type products not sold by the store, but may carry other advertising.

The store will be required to play the tape continuously during all open hours.

The installation and maintenance of the tape recorders and speakers will be at no initial cost to the store owners.

The Basic Plan will be offered to all retail stores competing for the retail sale of any product handled by the Promoter.

Each store desiring the Basic Plan will be required to pay a fixed monthly charge of \$40.00 to defray the cost, installation and maintenance of the audio equipment and tapes, a monthly cost of \$1.00 for each speaker necessary in the store, and \$5.00 per month for the music.

It is anticipated that Promoter will handle the promotion of numerous products and that each product manufacturer, or advertiser, will compensate the Promoter on the basis of the number of persons exposed to the advertising message. The Promoter will in turn compensate the retail outlet for the privilege of advertising in the store on a similar basis.

Compensation to each store or retail outlet will be a net cash sum computed on the basis of a formula composed of a fixed sum for each one thousand persons exposed to each promotional announcement, less a determinable portion of the expense for producing the promotional announcement, providing the merchandising aides, etc. The amount of the expense charged against the gross compensation to each outlet will be based on the percentage of time used for promotional announcements in each store and the number of persons exposed to the announcements in the store. (Attached hereto as Exhibit "A" is a scale of expenses based upon the presently anticipated expense unit of \$5.00 per one thousand persons at a maximum use).

For example, it is anticipated at the present time that the Promoter will credit each retail outlet with the fixed sum of \$1.1475 per announcement, per one thousand people reached, based on the traffic count in the particular retail outlet. Charged against this sum would be the expense factor computed on the basis of Exhibit "A" and using the presently projected cost unit of \$5.00 per one thousand persons with 100% of the retail stores advertising time being utilized. Normally the fixed credit multiplied by the number of products advertised will be greater than the expense charge.

At no time would any store be required to pay advertising expense computed on the scale in excess of base remuneration credited. The only fixed expense to each outlet will be the fixed monthly charge equipment, servicing, tapes and music.

It is felt that both the base method of compensation to the retail outlet, based on store traffic, as well as the method of computing expenses, is fair and non-discriminatory for all outlets, large and small. Both factors are based upon traffic count and not dollar volume. Experience shows however, that smaller outlets usually having less traffic, normally have a smaller dollar amount of purchases per customer.

ADVISORY OPINIONS WITH RECOMMENDATIONS

Based upon the expense scale (Exhibit "A") the outlets will also share expenses in proportion to store traffic, and therefore, both compensation and expenses are offered to all stores on a proportionally equal basis.

Attached hereto as Exhibit "B" is an example of the proportionate equality of the formula using two stores of varying volume of sales and traffic. It is apparent from the example that the smaller store having less than 1/6 of the dollar volume of the larger store but 3/5 of the traffic volume would receive about three-fifths as much from the Plan as the larger store. Attached as Exhibit "G" is a computation showing that, regardless of dollar volume, compensation at maximum advertising remains constant per one thousand persons.

Promoter will offer two alternate plans, either of which may be selected by any retail outlet.

ALTERNATE PLAN #1

In the event any competing outlet already provides background music or desires to select a different system of background music, the Promoter will offer an alternate plan functionally equivalent to the Basic Plan.

Under Alternate Plan #1 Promoter will provide the same electronic sound equipment to the outlet, and will provide tapes without background music, containing only intermittent promotional announcements similar to those on the tapes with music. The equipment will be capable of projecting the promotional announcements over the type of background music without otherwise interfering with the background music.

A retail outlet selecting the Alternate Plan will not be required to pay for the music, but all other expenses will be identical.

ALTERNATE PLAN #2

In order to make the Plan functionally available to all competing retail outlets the Promoter will offer a second Alternate Plan designed to provide retail outlets with in-store promotional material for the same products advertised on the tapes, without the necessity of using the audio system.

Such outlets will be furnished with promotional material such as window banners, posters, handbills and shelf displays, as well as the assistance of merchandising specialists.

Retail outlets using the second alternative plan will be compensated by Promoter on the basis of the store traffic using the same base compensation rate for each product promoted as is used for outlets selecting either of the two other plans for audio advertising. That is, two stores of comparable traffic volume, one using Alternate #1 and the other using Alternate #2 would each be credited with the same base compensation per product advertised.

There would of course be no charge for audio equipment, music or tapes to an outlet using the second alternate, however, there would be a fixed monthly service charge or cost to defray the cost of delivery equipment and personnel for the promotional material. This fixed cost is based on a reducing scale depending upon the volume of store traffic, starting with a minimum cost of \$4.00 per thousand persons. Attached hereto as Exhibit "C" is the proposed scale.

The base compensation to a store selecting the second alternate plan would also be reduced by a portion of the expense of producing and distributing the promotional material. The expense factor for Alternate Plan #2 will be computed on the same scale, Exhibit "A", as is used for the other two plans. Expenses

charged against base compensation under the second alternative will be accounted for separately however, and will be expanded only on promotional materials, etc., used for such plan.

It is anticipated that the net compensation to outlets using the second alternate plan will be approximately the equivalent of the net income received by an outlet of comparable size using the audio system. Attached hereto as Exhibit "D" is an example of two outlets using the second alternate, which may be compared to the examples on Exhibit "B".

Attached hereto as Exhibits "E" and "F" are examples showing the relative net income to one store computed under each Plan, and using different amounts of advertising time filled.

Promoter will offer the Plan to all customers competing in the distribution of each manufacturer's product handled by Promoter in selected trade areas.

It is felt that the proposed plan and the alternates will provide a system which will be functionally available on proportionally equal terms to all such competing retailers of grocery type products, including those retailers using vending machines. For example, should Promoter enter into an agreement with a cigarette or soft drink manufacturer to use Promoter's plan, the base plan would not be functionally available, however, under Alternate Plan #2 advertising and promotional material designed for display on vending machines could be furnished.

Promoter will require each manufacturer or supplier using the Plan to furnish Promoter with a list of all retailers of the manufacturer's product in the geographic area wherein the promotional plan is implemented, as well as retailers located on fringe areas and actually competing with those in the geographic area selected. Promoter will give notice to all such retailers that the promotional plan is available, either through direct mail, or through publication in newspapers and trade publications reasonably calculated to reach or notify every such retailer.

Promoter will also inform each supplier and each retailer using the plan that even though Promoter is acting as an intermediary in the plan, it remains the supplier's responsibility to take all necessary steps so that each of the supplier's customers who compete with one another is offered an opportunity to participate in the plan on proportionally equal terms through use of the basic plan or one of the alternate plans.

Promoter requests that you review the proposed plan and alternates and advise whether or not the plan conforms to the requirements of Section 2(d) and 2(e) of the Robinson-Patman Act.

In the event there is any question in regard to the proposed plan, any additional information needed, or in the event an adverse opinion is proposed, please notify the undersigned by collect telephone call, at Area Code 901, Number 525-5881.

Should it be determined that a conference with the Commission Staff would expedite an opinion on this matter, or be helpful in any manner, the undersigned will be available at the convenience of the Commission.

Sincerely,

MARTIN, TATE, MORROW & MARSTON

Lawson F. Apperson

EXHIBIT A

*Hall, King, Stanfill Agency, Inc.,
Expense scale for all plans*

Actual percent of advertising time used and paid for	Percent charged	Cost per 1,000=\$5 actual cost
100-----	100	\$5.00
95-100-----	99	4.95
90-95-----	98	4.90
85-90-----	96	4.80
80-85-----	94	4.70
75-80-----	91	4.55
70-75-----	88	4.40
65-70-----	85	4.25
60-65-----	82	4.10
55-60-----	79	3.95
50-55-----	76	3.80
45-50-----	73	3.65
40-45-----	70	3.50
35-40-----	65	3.25
30-35-----	60	3.00
25-30-----	55	2.75
20-25-----	50	2.50
15-20-----	45	2.25
10-15-----	40	2.00
5-10-----	35	1.75
0-5-----	30	1.50

Utilizing the maximum advertising time at one advertisement per 2 minutes, there are 30 announcements per hour or 300 spots in a 10 hour day.

In order to reach all persons using the store open 10 hours per day, an announcement must run once each 24 minutes or 25 times per 10 hour day.

Similarly, to reach one-half of the persons using the store, an announcement must run approximately one-half as many times.

Therefore, maximum advertising time would be 300 spots per day, ideally, with 12 products announced once every 24 minutes.

EXHIBIT B

Hall, King, Stanfill Agency, Inc., comparative examples, monthly basis

	Store A	Store B
Volume-----	\$1,000,000	\$150,000
Traffic:		
Per week-----	5,000	3,000
Per month-----	21,650	12,990
Total possible revenue ¹ -----	298.08	178.92
Expense charge per scale-----	-108.25	-64.95
Music-----	189.83	113.97
\$1 per speaker (probably 10)-----	-5.00	-5.00
	-10.00	² -4.00
Net compensation—Base plan-----	174.83	104.97
Add back music-----	5.00	5.00
Net compensation alternate No. 1-----	179.83	109.97

¹ \$1.1475 per 1,000 people reached per product advertised.

² Probably 4.

NOTE.—Fixed expense of \$40 per month is the same for all stores using electronic equipment and tapes.

EXHIBIT C

HALL, KING, STANFILL AGENCY, INC., FIXED CHARGE SCALE FOR ALTERNATE NO. 2
(NO AUDIO ADS)

Fixed charge for using P.O.P. ads program. This is a minimum charge for service, men, trucks, and special equipment to place and maintain point of purchase advertising material.

Traffic per month	Cost per 1,000	Cost per month
0-1,000.....	¹ \$4.00	\$4.
1-6,000.....	4.00	\$4 to \$24.
6-8,000.....	3.80	\$24 minimum to \$30.40.
8-10,000.....	3.65	\$30.40 minimum to \$36.50.
10-12,000.....	3.50	\$36.50 minimum to \$42.
12-14,000.....	3.25	\$42 minimum to \$45.50.
14-16,000.....	3.00	\$45.50 minimum to \$48.
16-18,000.....	2.75	\$48 minimum to \$49.50.
18-22,000.....	2.50	\$49.50 minimum to \$55.
22-30,000.....	2.25	\$55 minimum to \$67.50.
30,000 or over.....		\$67.50.

¹ Minimum.

EXHIBIT D

HALL, INC., STANFILL AGENCY, INC., COMPARATIVE EXAMPLE ALTERNATE #2
(NO AUDIO ADS)

Income or revenue credited will be based on same amount of money credited per 1,000 traffic count of each product as is credited to other stores using the base proposal or alternate #1. If these stores have enough product items in their stores, they can have 100 percent revenue coming in. This revenue will not be spent on music, spot advertisements, etc., but will be used for point of purchase advertising material and services.

	No. 1	No. 2
Volume.....	\$1,000,000	\$150,000
Traffic:		
Per week.....	5,000	3,000
Per month.....	21,650	12,990
Total possible revenue.....	\$298.08	\$178.92
Overhead—100 percent advertising filled.....	-108.25	-64.95
Total.....	189.83	113.97
Total.....	-54.13	-42.22
Total.....	135.70	71.75

NOTE.—Total possible revenue: \$1.1475 per 1,000 people reached per product advertised.

EXHIBIT E

Hall, King, Stanfill Agency, Inc., Comparative example

[Volume, \$100,000 approximately; traffic, 2,000 per week or 8,660 per month]

	Base proposal	Alternate No. 1	Alternate No. 2
Total possible revenue.....	\$119.24	\$119.24	\$119.24
Expense charge on 100 percent advertising filled.....	-43.30	-43.30	-43.30
Total.....	75.94	75.94	75.94
Equipment and tapes.....	-40.00	40.00	40.00
Speakers (2).....	-2.00	2.00	2.00
Music.....	-5.00		
Fixed charge.....			-31.61
Total.....	28.94	33.94	44.33

NOTE.—Total possible revenue: \$1.1475 per 1,000 people reached per product advertised.

EXHIBIT F

Hall, King, Stanfill Agency, Inc., Comparative Example

[Volume, \$100,000 approximately; traffic, 2,000 per week or 8,660 per month]

	Base proposal	Alternate No. 1	Alternate No. 2
75 percent advertising time.....	\$89.43	\$89.43	\$89.43
Expense charge on 75 percent advertising filled.....	39.40	34.40	39.40
Total.....	50.03	50.03	50.03
Equipment and tapes.....	40.00	40.00	40.00
Speakers (2).....	2.00	2.00	2.00
Music.....	5.00		
Fixed charge.....			31.60
Total.....	3.03	8.03	18.42

NOTE.—Total possible revenue: \$1.1475 per 1,000 people reached per product advertised.

EXHIBIT G

Hall, King, Stanfill Agency, Inc., Comparative Compensation on Volume and Traffic at Maximum Advertising Capacity

	\$1,000,000.00	\$150,000.00	\$100,000.00
Volume.....	\$189.83 ×12	\$113.97 ×12	\$75.94 ×12
Total.....	¹ 2,277.96	² 1,367.64	² 911.28
	21,650/month	12,990/month	8,660/month
Traffic.....	\$189.83=\$8.77/1,000	\$113.97=\$8.77/1,000	\$75.94=\$8.77/1,000

¹ 0.227 percent of volume.

² 0.9112 percent of volume.

**Marking of origin of music box toys containing musical units
imported from Switzerland and Japan. (File No. 713 7003)**

Opinion Letter

October 15, 1970

Dear Mr. Shaw:

This is in reply to your request for an advisory opinion on behalf of your client, Fisher-Price Toy Co., as to the proper marking of the country of origin of music box toys containing musical units imported from Switzerland and Japan.

According to the Commission's understanding of the facts, your client, in the manufacture of so-called "Swiss music boxes," utilizes musical units imported from Switzerland and later, from Japan as well as Switzerland. The manufacturer has been clearly indicating on each toy and on each carton for each toy, the origin for the particular music unit in that toy. Based on the experience of another toy manufacturer, not further identified as to the manufacturer or the toy, your client asks whether he can clearly mark both the toys and the cartons for these music boxes with the following notation: "Musical Movement Made in Switzerland or Japan"?

The Commission has given this matter careful consideration and is of the view that under the circumstances outlined above the dual designation of the origin of the musical unit of such toys would be confusing, misleading and may be deceptive.

By direction of the Commission.

Letter of Request

July 13, 1970

Gentlemen:

We have a client that makes toys utilizing what are commonly known as "Swiss music boxes". The actual musical movements were originally imported from Switzerland, and later have been imported from Japan as well as Switzerland. Great care is exercised to clearly indicate on each *toy* and on the *carton* for each toy the origin for the particular music unit in that toy.

It has recently come to our attention that another toy manufacturer marks its toys with the statement "Made in Hong Kong or Taiwan", and this has prompted us to inquire whether it would be permissible for our client to use a similar procedure for its toys using music units from Switzerland or Japan. Would it be acceptable if our client clearly marked both the toys and the cartons for the same with the following notation: "Musical Movement Made in Switzerland or Japan"? Our client guarantees the entire toy for one year, including the music unit, regardless of the country of origin thereof.

I would appreciate an advisory opinion on the above question. If I have not set forth the problem in the proper fashion or have not addressed my letter to the right department, please let me know. I will appreciate your help in obtaining an answer to this question.

Thank you for your consideration in this matter.

Cordially yours,
CUMPSTON, SHAW & STEPHENS
George W. Shaw

Proposed promotional game of chance for food retailing and gasoline industries. (File No. 703 7113)

Opinion Letter

November 13, 1970

Dear Sirs:

This is in response to your request for an advisory opinion regarding a promotion proposed by your client, Marketing Action Group, Inc.

In the Commission's opinion, the game as presented would not comply with the Trade Regulation Rule for Games of Chance in the Food Retailing and Gasoline Industries (16 CFR 419.1) since the game pieces would not be mixed "totally and solely on a random basis throughout the game program and throughout the geographic area covered by the game . . ." Since your present submittal did not include samples of proposed advertising, the Commission cannot, of course, pass upon the manner in which the game will be promoted, but it seems obvious that if the game is to be advertised over broad areas, perhaps on a corporate basis, the game pieces could not be said to have been mixed in accord with the clear requirement of the Rule if they are mixed and distributed in batches of five thousand.

However, the Commission believes that if certain adjustments are made the promotion can be brought into conformity with the requirements of the Rule. In a game such as the one proposed by Marketing Action, a key question is the extent of "the game program" and of "the geographic area covered by the game." You will note that paragraph 2 requires the disclosure of certain facts which tends to define these terms.

If in making the paragraph 2 disclosures Marketing Action clearly and conspicuously advertises the game on an outlet-by-outlet basis, the boundaries of the game for the purposes of the Rule will be each outlet. Since each outlet will be a separate game for the purpose of the Rule, all of the game pieces in each outlet must be mixed on a random

basis, *i.e.* all game pieces mixed together and at the same time. If Marketing Action truthfully advertises the game on an outlet-by-outlet basis and if it mixes together and at the same time all of the pieces to be used by each outlet, the Commission believes that the game of chance proposed by Marketing Action would then comply with the above Trade Regulation Rule.

By direction of the Commission.

Third Letter of Request

May 25, 1970

Dear Mr. Shea :

This letter is in lieu of our letters of May 11 and 21, 1970, requesting on behalf of Marketing Action Group, Inc. (MAG), a Delaware corporation, an advisory opinion of the Federal Trade Commission in regard to proposed promotion plan of MAG. A detailed plan of the proposed program is set forth in the memorandum which was enclosed with the May 11th letter.

The proposed program of MAG is not currently being employed by MAG and is not the subject of any pending investigation or other proceeding by the Federal Trade Commission, or by any other agency of the United States Government, or of any State or local government, except that under date of May 19, 1970, it was submitted to the mailability division of the Post Office Department for its approval under the provisions of that Department.

If the proposed plan is approved by the Federal Trade Commission, thereafter, at such time as MAG concludes negotiations for, but prior to, its implementation, MAG will furnish the public, through an advertising program and the promotion rules, with data pertaining to (i) the geographic area to be covered by, and the total number of retail outlets to participate in, the promotion; (ii) the procedure to be followed to insure full disclosure of information pertaining to prizes and odds of winning; and (iii) the scheduled termination date.

If the Commission approves the proposed plan, MAG will maintain a record keeping system which would demonstrate that mixing, distribution, and dispersal were done totally and solely on a random basis.

Upon the conclusion of the promotion, MAG will furnish the Commission, and also post clearly and conspicuously in each retail outlet which participated, (i) a complete list of the names and addresses of the winners of each prize and the amount or value of the prizes won by each; (ii) the total number of promotion pieces distributed; (iii) the total number of prizes in each category or denomination which were made available and (iv) the total number of prizes in each category or denomination which were awarded.

The termination date would be advertised in each participating outlet and, as set forth in the memorandum, final drawings to select prize winners would take place shortly after a date three weeks from the termination date. The rules would advise the public that each dealer must notify the sponsoring corporation's head office immediately after such termination date if all promotion pieces in a dealer's possession have not been distributed. The promotion would then continue only in such outlets until all promotion pieces have been distributed, at which time the dealers involved would notify the sponsoring corporation's head office of such fact. If a sponsoring corporation's head office were to receive notification that all promotion pieces had not been distributed, all final drawings would be postponed until at least three weeks from the day that the last dealer communicates the second notification to the head office, thus giving his customers three weeks from the date they received their numbered promotion pieces in which to submit potential winning numbers to the sponsoring corporation's head office for the final drawings.

We trust that the memoranda previously forwarded explains the proposed program to the satisfaction of the Commission. However, we will be glad to answer any questions which the Commission may have in regard to the MAG program. Please direct any inquiries to F. Herbert Prem, Jr., Esq. of this firm, or in his absence, to Robert B. Sims, Esq.

Very truly yours,
Whitman & Ransom

Second Letter of Request

May 21, 1970

Dear Mr. Shea :

This letter is in lieu of our letter of May 11, 1970, requesting on behalf of Marketing Action Group, Inc. (MAG), a Delaware corporation, an advisory opinion of the Federal Trade Commission in regard to a proposed promotion plan of MAG. A detailed plan of the proposed program is set forth in the memorandum which was enclosed with the May 11th letter.

The proposed program of MAG is not currently being employed by MAG and is not the subject of any pending investigation or other proceeding by the Federal Trade Commission, or by any other agency of the United States Government, or of any State or local government, except that under date of May 19, 1970, it was submitted to the mailability division of the Post Office Department for its approval under the provisions of that Department.

If the proposed plan is approved by the Federal Trade Commission, thereafter, at such time as MAG concludes negotiations for, but prior to, its implementation, the requesting party will furnish the Commission with data pertaining to (i) the geographic area to be covered by, and the total number of retail outlets to participate in, the promotion; (ii) the procedure to be followed to insure full disclosure of information pertaining to prizes and odds of winning (iii) the record keeping system which would demonstrate that mixing, distribution and dispersal were done totally and solely on a random basis; and (iv) the scheduled termination date.

Upon the conclusion of the promotion, MAG will furnish the Commission, and also post clearly and conspicuously in each retail outlet which participated, (i) a complete list of the names and addresses of the winners of each prize and the amount or value of the prizes won by each; (ii) the total number of promotion pieces distributed; (iii) the total number of prizes in each category or denomination which were made available and (iv) the total number of prizes in each category or denomination which were awarded.

The termination date would be advertised in each participating outlet and, as set forth in the memorandum, final drawings to select prize winners would take place shortly after a date three weeks from the termination date. The rules would advise the public that each dealer must notify the sponsoring corporations' head office immediately after such termination date if all promotion pieces in a dealer's possession had not been distributed. The promotion would then continue only in such outlets until all promotion pieces have been distributed, at which time the dealers involved would notify the sponsoring corporation's head office of such fact. If a sponsoring corporation's head office were to receive notification that all promotion pieces had not been distributed, all final drawings would be postponed until at least three weeks from the day that the last dealer communicates the second notification to the head office, thus giving his customers three weeks from the date they receive their numbered promotion pieces in which to submit potential winning numbers to the sponsoring corporation's head office for the final drawings.

We trust that the memorandum previously forwarded explains the proposed program to the satisfaction of the Commission. However, we will be glad to answer any questions which the Commission may have in regard to the MAG program. Please direct any inquiries to F. Herbert Prem, Jr., Esq. of this firm, or in his absence, to Robert B. Sims, Esq.

Very truly yours,
Whitman & Ransom

First Letter of Request

May 11, 1970

Dear Mr. Shea :

Request is hereby made on behalf of Marketing Action Group, Inc. (MAG), a Delaware corporation, for an advisory opinion of the Federal Trade Commission in regard to a proposed promotion plan of MAG. A detailed plan of the proposed program is set forth in the memorandum enclosed herewith.

The proposed program of MAG is not currently being employed by the requesting party and is not the subject of any pending investigation or other proceeding by the Federal Trade Commission, or by any other agency of the United States Government, or of any State or local government, except that under date of April 21, 1970, it was submitted to the Mailability Division of the Post Office Department for its approval under the provisions of the Post Office Department.

We trust that the enclosed memorandum fully explains the proposed program to the satisfaction of the Commission. However, we will be glad to answer any questions which the Commission may have in regard to the MAG program. Please direct any inquiries to F. Herbert Prem, Jr., Esq. of this firm or, in his absence, to Robert B. Sims, Esq.

Very truly yours,
Whitman & Ransom

Enclosure

The Enclosure

MARKETING ACTION GROUP, INC.

Retail Merchants' and Manufacturers' Merchandising and Promotional
Program

Marketing Action Group, Inc. (MAG) is engaged in offering patrons of retail merchants and manufacturers (i.e., sponsoring corporations) an opportunity to participate in a merchandising and promotional program to be promoted under a name such as "Winners In Every Outlet" with a predetermined period of duration (which, for the purposes of this memorandum, shall be twelve weeks).

Promotion Pieces

Under this program, on each visit to a participating outlet, a customer (or other member of the public, since no purchase is necessary) would receive a folded, sealed, perforated promotion piece (FPD) advertising the promotion, outlining the rules, and bearing a serial number, the name and address of that particular FPD distributing outlet, and space for the customer's name and address. The serial number of the FPDs would be impossible to determine until the seal is broken by the customer and all FPDs in each series would be mixed to insure that winning game pieces would be distributed in each outlet on a random basis.

The FPD promotion pieces would be consecutively numbered and would be distributed by the sponsoring corporation or its promotion coordinator to each

outlet in lots or series of equal size—the size to depend upon the commercial nature of the sponsor. (For the purposes of this memorandum, it will be assumed that the majority of a sponsor's outlets would need at least 5,000 promotion pieces to cover their volume and thus each lot delivered to participating outlets would contain 5,000 FPDs numbered one through five thousand and randomly mixed.) Although no two numbers would appear twice in the same lot, for any number that is selected as a possible winner, there may be as many potential claimants for a prize as there are series of 5,000 numbers.

Corporate Section

There would be both corporate and in-outlet sections to the promotion. The corporate section would be operated from a sponsoring corporation's head office, would advertise available prizes to be awarded at the end of the promotion period, and would have a judging corporation randomly draw each week of the twelve-week promotion-period one winning FPD number across all participating outlets which would be mailed weekly to each outlet for posting and would remain posted for the duration of the promotion. Customers would check the numbers on the FPDs they hold against the numbers that have been posted. If at any time during the promotion an FPD serial number held by a customer matched one of the posted numbers, such customer would become a potential winner of a prize. In order to qualify for the second drawing which would determine the winner, a holder of a drawn and posted FPD would have to fill in his name and address in the space provided on each FPD and submit it to a previously announced address within three weeks from the last day of the promotion. The actual prize winners would then be selected by name at the end of the promotion period in a second series of twelve random drawings, one drawing from among the holders of each FPD number previously drawn and posted. (Thus, if the promotion runs for twelve weeks, there would be twelve different winning numbers and a like number of winners selected from the holders of each winning number.)

In-Outlet Section

The other element of the promotion would be an in-outlet section, also operated from corporate headquarters but (a) having a judging corporation randomly draw once, at the end of the twelve-week promotion, one potential winning number across all, and to be posted in, participating outlets for a large in-outlet prize (or prizes, as hereinafter described) which would be awarded at the end of the twelve-week promotion in each outlet (and could vary in each outlet as posted therein), and (b) awarding lower-value instant winner prizes throughout the course of the promotion.

In-Outlet Large Prize

A unique aspect of the in-outlet large prize promotion is that each outlet can select its own tailored in-outlet prize structure depending upon its particular needs and the manager's and/or owner's preference. The FPDs would advertise that in-outlet large prizes may vary with each outlet and advise customers to check the posted list of available prizes at the outlet where they received their FPD. If only one series of 5,000 FPD promotion pieces were distributed by an outlet, there would be one such large prize worth about \$100–\$150, with the particular prize to be selected by each outlet. If 10,000 promotion pieces were distributed, an outlet could award two prizes each worth \$100–\$150 or one prize worth \$200–\$300. Thus, the number of prizes available need not correspond to the aggregate number of series of FPDs distributed by the outlet, but would be dependent upon its preference.

In every participating outlet, the winning number would be posted and the customer with that number would win the outlet's large prize. If the in-outlet prize structure offers one prize for every series of FPDs distributed, each holder of a winning number would receive a prize. If, on the other hand, the number of prizes does not correspond to the aggregate number of series of FPDs distributed by the outlet (as where the particular outlet selects one grand prize covering several series of FPDs distributed), there would be a random drawing at the outlet to determine which claimant wins the one prize available, or, if several prizes of varying value are available, which wins a particular prize. All prizes in the previously announced prize structure would thus be awarded, and customers would have three weeks after the last day of the promotion in which to submit their claims.

If the exact winning number fails to appear, the nearest number would be awarded the prize. The rules of the promotion would advise customers that a holder of a number near the winning number should submit his name and address to the dealer from whom he received his FPD so that, should a holder of a winning number fail to appear to claim his prize, such "runner-up" could be notified to surrender his FPD in exchange for the outlet's large prize. Should more than one claimant appear as might occur if the holder of the exact winning number does not show up and the holders of the two closest numbers—one lower and one higher—appear to claim the prize, there would be a random drawing at the outlet to decide which claimant wins the prize.

In-Outlet Instant Winner

In every 5,000 FPDs there would be 100 "Instant Winners" which would be randomly selected by the judging corporation at the start of the promotion and a listing thereof would be posted in each outlet immediately. Such 100 Instant Winner numbers would be the same in every lot (and thus in every outlet) and would remain the same for the duration of the promotion. One or several series of 5,000 FPDs would be delivered to each outlet, depending upon its needs. Upon comparing his FPD number with the list of posted Instant Winners and discovering that he is such a winner, a customer would receive his lower-value prize immediately by surrendering his FPD to the dealer. All Instant Winner FPD numbers would then be precluded from being potential winning corporate or in-outlet large prize numbers.

Conclusion

The MAG program offers a new and unique approach to merchandising and promotional programs. It provides for (1) random selection of winning numbers and (2) actual prize winners and claimants to prizes in every participating outlet without seeding.

In distributing to every participating outlet at least one series of 5,000 FPD promotion pieces, the MAG program guarantees that every outlet which distributes at least one entire lot of 5,000 FPDs would have twelve potential winners of corporate prizes, one in-outlet large prize winner, and 100 Instant Winners. Although every participating outlet would have identical promotional pieces and winning numbers, there would be an assurance of random selection of winners since (1) winning numbers for corporate and in-outlet large prizes would be drawn after distribution of FPD promotional pieces to participating outlets and (2) Instant Winner numbers, even though they would necessarily have to be drawn prior to distribution of FPDs, would be sealed and mixed prior to distribution along with all other numbers in a series of 5,000. Thus, there would be no way (without obvious tampering) for anyone to determine a number before the FPD is in the possession of the customer.

The MAG program would create, in effect, a separate promotion in each participating outlet, with its own in-outlet prize winners and potential winners of corporate prizes.

Attached hereto are several pages bearing the contents of an FPD. Although there may be some alterations or modifications in the wording and design of the FPDs distributed during the promotion, the following example (not to scale) displays the basic concept.

Each FPD would be folded into thirds (see the three panels indicated on the diagrams) and sealed on all sides such that it would be impossible, in the absence of obvious tampering, to determine the serial number until the seal is broken by the customer.

Outside of Promotion Piece

Name of Sponsor Company

WINNERS IN EVERY OUTLET

3 OPPORTUNITIES TO WIN

SAVE YOUR NUMBER and COLLECT MORE NUMBERS

WATCH THE POSTED WINNERS LIST

No Purchase Necessary

Name and Address of Sponsor Company

Inside Promotion Piece

1st Panel

You May Be A Winner--

Your Number Offers You 3 Opportunities to Win

An immediate prize from this outlet

One of twelve company prizes

A prize from this outlet at the completion of this promotion

No Purchase Necessary

Number

2nd Panel

RULES: (See Attached)

Name—Address—State—Zip—City—Phone—

Number

Panel 2 Rules of the "Winners in Every Outlet" Promotion

1. Save this leaflet with your number shown in the lower right hand corner of panels one and three for the duration of the promotion until (date).

2. Instant winners are now posted at this outlet. If you have one of the instant winner numbers posted, surrender this leaflet to the manager and you will receive your prize now.

3. Each week of the promotion a new sponsor company prize number will be posted. There will be a total of (000) of these sponsor company prize numbers posted. If you have one or receive one of these numbers, fill in your name and

address in the space provided below and mail it to (address) no later than (date) (21 days after the final number is posted). Hold on to panel number one which also has your number. By (date) (28 days after the final number is posted) there will be (000) random drawings, one from each group of sponsor company prize numbers submitted. Only prize winners will be notified. For a list of winners, send a self-addressed envelope to (address).

4. At the completion of the promotion an Outlet Winner's number will be posted. If you have this number, fill in your name and address in the space below and submit it to the outlet manager by (date) (21 days after the number is posted). You are the winner of the outlet prize.

5. This promotion is open to all individuals/licensed drivers 18 years of age or above only, except employees of the sponsor company, its subsidiary outlets, manufacturers of promotion materials and families of the foregoing.

6. All entries are subject to verification. Entries are void and will be rejected if not obtained through legitimate channels or if illegible, mutilated, smeared or tampered with or contain printing or other errors. Void where restricted by law. Applicable taxes are the responsibility of winners.

(c) Copyright 1970 by the Marketing Action Group, Inc.

SAVE YOUR NUMBERS! COLLECT MORE NUMBERS!
NO PURCHASE NECESSARY!

Location of disclosure of country of origin on packages containing items of vinyl baby apparel imported from Taiwan. (File No. 713 7004)

Opinion Letter

November 23, 1970

Dear Mr. Spill:

This is in reply to your request for an advisory opinion on behalf of the Rand Rubber Co., as to the proper location of disclosure of the country or origin on packages containing items of vinyl baby apparel imported from Taiwan.

According to the Commission's understanding of the facts, your company will label the individual imported items "Made in Taiwan," and package them in clear poly bags in such a manner as to clearly and conspicuously disclose the country of foreign origin. The bags used in packaging will contain no writing, such as, "Made in U.S.A." and the label will be clearly visible through the bag.

The Commission has given this matter careful consideration, and is of the view that, based on the material and information available, failure to disclose the country of foreign origin on the clear poly bags would not be deceptive.

By direction of the Commission.

Letter of Request

August 13, 1970

Dear Mr. O'Brien:

Would you please be good enough to render or have rendered an opinion on our discussion of today August 13, 1970.

To wit, we are planning on packing three items made in Taiwan, labeled **MADE IN TAIWAN** on each individual item in a poly bag, with a header stating the name of the store and size of the item and retail price. There will be no printing on the bag, such as, made in U.S.A. etc.

As per our discussion, it was your opinion that we need not mention country of origin on the package itself, as long as the goods were clearly labeled and the labels visible through the poly bag.

Awaiting your reply.

Very truly yours,
RAND RUBBER COMPANY, INC.

/s/ Mort Spill
Director of Marketing and Sales

Disclosure of former title of monthly trade journal on issues carrying the new title. (File No. 713 7007)

Opinion Letter

November 23, 1970

Dear Mr. Gray:

This is in reply to your letter of September 23, 1970, requesting advice as to whether it will be necessary to disclose the former title of your magazine, Tourist Court Journal, on issues carrying the new title Motel/Motor Inn Journal.

As the Commission understands the facts, the change in title will be initiated as of the November 1970, issue.

The Commission has given your request careful consideration, and based on the information furnished, is of the view that failure to disclose the old title on issues containing the new title probably would not violate any of the laws administered by the Commission. This opinion in no way implies either approval or disapproval as to the propriety of your use of the title Motel/Motor Inn Journal.

By direction of the Commission.

Letter of Request

September 23, 1970

Dear Sir:

It is our understanding that according to a ruling of the Federal Trade Commission concerning the publishing of a new edition of a book with an entirely different title from that used in the original edition, the original title must appear wherever the new title is used—the cover, the title page, the jacket, etc. Although we are not primarily concerned with the publishing of a new edition of a book, our immediate problem is somewhat similar, and, we do need to know if this ruling applies to our circumstances; and if so, then the specifics of compliance so far as your Commission is concerned.

We publish a trade journal monthly under the title of TOURIST COURT JOURNAL, which is directed to those in, and related to, the motel industry. Beginning with the November, 1970 issue, it is our intention to change the title of this publication from TOURIST COURT JOURNAL to MOTEL/MOTOR INN JOURNAL . . . this will be the only change in the publication. Will you, therefore, advise us of any ruling of your commission pertaining to this situation, and, the requirements necessary on our part to effect compliance with any such ruling. Also, in the event of having to perform certain acts of compliance, would it be for one issue only, or, each monthly issue thereafter. And if so, for how long?

Your help and consideration in this matter will be greatly appreciated.

Courteously yours,
TOURIST COURT JOURNAL
/s/ James L. Gray

Brand name advertising of milk of a particular producer or handler as compared to promotion of milk or milk products generally. (File No. 713 7010)

Opinion Letter

December 23, 1970

Dear Mr. Anderson:

This is in reference to your letter of June 15, 1970, in which you requested an advisory opinion on behalf of your clients, a group of agricultural cooperative milk marketing organizations covered by Milk Marketing Order #50, for the central Illinois area, and administered by the Secretary of Agriculture (7 C.F.R. 1050). The course of business action proposed involves the establishment of a "Federal Order #50 Committee" to promote brand name advertising

of the milk of a particular producer or handler, as compared to the promotion of milk or milk products generally.

The information supplied indicates that there are five or six cooperative milk marketing associations, organized pursuant to the pertinent provisions of the Capper-Volstead Act, 7 U.S.C. 291, 292, operating within the area covered by the milk marketing order promulgated by the Secretary of Agriculture for central Illinois (7 C.F.R. 1050). These cooperative associations and their members plan to establish the "Federal Order #50 Committee," composed of representatives of the cooperating dairies and handlers who sell, package or deliver milk and milk products into the area regulated by Federal Order #50. The purpose of the organization is stated to be to receive funds from dairy farmers and/or dairy cooperatives and disburse such funds for the purpose of advertising, research and promotion of Class I milk and dairy products, particularly on a brand name basis. The proposal as submitted also details the manner in which the cooperative advertising program will be operated. It indicates substantial compliance with the requirements of Sections 2(d) and 2(e) of the Clayton Act, as amended, as provided in the Commission's "Guides for Advertising Allowances and Other Merchandising Payments and Services," promulgated May 29, 1968.

The Commission has considered your submittal and is of the opinion, subject to the limitations indicated below, that formation of the "Federal Order #50 Committee" by the cooperative associations of milk producers, milk handlers and dairymen under the described conditions probably would not result in violation of Commission administered statutes. This action is restricted solely to the formation of the proposed joint advertising program to be administered by "Federal Order #50 Committee," and is not to be construed as approval for any practice which may be predatory in nature, may result in unlawful monopolization, may restrain commerce to the extent that milk prices are unduly enhanced thereby, or for conspiracies or combinations between the members of the milk cooperatives operating under the Central Illinois Milk Marketing Order (7 C.F.R. 1050) and persons or entities not in this category. It should be noted specifically that restrictions on price announcements as provided in item 2 of the "Sample Notification" and item 6 of the "Policy" statement cannot be approved. It is essential for such provisions to be revised so as to make it clear that reimbursement will be made for advertisements which meet the basic requirements regardless of the price at which the milk is offered. Likewise, the approval herein granted may be rescinded or revoked upon notice should subsequent facts indicate a failure on the part of the Committee to conform the advertising program with Sections 2(d) and 2(e) of the Clayton Act, as amended.

By direction of the Commission.

Letter of Request

June 15, 1970

Attention: Robert L. Camenish
Attorney in Charge

Dear Sirs:

For appropriate examination and report under Business Review Procedures of the Commission, we are enclosing a proposal for operation of a joint advertising program for milk in the Central Illinois area.

The parties concerned are a group of agricultural cooperative milk marketing organizations in the areas involved. The milk is subject to regulation primarily under the Marketing Order administered by the Secretary of Agriculture for the Central Illinois area 7 CFT 1050. Lesser amounts of milk sold in the area are sold by handlers regulated by Marketing Order No. 32 Southern Illinois area, Order No. 30 Chicago Regional area, Order No. 49 Quad-City area, Order No. 62 St. Louis area and Order No. 63 Indianapolis area.

The proposal is to emphasize brand name advertising and promotion in the name of a particular cooperating handler or buyer as compared with the promotion of milk or milk products generally. The program has not been instituted or placed in operation pending your examination and report.

Please let us have your response at your earliest convenient date. If further information is required, please contact the undersigned or Mr. L. K. Wallace, Secretary-Manager, Illinois Milk Producers' Association, 1701 Townanda Avenue, Bloomington, Illinois 61701, telephone 309-828-0021.

We are sending a copy of this letter and the enclosed outline of the proposal to the Chicago Midwest Office of the Anti-Trust Division, Department of Justice, attention Mr. Bertram M. Long, assistant chief.

Thank you for the review and report requested.

Very truly yours,
MERKER & ADLER
James L. Anderson
JLA/deh

Enclosure

cc: Mr. Bertram M. Long
Assistant Chief
Midwest Office of Anti-Trust Division
Suite 2634
219 South Dearborn Street
Chicago, Illinois

The Enclosure

ORGANIZATION STRUCTURE FOR CENTRAL ILLINOIS ADVERTISING COMMITTEE

Name

The name of this organization shall be the "Federal Order No. 50 Committee."

Purpose

The purpose of this organization shall be to receive funds from dairy farmers and/or dairy cooperatives and disburse and allocate funds to organizations and corporations for the purpose of advertising, research and promotion of Class I milk and dairy products.

Management

The management, control and operation shall be under the direction of a committee made up as follows: one dairy farmer member appointed by the Board of Directors of such cooperatives that shall qualify as members as hereinafter provided. Such producer-member may be represented by an employee of his cooperative who may vote on all matters of business in case of the dairy farmer member's absence.

Qualification of members

Any dairy cooperative who regularly sells milk either directly by its producer-members to handlers regulated by Order No. 50 or who sell packaged milk into the above marketing area, or who sell bulk milk to handlers who sell milk into the above area, but who are regulated by another order and who contribute funds in accordance with policies as determined from time to time by the committee.

Responsibilities of committee members

The committee shall determine policies pertaining to the allocation, terms and conditions of eligibility, collection and disbursement of funds. The committee shall also have the authority to select a person or organization as an agent to be responsible for maintaining proper records, receive and collect funds, and otherwise administer the program as directed by the committee. The committee shall have the authority to determine reasonable compensation for the services of the agents in performing his functions as provided herein. The agent so selected shall not divulge or otherwise make public Class I sales, production or other market information of any handler or cooperative of any individual member or handler which is customarily kept confidential and which comes into his possession in carrying out his functions.

Cooperation with other promotion agencies

The committee shall cooperate and work closely with the American Dairy Association, A-D-A of Illinois, National Dairy Council and Dairy Research, Inc. It shall seek to function in such a manner that will supplement and support the work they are currently carrying out.

It shall also utilize any material or personnel of the above organizations which may be available to them and which might be of assistance in their work and which will be of the greatest possible service to the dairy industry.

First Letter of Request

May 11, 1970

Dear Mr. Shea :

Request is hereby made on behalf of Marketing Action Group, Inc. (MAG), a Delaware corporation, for an advisory opinion of the Federal Trade Commission in regard to a proposed promotion plan of MAG. A detailed plan of the proposed program is set forth in the memorandum enclosed herewith.

The proposed program of MAG is not currently being employed by the requesting party and is not the subject of any pending investigation or other proceeding by the Federal Trade Commission, or by any other agency of the United States Government, or of any State or local government, except that under date of April 21, 1970, it was submitted to the Mailability Division of the Post Office Department for its approval under the provisions of the Post Office Department.

We trust that the enclosed memorandum fully explains the proposed program to the satisfaction of the Commission. However, we will be glad to answer any questions which the Commission may have in regard to the MAG program. Please direct any inquiries to F. Herbert Prem, Jr., Esq. of this firm or, in his absence, to Robert B. Sims, Esq.

Very truly yours,
Whitman & Ransom

Enclosure

The Enclosure

MARKETING ACTION GROUP, INC.

Retail Merchants' and Manufacturers' Merchandising and Promotional
Program

Marketing Action Group, Inc. (MAG) is engaged in offering patrons of retail merchants and manufacturers (i.e., sponsoring corporations) an opportunity to participate in a merchandising and promotional program to be promoted under a name such as "Winners In Every Outlet" with a predetermined period of duration (which, for the purposes of this memorandum, shall be twelve weeks).

Promotion Pieces

Under this program, on each visit to a participating outlet, a customer (or other member of the public, since no purchase is necessary) would receive a folded, sealed, perforated promotion piece (FPD) advertising the promotion, outlining the rules, and bearing a serial number, the name and address of that particular FPD distributing outlet, and space for the customer's name and address. The serial number of the FPDs would be impossible to determine until the seal is broken by the customer and all FPDs in each series would be mixed to insure that winning game pieces would be distributed in each outlet on a random basis.

The FPD promotion pieces would be consecutively numbered and would be distributed by the sponsoring corporation or its promotion coordinator to each

outlet in lots or series of equal size—the size to depend upon the commercial nature of the sponsor. (For the purposes of this memorandum, it will be assumed that the majority of a sponsor's outlets would need at least 5,000 promotion pieces to cover their volume and thus each lot delivered to participating outlets would contain 5,000 FPDs numbered one through five thousand and randomly mixed.) Although no two numbers would appear twice in the same lot, for any number that is selected as a possible winner, there may be as many potential claimants for a prize as there are series of 5,000 numbers.

Corporate Section

There would be both corporate and in-outlet sections to the promotion. The corporate section would be operated from a sponsoring corporation's head office, would advertise available prizes to be awarded at the end of the promotion period, and would have a judging corporation randomly draw each week of the twelve-week promotion-period one winning FPD number across all participating outlets which would be mailed weekly to each outlet for posting and would remain posted for the duration of the promotion. Customers would check the numbers on the FPDs they hold against the numbers that have been posted. If at any time during the promotion an FPD serial number held by a customer matched one of the posted numbers, such customer would become a potential winner of a prize. In order to qualify for the second drawing which would determine the winner, a holder of a drawn and posted FPD would have to fill in his name and address in the space provided on each FPD and submit it to a previously announced address within three weeks from the last day of the promotion. The actual prize winners would then be selected by name at the end of the promotion period in a second series of twelve random drawings, one drawing from among the holders of each FPD number previously drawn and posted. (Thus, if the promotion runs for twelve weeks, there would be twelve different winning numbers and a like number of winners selected from the holders of each winning number.)

In-Outlet Section

The other element of the promotion would be an in-outlet section, also operated from corporate headquarters but (a) having a judging corporation randomly draw once, at the end of the twelve-week promotion, one potential winning number across all, and to be posted in, participating outlets for a large in-outlet prize (or prizes, as hereinafter described) which would be awarded at the end of the twelve-week promotion in each outlet (and could vary in each outlet as posted therein), and (b) awarding lower-value instant winner prizes throughout the course of the promotion.

In-Outlet Large Prize

A unique aspect of the in-outlet large prize promotion is that each outlet can select its own tailored in-outlet prize structure depending upon its particular needs and the manager's and/or owner's preference. The FPDs would advertise that in-outlet large prizes may vary with each outlet and advise customers to check the posted list of available prizes at the outlet where they received their FPD. If only one series of 5,000 FPD promotion pieces were distributed by an outlet, there would be one such large prize worth about \$100–\$150, with the particular prize to be selected by each outlet. If 10,000 promotion pieces were distributed, an outlet could award two prizes each worth \$100–\$150 or one prize worth \$200–\$300. Thus, the number of prizes available need not correspond to the aggregate number of series of FPDs distributed by the outlet, but would be dependent upon its preference.

In every participating outlet, the winning number would be posted and the customer with that number would win the outlet's large prize. If the in-outlet prize structure offers one prize for every series of FPDs distributed, each holder of a winning number would receive a prize. If, on the other hand, the number of prizes does not correspond to the aggregate number of series of FPDs distributed by the outlet (as where the particular outlet selects one grand prize covering several series of FPDs distributed), there would be a random drawing at the outlet to determine which claimant wins the one prize available, or, if several prizes of varying value are available, which wins a particular prize. All prizes in the previously announced prize structure would thus be awarded, and customers would have three weeks after the last day of the promotion in which to submit their claims.

If the exact winning number fails to appear, the nearest number would be awarded the prize. The rules of the promotion would advise customers that a holder of a number near the winning number should submit his name and address to the dealer from whom he received his FPD so that, should a holder of a winning number fail to appear to claim his prize, such "runner-up" could be notified to surrender his FPD in exchange for the outlet's large prize. Should more than one claimant appear as might occur if the holder of the exact winning number does not show up and the holders of the two closest numbers—one lower and one higher—appear to claim the prize, there would be a random drawing at the outlet to decide which claimant wins the prize.

In-Outlet Instant Winner

In every 5,000 FPDs there would be 100 "Instant Winners" which would be randomly selected by the judging corporation at the start of the promotion and a listing thereof would be posted in each outlet immediately. Such 100 Instant Winner numbers would be the same in every lot (and thus in every outlet) and would remain the same for the duration of the promotion. One or several series of 5,000 FPDs would be delivered to each outlet, depending upon its needs. Upon comparing his FPD number with the list of posted Instant Winners and discovering that he is such a winner, a customer would receive his lower-value prize immediately by surrendering his FPD to the dealer. All Instant Winner FPD numbers would then be precluded from being potential winning corporate or in-outlet large prize numbers.

Conclusion

The MAG program offers a new and unique approach to merchandising and promotional programs. It provides for (1) random selection of winning numbers and (2) actual prize winners and claimants to prizes in every participating outlet without seeding.

In distributing to every participating outlet at least one series of 5,000 FPD promotion pieces, the MAG program guarantees that every outlet which distributes at least one entire lot of 5,000 FPDs would have twelve potential winners of corporate prizes, one in-outlet large prize winner, and 100 Instant Winners. Although every participating outlet would have identical promotional pieces and winning numbers, there would be an assurance of random selection of winners since (1) winning numbers for corporate and in-outlet large prizes would be drawn after distribution of FPD promotional pieces to participating outlets and (2) Instant Winner numbers, even though they would necessarily have to be drawn prior to distribution of FPDs, would be sealed and mixed prior to distribution along with all other numbers in a series of 5,000. Thus, there would be no way (without obvious tampering) for anyone to determine a number before the FPD is in the possession of the customer.

The MAG program would create, in effect, a separate promotion in each participating outlet, with its own in-outlet prize winners and potential winners of corporate prizes.

Attached hereto are several pages bearing the contents of an FPD. Although there may be some alterations or modifications in the wording and design of the FPDs distributed during the promotion, the following example (not to scale) displays the basic concept.

Each FPD would be folded into thirds (see the three panels indicated on the diagrams) and sealed on all sides such that it would be impossible, in the absence of obvious tampering, to determine the serial number until the seal is broken by the customer.

Outside of Promotion Piece

Name of Sponsor Company

WINNERS IN EVERY OUTLET

3 OPPORTUNITIES TO WIN

SAVE YOUR NUMBER and COLLECT MORE NUMBERS

WATCH THE POSTED WINNERS LIST

No Purchase Necessary

Name and Address of Sponsor Company

Inside Promotion Piece

1st Panel

You May Be A Winner--

Your Number Offers You 3 Opportunities to Win

An immediate prize from this outlet

One of twelve company prizes

A prize from this outlet at the completion of this promotion

No Purchase Necessary

Number

2nd Panel

RULES: (See Attached)

Name—Address—State—Zip—City—Phone—

Number

Panel 2 Rules of the "Winners in Every Outlet" Promotion

1. Save this leaflet with your number shown in the lower right hand corner of panels one and three for the duration of the promotion until (date).

2. Instant winners are now posted at this outlet. If you have one of the instant winner numbers posted, surrender this leaflet to the manager and you will receive your prize now.

3. Each week of the promotion a new sponsor company prize number will be posted. There will be a total of (000) of these sponsor company prize numbers posted. If you have one or receive one of these numbers, fill in your name and

address in the space provided below and mail it to (address) no later than (date) (21 days after the final number is posted). Hold on to panel number one which also has your number. By (date) (28 days after the final number is posted) there will be (000) random drawings, one from each group of sponsor company prize numbers submitted. Only prize winners will be notified. For a list of winners, send a self-addressed envelope to (address).

4. At the completion of the promotion an Outlet Winner's number will be posted. If you have this number, fill in your name and address in the space below and submit it to the outlet manager by (date) (21 days after the number is posted). You are the winner of the outlet prize.

5. This promotion is open to all individuals/licensed drivers 18 years of age or above only, except employees of the sponsor company, its subsidiary outlets, manufacturers of promotion materials and families of the foregoing.

6. All entries are subject to verification. Entries are void and will be rejected if not obtained through legitimate channels or if illegible, mutilated, smeared or tampered with or contain printing or other errors. Void where restricted by law. Applicable taxes are the responsibility of winners.

(c) Copyright 1970 by the Marketing Action Group, Inc.

SAVE YOUR NUMBERS! COLLECT MORE NUMBERS!
NO PURCHASE NECESSARY!

Location of disclosure of country of origin on packages containing items of vinyl baby apparel imported from Taiwan. (File No. 713 7004)

Opinion Letter

November 23, 1970

Dear Mr. Spill:

This is in reply to your request for an advisory opinion on behalf of the Rand Rubber Co., as to the proper location of disclosure of the country or origin on packages containing items of vinyl baby apparel imported from Taiwan.

According to the Commission's understanding of the facts, your company will label the individual imported items "Made in Taiwan," and package them in clear poly bags in such a manner as to clearly and conspicuously disclose the country of foreign origin. The bags used in packaging will contain no writing, such as, "Made in U.S.A." and the label will be clearly visible through the bag.

The Commission has given this matter careful consideration, and is of the view that, based on the material and information available, failure to disclose the country of foreign origin on the clear poly bags would not be deceptive.

By direction of the Commission.

Letter of Request

August 13, 1970

Dear Mr. O'Brien:

Would you please be good enough to render or have rendered an opinion on our discussion of today August 13, 1970.

To wit, we are planning on packing three items made in Taiwan, labeled MADE IN TAIWAN on each individual item in a poly bag, with a header stating the name of the store and size of the item and retail price. There will be no printing on the bag, such as, made in U.S.A. etc.

As per our discussion, it was your opinion that we need not mention country of origin on the package itself, as long as the goods were clearly labeled and the labels visible through the poly bag.

Awaiting your reply.

Very truly yours,
RAND RUBBER COMPANY, INC.

/s/ Mort Spill
Director of Marketing and Sales

Disclosure of former title of monthly trade journal on issues carrying the new title. (File No. 713 7007)

Opinion Letter

November 23, 1970

Dear Mr. Gray:

This is in reply to your letter of September 23, 1970, requesting advice as to whether it will be necessary to disclose the former title of your magazine, Tourist Court Journal, on issues carrying the new title Motel/Motor Inn Journal.

As the Commission understands the facts, the change in title will be initiated as of the November 1970, issue.

The Commission has given your request careful consideration, and based on the information furnished, is of the view that failure to disclose the old title on issues containing the new title probably would not violate any of the laws administered by the Commission. This opinion in no way implies either approval or disapproval as to the propriety of your use of the title Motel/Motor Inn Journal.

By direction of the Commission.

Letter of Request

September 23, 1970

Dear Sir:

It is our understanding that according to a ruling of the Federal Trade Commission concerning the publishing of a new edition of a book with an entirely different title from that used in the original edition, the original title must appear wherever the new title is used—the cover, the title page, the jacket, etc. Although we are not primarily concerned with the publishing of a new edition of a book, our immediate problem is somewhat similar, and, we do need to know if this ruling applies to our circumstances; and if so, then the specifics of compliance so far as your Commission is concerned.

We publish a trade journal monthly under the title of TOURIST COURT JOURNAL, which is directed to those in, and related to, the motel industry. Beginning with the November, 1970 issue, it is our intention to change the title of this publication from TOURIST COURT JOURNAL to MOTEL/MOTOR INN JOURNAL . . . this will be the only change in the publication. Will you, therefore, advise us of any ruling of your commission pertaining to this situation, and, the requirements necessary on our part to effect compliance with any such ruling. Also, in the event of having to perform certain acts of compliance, would it be for one issue only, or, each monthly issue thereafter. And if so, for how long?

Your help and consideration in this matter will be greatly appreciated.

Courteously yours,
TOURIST COURT JOURNAL
/s/ James L. Gray

Brand name advertising of milk of a particular producer or handler as compared to promotion of milk or milk products generally. (File No. 713 7010)

Opinion Letter

December 23, 1970

Dear Mr. Anderson:

This is in reference to your letter of June 15, 1970, in which you requested an advisory opinion on behalf of your clients, a group of agricultural cooperative milk marketing organizations covered by Milk Marketing Order #50, for the central Illinois area, and administered by the Secretary of Agriculture (7 C.F.R. 1050). The course of business action proposed involves the establishment of a "Federal Order #50 Committee" to promote brand name advertising

of the milk of a particular producer or handler, as compared to the promotion of milk or milk products generally.

The information supplied indicates that there are five or six cooperative milk marketing associations, organized pursuant to the pertinent provisions of the Capper-Volstead Act, 7 U.S.C. 291, 292, operating within the area covered by the milk marketing order promulgated by the Secretary of Agriculture for central Illinois (7 C.F.R. 1050). These cooperative associations and their members plan to establish the "Federal Order #50 Committee," composed of representatives of the cooperating dairies and handlers who sell, package or deliver milk and milk products into the area regulated by Federal Order #50. The purpose of the organization is stated to be to receive funds from dairy farmers and/or dairy cooperatives and disburse such funds for the purpose of advertising, research and promotion of Class I milk and dairy products, particularly on a brand name basis. The proposal as submitted also details the manner in which the cooperative advertising program will be operated. It indicates substantial compliance with the requirements of Sections 2(d) and 2(e) of the Clayton Act, as amended, as provided in the Commission's "Guides for Advertising Allowances and Other Merchandising Payments and Services," promulgated May 29, 1968.

The Commission has considered your submittal and is of the opinion, subject to the limitations indicated below, that formation of the "Federal Order #50 Committee" by the cooperative associations of milk producers, milk handlers and dairymen under the described conditions probably would not result in violation of Commission administered statutes. This action is restricted solely to the formation of the proposed joint advertising program to be administered by "Federal Order #50 Committee," and is not to be construed as approval for any practice which may be predatory in nature, may result in unlawful monopolization, may restrain commerce to the extent that milk prices are unduly enhanced thereby, or for conspiracies or combinations between the members of the milk cooperatives operating under the Central Illinois Milk Marketing Order (7 C.F.R. 1050) and persons or entities not in this category. It should be noted specifically that restrictions on price announcements as provided in item 2 of the "Sample Notification" and item 6 of the "Policy" statement cannot be approved. It is essential for such provisions to be revised so as to make it clear that reimbursement will be made for advertisements which meet the basic requirements regardless of the price at which the milk is offered. Likewise, the approval herein granted may be rescinded or revoked upon notice should subsequent facts indicate a failure on the part of the Committee to conform the advertising program with Sections 2(d) and 2(e) of the Clayton Act, as amended.

By direction of the Commission.

Letter of Request

June 15, 1970

Attention: Robert L. Camenish
Attorney in Charge

Dear Sirs:

For appropriate examination and report under Business Review Procedures of the Commission, we are enclosing a proposal for operation of a joint advertising program for milk in the Central Illinois area.

The parties concerned are a group of agricultural cooperative milk marketing organizations in the areas involved. The milk is subject to regulation primarily under the Marketing Order administered by the Secretary of Agriculture for the Central Illinois area 7 CFT 1050. Lesser amounts of milk sold in the area are sold by handlers regulated by Marketing Order No. 32 Southern Illinois area, Order No. 30 Chicago Regional area, Order No. 49 Quad-City area, Order No. 62 St. Louis area and Order No. 63 Indianapolis area.

The proposal is to emphasize brand name advertising and promotion in the name of a particular cooperating handler or buyer as compared with the promotion of milk or milk products generally. The program has not been instituted or placed in operation pending your examination and report.

Please let us have your response at your earliest convenient date. If further information is required, please contact the undersigned or Mr. L. K. Wallace, Secretary-Manager, Illinois Milk Producers' Association, 1701 Townanda Avenue, Bloomington, Illinois 61701, telephone 309-828-0021.

We are sending a copy of this letter and the enclosed outline of the proposal to the Chicago Midwest Office of the Anti-Trust Division, Department of Justice, attention Mr. Bertram M. Long, assistant chief.

Thank you for the review and report requested.

Very truly yours,
MERKER & ADLER
James L. Anderson
JLA/deh

Enclosure

cc: Mr. Bertram M. Long
Assistant Chief
Midwest Office of Anti-Trust Division
Suite 2634
219 South Dearborn Street
Chicago, Illinois

The Enclosure

ORGANIZATION STRUCTURE FOR CENTRAL ILLINOIS ADVERTISING COMMITTEE

Name

The name of this organization shall be the "Federal Order No. 50 Committee."

Purpose

The purpose of this organization shall be to receive funds from dairy farmers and/or dairy cooperatives and disburse and allocate funds to organizations and corporations for the purpose of advertising, research and promotion of Class I milk and dairy products.

Management

The management, control and operation shall be under the direction of a committee made up as follows: one dairy farmer member appointed by the Board of Directors of such cooperatives that shall qualify as members as hereinafter provided. Such producer-member may be represented by an employee of his cooperative who may vote on all matters of business in case of the dairy farmer member's absence.

Qualification of members

Any dairy cooperative who regularly sells milk either directly by its producer-members to handlers regulated by Order No. 50 or who sell packaged milk into the above marketing area, or who sell bulk milk to handlers who sell milk into the above area, but who are regulated by another order and who contribute funds in accordance with policies as determined from time to time by the committee.

Responsibilities of committee members

The committee shall determine policies pertaining to the allocation, terms and conditions of eligibility, collection and disbursement of funds. The committee shall also have the authority to select a person or organization as an agent to be responsible for maintaining proper records, receive and collect funds, and otherwise administer the program as directed by the committee. The committee shall have the authority to determine reasonable compensation for the services of the agents in performing his functions as provided herein. The agent so selected shall not divulge or otherwise make public Class I sales, production or other market information of any handler or cooperative of any individual member or handler which is customarily kept confidential and which comes into his possession in carrying out his functions.

Cooperation with other promotion agencies

The committee shall cooperate and work closely with the American Dairy Association, A-D-A of Illinois, National Dairy Council and Dairy Research, Inc. It shall seek to function in such a manner that will supplement and support the work they are currently carrying out.

It shall also utilize any material or personnel of the above organizations which may be available to them and which might be of assistance in their work and which will be of the greatest possible service to the dairy industry.

Sample Notification

FEDERAL ORDER NO. 50 COMMITTEE COOPERATIVE ADVERTISING PLAN

Dear _____:

Effective — day of —, 1970, the Federal Order No. 50 Committee will cooperate with the costs of your advertising on the following basis:

1. We will pay one half of your net advertising cost up to a total expenditure of \$——; said sum has been determined based upon your volume of Class I sales within the Federal Order #50.

2. This agreement shall not apply to advertising which is derogatory to a competing brand, in conjunction with a special price announcement or used in conjunction with a loss leader promotion.

3. Advertising payments hereunder shall only be made for advertising Class I dairy products.

4. You may advertise Class I products in one or more of the following mediums: local newspapers of general circulation; college and university newspapers; magazines, radio, TV, catalogues or brochures, provided that said advertising is primarily directed to consumers within the Federal Order #50 marketing area

5. Within 30 days after the advertising, you shall submit to——.

(a) invoice for our share of the cooperative advertising, together with proof of performance in the form of a full page tear sheet for newspaper and magazine advertising or the copy used and verified proof of time for radio or TV advertising or a copy of the full catalogue or brochure; and

(b) proof of actual net costs in the form of an invoice or paid bill from the medium.

6. In the event that you are processing Class I products under other brand names in competition with other brand name Class I products, you shall notify your customer as to the terms of this offer and he shall be entitled to participate in this program pursuant to the terms herein contained. This plan shall be effective from and after the — day of —, 1970 to the — day of —, 1971 and may be extended only at the option of the Committee.

Send advertising and tearsheets to: _____

MEMBERSHIP AGREEMENT

The undersigned by the execution of this agreement hereby agrees to become a member of the Central Illinois Advertising Committee known as the Federal Order #50 Committee.

The undersigned further agrees that it will abide by the policies of the Committee and specifically Paragraphs 5(a), 5(b) and 6 of the policies for contributing cooperative members. The undersigned hereby appoints _____

to serve as his common agent with other members and authorize him to receive funds for the Cooperative Advertising Program either from the Super Pool or directly from the undersigned pursuant to Paragraph 6 of the aforesaid policies, and the undersigned agrees to make such payments as provided therein.

POLICY FOR PROCESSORS AND HANDLERS TO BE ELIGIBLE TO RECEIVE FUNDS FROM
ADVERTISING FUND

1. Both private corporations and cooperatives who meet the necessary qualifications shall be eligible to participate, hereinafter referred to as participating handlers.

2. All conditions and terms shall be made applicable and available to handlers regulated by Order #50, as well as those regulated by other Orders who sell Class I products within the marketing area as defined by Order #50.

3. Funds shall be available for the advertising of "brand" name Class I milk products as defined by Order #50 *only*.

4. Each handler shall be eligible to receive funds based upon the following guidelines published by the Federal Trade Commission, "Guides for Advertising allowances . . .," promulgated May 29, 1969:

(A) The payments under this plan shall be available on proportionately equal terms to all competing handlers in the Central Illinois Marketing Area (Order #50).

(1) Sellers (co-ops) shall take action to inform all their competing customers of the existence of and essential features of the promotion plan in ample time for them to take full advantage of it.

(2) Alternatives that are functionally available shall be offered to customers which find the basic plan not functionally available (i.e., TV may not be available in specific areas).

(3) The seller shall take precautions to see that services (advertising and promotion, in this case) are being performed and that he is not overpaying for them.

(4) In informing customers of the plan, the seller should provide sufficient information to give clear understanding of the offer.

(5) At regular intervals (of at least 90 days) during the year a seller must make spot checks to verify the effectiveness of his notification procedures.

(Note: Guide 7 states that generally speaking the basis for treating customers on proportionately equal terms can be best done by basing payments on the quantity of goods purchased during a specified period. Thus the payments could be related to the quantity of Class I products disposed of within the marketing area. Our collections and disbursements could be related to these data.)

5. Each eligible handler shall provide 30 days in advance an advertising budget or statement of advertising expense for a period not to exceed six months for committee approval and for which he is assured matching funds will be made available by participating cooperatives, to the extent monies are allocated to the handler.

6. Handler may become eligible for reimbursement for any advertising purposes which are available for purchase and in use promoting Class I sales except as follows: ads or material shall not cast reflection or be derogatory towards a competing brand. Ad material shall not be used in conjunction with a price announcement in such a manner that the consumer is influenced towards one brand over another on the basis of price, or used in conjunction with a loss leader type of promotion. Ad material shall be directed for use in the Federal Order #50 area.

7. Handler shall provide copies of paid advertising invoices and such other proof of having entered into a contract with radio, TV, newspapers, etc., for such advertising and promotion of Class I products.

8. Each handler shall authorize the Market Administrator to release to the Administrator such Class I sales information for such periods necessary for determining eligibility.

POLICY FOR CONTRIBUTING COOPERATIVE MEMBERS

1. Make available and authorize the Order #50 Market Administrator to make available such sales and market information to proper designated person so payments due, sales, etc., can be properly determined.

2. Agree to pay or authorize Pooling Agent or other person to pay the amounts due to the person responsible for the collection and disbursement of funds under the direction of committee.

3. Agree to provide from super-pool funds or otherwise pay to committee the assessment agreed upon.

4. Agree to provide such funds for one year subject to the member giving written notice of his intention to cancel such agreement at least four months in advance to the committee.

5. The assessment shall be based upon the:

(a) Volume of producers milk pooled under Federal Order #50 at the rate of $4\frac{1}{2}\text{¢}$ per hundred weight. Two cents per hundred weight shall be dispersed to the State American Dairy Association for the Basic Program. The remainder shall be used for the advertising program hereinafter provided.

(b) In addition there shall be provided additional funds from cooperative members whose milk is sold within the Federal Order #50 area but priced pursuant to another Order based upon 4¢ per hundred weight for Class I sales within the Federal Order #50 area (the 4¢ per hundred weight on Class I sales approximates an assessment of $2\frac{1}{2}\text{¢}$ per hundred weight on all milk pooled under Federal Order #50).

6. Each member shall authorize the Pooling Agent to make distribution of funds in 5(a) and (b) herein to the agent selected by the committee. In the event of termination of the super pool, members shall pay the monies determined herein directly to the agent and shall continue such arrangement from year to year thereafter unless cancelled upon four months prior written notice. All payments required herein shall be remitted monthly.

**Proposed direct mailing program for issuance of a "MoneyCard"
to loan prospects whose names are obtained from chattel
mortgage and credit bureau lists. (File No. 713 7015)**

Opinion Letter

December 31, 1970

Dear Mr. Bramwell:

This is with further reference to your request for an advisory opinion regarding the proposed "MoneyCard" plan of Aetna Finance Company, a subsidiary of International Telephone and Telegraph Corporation.

It is the Commission's understanding that the "MoneyCard," in size and appearance, would be comparable to a credit card. It would bear a serial number and the name of the person to whom it was issued.

In fact, however, it would not be a credit card and would have printed on the bottom of the principal face:

This will serve to introduce you to any Aetna office where you may apply for a loan. It is not a credit card.

The following language would be printed on the back:

This card is authorized for the exclusive use of the person named on the other side. It may be presented at any of the more than 300 affiliated Aetna offices where it will serve to introduce such person to an Aetna representative.

Aetna would attach the card to a flyer containing a loan application form. A form letter transmitting the card and flyer would indicate the card was to serve to introduce the addressee to an Aetna loan office where he could apply for a loan.

Addressees' names would be obtained from chattel mortgage lists. Lists of persons for whom credit had been approved, purchased from credit bureaus, also would be used. The letter also would invite the cardholder to phone an Aetna office or to mail the completed loan application, so that work could begin promptly on his application. The cardholder, however, would be treated the same as any other potential loan customer.

The Commission is of the opinion that implementation of the proposal would raise very serious questions under Section 5 of the Federal Trade Commission Act, both with respect to the possible deception of cardholders as to their eligibility for loans, and with respect to the possible misuse of the "MoneyCard" by cardholders to misrepresent their credit worthiness in transactions with third parties.

If the plan for use of the "MoneyCard" is put into effect, initiation of an investigation to ascertain whether such use constituted a violation of Section 5 of the Federal Trade Commission Act may be warranted.

By direction of the Commission.

Supplemental Letter Relative to Request

October 30, 1970

Dear Mr. Dufresne:

We have your letter of October 20, 1970.

The primary source of names and addresses of persons to whom the "MoneyCard" would be mailed are chattel mortgage lists and lists purchased from credit bureaus of persons for whom credit has been approved. Both sources provide names of persons who have previously obtained credit and who, experience shows, are likely to be good prospects for consumer finance loans and to be acceptable credit risks.

When a holder of a "MoneyCard" visits an Aetna office, he would be treated essentially the same as any other potential loan customer.

The purpose of a card of introduction is accomplished when it is presented. In this case, the card does not promise any more than is intended and specifically stated on the front of the card: "This card will serve to introduce you to any Aetna office where you may apply for a loan. It is not a credit card." In view of this clear statement, it is difficult to see how any holder of the card could be misled, or to imagine any merchant extending credit or accepting a check in reliance on the card. Furthermore, in view of the fact that a merchant must have a contractual relationship with the issuer of a credit card in order for the merchant to receive payment from the issuer, the individual merchant and his employees must know what credit cards they may accept. Also, because of the detailed procedures for acceptance of credit cards by merchants which are required by the issuers, there is a high degree of sophistication among merchants and their employees concerning the handling of credit cards. Accordingly, the possibility of misuse seems rather slight.

We trust that this letter will answer your questions, but if you have any further questions or comments, we will be pleased to meet with you to discuss them.

Very truly yours,
/s/William M. Bramwell, Jr.
Assistant Secretary

Letter of Request

October 5, 1970

Dear Mr. Shea:

Aetna Finance Company (the name under which ITT Aetna Corporation's operating subsidiaries do business) proposes to undertake a direct mailing program to prospective loan applicants. The proposed direct mailing program will include a card of introduction, known as the Aetna "MoneyCard" (a registered service mark), which will be used for the sole purpose of introducing the holder to an Aetna office where he may apply for a loan.

We are aware that the Commission has recently adopted Trade Regulation Rule, Section 421.1 (hereinafter referred to as the "Rule"), which prohibits the mailing of unsolicited credit cards. Inasmuch as the Rule defines a "credit card" to mean any card, plate, coupon book, or other credit device employed for the purpose of establishing *identity and credit*, we respectfully request, pursuant to Sections 1.1 to 1.4 of the Commission's Procedure and Rules of Practice, an advisory opinion that the mailing by Aetna Finance Company of its proposed card, which merely serves to introduce the holder to an Aetna office but does not establish credit, will not violate the Rule.

The direct mailing will consist of only the following:

1. The proposed Aetna "MoneyCard".

2. Proposed flyer to which the card will be attached.
3. Proposed letter to loan prospect with which the card and flyer are to be enclosed.

Samples of each are attached for your information. (Only one sample of the card itself is being submitted since it was hand lettered by the art department of an outside agency and cost \$75.00. Additional samples would each cost the same. However, twelve xerox copies of all three items are being submitted, including the back as well as the front of the card and the flyer.)

The proposed direct mailing program is not currently being followed, and the program is not the subject of a pending investigation or other proceeding by the Commission or other governmental agency. Aetna previously had a program of direct mailing which was discontinued prior to the effective date of the Rule, and all of the materials have been substantially rewritten.

It is clear from its face that the Aetna card does no more than introduce the holder to an Aetna office where he may apply for a loan. A form of loan application is printed on the reverse of the flyer to which the card is attached. There is no promise, express or implied, in either the card itself, the flyer or the covering letter that the holder is guaranteed a loan. In fact, the card expressly states on its face that "It is not a credit card." The attached items, taken together or individually, are simply an invitation to apply for a loan. Thus, the card does not in any manner establish credit.

Since the card does not in fact establish the credit of the holder, the hazards which the Rule was designed to overcome are not present in the direct mailing of the Aetna card. The mailing of the card does not in any way establish an account for the recipient, would not expose the intended recipient to any risk of the card being misappropriated and fraudulently used by unknown parties, would result in no billings whatsoever to the intended recipient, and would not require the return of an unwanted card. The recipient of the card must take affirmative steps, other than the mere submission of the card, in order to establish an account and receive credit.

For the above reasons it is respectfully submitted that the direct mailing of the Aetna "MoneyCard" would not violate the aforementioned Trade Regulation Rule or any other law or regulation administered by the Federal Trade Commission, and it is respectfully requested that the Commission issue an advisory opinion so stating.

If you have any questions concerning this request, please call the undersigned collect at (212) 752-6000, extension 8872.

Very truly yours,
/s/ William M. Bramwell, Jr.
Assistant Secretary

Here's your personal

Aetna MoneyCard

It will introduce you to any Aetna office where you may apply for a loan.

"An exclusive servicework for consumer finance loans
(See other side)

Aetna Finance MoneyCard

012 089 069

JOHN Q. PROSPECT

This card will serve to introduce you to any Aetna office where you may apply for a loan. It is not a credit card.

"An exclusive servicemark for consumer finance loans
please detach and keep in your wallet or purse for ready availability. This MoneyCard is authorized for your exclusive use.

CONFIDENTIAL APPLICATION (for Loans up to \$5,000).

Fill out and bring or mail to your nearby local office or phone the manager, if you prefer.

☐ I would like to reply for a loan in the amount of \$-----

☐ I would like the money on-----

Day

Date

Convenient monthly payments. Indicate No. months desired :-----

Wife's

Name ----- Name -----

Address -----

City and State-----

Phones where I may be reached when money is ready :

Day----- Night-----

(It is understood this request is for your files only)

There's an AETNA office near you.

See list of Aetna offices on enclosed folder for location nearest you.

You may obtain cash promptly in 3 ways :

1. PHONE nearest office.
2. COME IN and present application to cashier.
3. MAIL your request. Address nearest office.

Loans to \$2000 made by AETNA FINANCE CO.

Loans over \$2000 made by AETNA CREDIT CO.

Under 2nd Mortgage Registration Act.

Loans made subject to usual credit requirements

(over)

AETNA : Aetna Finance Company, A Financial Service of ITT

DEAR FRIEND,

You will be pleased to receive the enclosed new Aetna MoneyCard. It is authorized for your exclusive use and will serve to introduce you to any Aetna office where you may apply for a loan—for back-to-school expenses, an unexpected bill for car or home repairs, or any worthwhile purpose.

You may also apply for a loan to pay off bills and debts. If you face some worrisome bills or high installment payments, our Consolidation Plan can combine monthly payments that you will like.

Whenever you need a loan, please bring your MoneyCard to your nearby Aetna office. If it is not convenient to come in, just phone and tell us that you are an Aetna MoneyCard holder so that we can begin work on your loan application. Or—mail your request on the enclosed form. We'll process your application promptly.

Remember, at Aetna, we're here to help *you*.

Sincerely yours,

ROBERT H. BENSON,
Treasurer's Office.

A National Finance System—Over 50 Years of Service