Docket 8876. Order, Dec. 18, 1972.

Order denying recommendation of administrative law judge that Commission seek enforcement of subpoena issued to third party and returning matter to the administrative law judge for further consideration of such action as may be deemed appropriate in the circumstances.

ORDER

The administrative law judge having issued on July 6, 1972, a subpoena *duces tecum* to Cornelius C. Setter, president of Independent Textile Testing Services, Inc. (hereafter referred to as "Independ-

ent"), and on July 27, 1972, having issued an order denying a motion by Independent to quash said subpoena *duces tecum;* and,

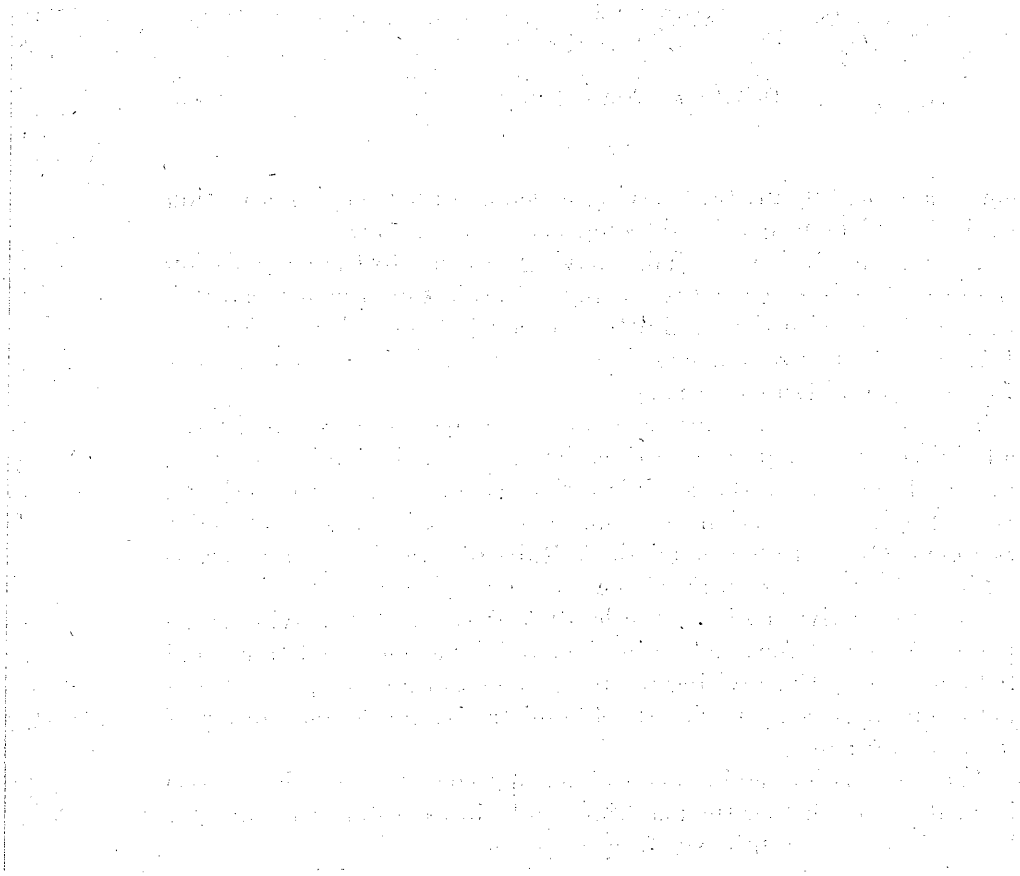
The administrative law judge having certified to the Commission the refusal of Independent to comply with said subpoena *duces tecum* in accordance with the administrative law judge's order of July 27, 1972, and having recommended that the Commission seek court enforcement of said subpoena; and,

The Commission having reviewed the papers referred to in the administrative law judge's certification, namely, the motion to quash filed by Independent, the administrative law judge's order of July 27, 1972, denying said motion to quash, the motion of Independent under Section 3.23(b) of the Commission's Rules of Practice for a determination allowing an appeal of the administrative law judge's order, the administrative law judge's order of August 16, 1972, denying Independent's request for a determination, and Independent's letter dated September 14, 1972, advising complaint counsel that Independent will not voluntarily comply with the administrative law judge's order of July 27, 1972; and,

The Commission having determined that consideration should also be made as to whether the material sought in the subpoena could not be obtained as expeditiously from respondents:

It is ordered, That the recommendation of the administrative law judge that the Commission seek enforcement of the subpoena *duces tecum* issued to Cornelius C. Setter, president of Independent Textile Testing Service, Inc., on July 6, 1972, be, and it hereby is, denied without prejudice.

It is further ordered, That the matter is returned to the administrative law judge for further consideration or such action as may be deemed appropriate in the circumstances.



ADVISORY OPINIONS WITH REQUESTS THEREFOR*

Rescission of Advisory Opinion

No. 88. Three-way Promotional Plan Set Up by Radio Station and Financed by Participating Retailers and Their Suppliers.

The Commission has reconsidered and rescinded the subject advisory opinion appearing at 70 F.T.C. 1869. (File No. 633 7022, released July 7, 1972.)

Product information disclosure on jewelry—"18K H.G.E." stamped alone and together with a tag bearing the words "18K Heavy Gold Electroplate." (File No. 723 7007)

Opinion Letter

AUGUST 18, 1972.

DEAR MR. WINDMAN:

This is in response to your letter request dated April 21, 1972, for an advisory opinion.

You requested the Commission's views regarding the propriety of using "18K H.G.E." alone stamped on a piece of jewelry, and, alternatively, such use if a tag were attached bearing the words "18K Heavy Gold Electroplate." It is the Commission's understanding that, in con-

*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.

In the case of requests for advice concerning proposed mergers, the requests together with supporting materials are placed on the public record as soon after they are received as circumstances permit, except for information for which confidential classification has been requested, with a showing therefor, and which the Commission, with due regard to statutory restrictions, its rules, and the public interest, has determined should not be made public. Any advice given under Section 1.3 of the Commission's Rules of Practice concerning proposed mergers, together with a statement of supporting reasons, are published when given.

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formity with Rule 22C (3) of the Trade Practice Rules for the Jewelry Industry amended November 17, 1959 (16 C.F.R. 23), the jewelry so represented would be covered throughout with a minimum thickness of 100/1,000,000 of fine gold.

The Commission is of the opinion that use of "18K H.G.E." alone on a piece of jewelry electroplated with gold would raise questions under Section 5 of the Federal Trade Commission Act because purchasers probably would be misled as to the meaning of the description due to use of the abbreviation.

The Commission cannot accept your suggestion that no quality disclosure need be made if the disclosure can only be made by abbreviation. The Commission favors disclosure by manufacturers and retailers of significant information regarding consumer products in order to assist prospective purchasers in making informed purchasing decisions. If the surface of the jewelry is large enough to contain a full disclosure, use of a tag would be an unacceptable substitute for such disclosure on the item itself. On the other hand, if the surface of the jewelry is too small to contain a full disclosure, the maximum reasonable abbreviated disclosure should be set forth on the jewelry item and the full disclosure should be contained on a securely attached tag.

In some circumstances, the failure to make an adequate disclosure could raise a question as to whether Section 5 of the Federal Trade Commission Act had been violated.

By direction of the Commission.

Letter of Request

APRIL 21, 1972.

DEAR MR. TOBIN:

This is a request pursuant to Section 1.1 of the Commission's Procedures and Rules of Practice for an Advisory Opinion.

We have been requested by a member not presently engaged in the following practices to advise them as to the propriety of stamping "18K H. G. E." on items of jewelry manufactured for ultimate sale to consumers. The initials are abbreviations for the marking, "Heavy Gold Electroplate." We have been further requested to advise in the event abbreviations are found capable of deception, whether the above abbreviation together with a tag attached affirmatively disclosing the item is "18K Heavy Gold Electroplate" would avoid the possibility of deception.

The Commission in its Advisory Opinion to Parker Pen Company CCH ¶19,802 announced September 30, 1971 stated that abbreviation of the term "electroplate" or "electroplated" to indicate that an item

is gold electroplate[d] would tend to mislead many consumers who would not know what the abbreviation signified and would, therefore, constitute an unfair and deceptive practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

In said opinion, the Commission stated that various industry Guides dealing with the labeling of gold content suggest a policy against abbreviation of the term "electroplate." (See 16 C. F. R. §§ 23.22, 60.2, 202, 226), as well as the most recent Guides for the Watch Industry specifically forbid it (See 16 C. F. R. § 245.3(m)). Finally, in said Opinion, seven abbreviations of the term "electroplate" were found to be inappropriate.

The Commission in an Advisory Opinion issued to the Jewelers Vigilance Committee No. 703 7071 concerning the use of dual quality marks for the unabbreviated term "electroplated" stated in its February 16, 1970 letter:

> It (the Commission) has concluded that it cannot give its approval to the proposed dual quality designation on the well-established principle that where a claim is capable of two interpretations, one of which is false, it would constitute a violation of Section 5 of the Federal Trade Commission Act.

Furthermore, in further response to this Advisory Opinion, the Commission stated on April 21, 1970 that the vast majority of consumers would be confused through the use of dual designations and if the Commission approves the use of dual designations, it would have to approve the use of triple, quadruple, etc., designations. The conclusion of said opinion was that the Commission could not approve the use of dual designations because "the use thereof would probably serve to confuse and deceive prospective purchasers in regard to the quality of the products being bought."

In light of the prohibitions against abbreviations found in the Guides and its affirmance by the Parker Pen opinion (*supra*), it may be improper to use the abbreviation, "18K H. G. E." Furthermore, it is believed if a tag were placed on abbreviated merchandise, the possibility of its removal in the line of distribution may circumvent the Guides and Opinions given by the Commission and serve to confuse and deceive prospective purchasers in regard to the quality of the products being bought.

Finally, if the Commission finds use of this abbreviation with a tag attached capable of deception, it is believed when proper stamping of jewelry is impossible without abbreviation, there should be no quality stamped. Those wishing to inform consumers of the quality should attach a tag conspicuously disclosing the quality without abbreviation. In this manner, if the tag were removed from the jewelry, no markings

would appear; thus, no affirmative quality disclosure would be made conforming to the various Rules and Guides of the Commission.

We do not believe there is any current proceeding of the Commission or any other governmental authority which has officially been instituted which is in any way related to the subject matter of this request. We also do not know of any formal previous proceeding which dealt with this particular terminology.

Furthermore, I would be glad to come to Washington and supply any additional information or technical advice that might be necessary for the Commission to reach a decision on this matter.

Respectfully submitted,

/S/ JOEL A. WINDMAN,
General Counsel.

Legality Under the Fair Credit Reporting Act of a General Order To Be Signed by the Judges of the U.S. District Court for the District of South Carolina, Authorizing the Furnishing to Lawyers Credit Information Regarding Prospective Jurors Selected in the Charleston, S.C. Metropolitan Area. (File No. 733 7001)

Opinion Letter

SEPTEMBER 21, 1972.

DEAR MR. URICCHIO:

This is in reference to your letters of February 22 and July 29, 1972, addressed to Secretary of the Commission, in which you requested an advisory opinion on behalf of your client, the Credit Bureau of Greater Charleston, Inc., regarding the legality, under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, of a general order to be signed by the judges of the United States District Court for the District of South Carolina, authorizing your client to furnish lawyers credit information with regard to prospective jurors selected in the Charleston, South Carolina, metropolitan area.

Your letters indicate that your client is a "consumer reporting agency" within the meaning of Section 603(f) of the Act and that the jury reports to be furnished by your client to attorneys include the addresses, employment history, general credit standings and general character of the prospective jurors and are "consumer reports" within the meaning of Section 603(d) of the Act.

The Commission has carefully considered your request and is of the opinion that a general order of the district court of the type you have described would not be an order of a court having jurisdiction to issue

such an order within the meaning of Section 604(1) of the Act, and that, therefore, your client may not, consistent with the Act, furnish attorneys with consumer reports in response to such a general order.

With respect to the situation described in your letter of February 22, 1972, the Commission is of the opinion that investigation of prospective jurors by attorneys is not a "business transaction involving the consumer" within the meaning of Section 604(3) (E) of the Act, and, therefore, your client may not lawfully furnish consumer reports to attorneys for jury investigation under the Act, unless, of course, written instructions releasing their consumer reports are obtained from prospective jurors.

The Commission is mindful of the demand on the part of attorneys trying cases to be presented before a jury for a jury reporting service of the type your client proposes to provide. However, in view of the clear and specific statutory proscriptions and congressional policy declarations contained in the Act, the Commission feels constrained to reach a negative conclusion with respect to the course of action proposed by your client.

By direction of the Commission.

Supplemental Letter Relative to the Request

JULY 29, 1972.

DEAR MR. FELDEMAN:

You will recall that we spoke over the telephone the other day in connection with this matter and that we had several previous discussions. I wrote to you on February 22, 1972, requesting an opinion as to whether or not reports furnished by the Credit Bureau of Greater Charleston, Inc., to lawyers in connection with prospective jurors would violate any of the provisions of the Consumer Credit Protection Act.

I would like to modify my request for an opinion as to whether or not the Commission would approve of a general Order signed by the judges of the United States District Court for the District of South Carolina, authorizing the Credit Bureau of Greater Charleston, Inc., to furnish lawyers information with regard to prospective jurors selected in the area. As I stated to you over the telephone, the list of jurors are made public approximately ten (10) days before a term of Court begins. This gives the lawyers little, or no time to go out and make independent investigations of the background of the prospective jurors. We also have a peculiar situation in this State in that the voir dire examination is extremely limited. For example, a jury panel is empaneled and sworn in a period of approximately fifteen to forty-

five minutes from the time they are drawn out of the jury box. The voir dire examination of jurors is generally restricted in both Federal and State Courts in South Carolina, and the only questions generally asked, are, "whether or not any of the jurors are stockholders in the corporation", if there is a corporation involved, and "whether or not the prospective juror can give each of the parties a fair and impartial trial", and "whether or not any of the prospective jurors are related either by blood or marriage to either of the parties". In the Federal Court, the judge usually asks whether or not any of the jurors are or have been represented by any of the attorneys involved in the case pending at that time. The reports furnished by the Credit Bureau of Greater Charleston, Inc., in connection with the prospective jurors, were limited to attorneys at law, requesting the reports in the interest of clients having cases pending during that term of Court in which the reports were rendered. The population of Charleston County has grown and there are a number of people who periodically come to Charleston County from other states, which makes such reports necessary as an aid to the selection of fair and impartial jurors, particularly in view of the limited voir dire examination. For example, a prosecutor would not desire a juror who has a bad reputation in the community to sit as a juror in a criminal case. In addition, if a particular store or corporation were being sued, and a juror did business with that store or corporation, the party suing the corporation certainly could not receive a fair and impartial trial with a good customer of the defendant sitting on the jury.

Additionally, there are areas in Charleston County where the people are extremely clannish and it is almost impossible for lawyers to obtain information from neighbors or friends.

It is our view that the Consumer Credit Protection Act and the Fair Credit Reporting Act was intended to protect a consumer in order that he might not be deprived of credit or employment as a result of improper information. If the information were furnished to attorneys concerning a prospective juror, the prospective juror, of course, would not be deprived of any rights or credit. The reports would, of course, be limited to use by attorneys in connection with the selection of prospective jurors. Reports of this nature have been used by attorneys in Charleston County and in the District of South Carolina for some period of time. These reports have also been used by the United States Attorney's Office, the State Prosecutor's Office, defendants' lawyers, and lawyers representing both plaintiffs and defendants in civil suits. We feel that such reports are extremely necessary as an

aid in selecting fair and impartial jurors, and that the ends of justice would be promoted thereby.

If necessary, the writer and several attorneys of the Charleston Bar, I am sure, would be willing to appear before the Commission in Washington, D.C., and testify, and explain in detail the necessity of such reports.

As you know, the matter is now pending before the judges of the United States District Court for the District of South Carolina, and we would like to have an opinion just as soon as possible.

With kind regards, I am,

Very truly yours,

/S/ PAUL N. URICCHIO, Jr.

Letter of Request

FEBRUARY 22, 1972.

GENTLEMEN:

I represent the Credit Bureau of Greater Charleston, Inc.

In this jurisdiction, the voir dire examination of jurors is limited in both the State and Federal Court, and for a great many years credit reports have been used by the vast majority of lawyers in and about the County of Charleston, for the purpose of obtaining information in connection with prospective jurors.

Without these reports, it is almost impossible to obtain information on prospective jurors during the limited period of time from the time the prospective juror is drawn until the time Court commences. In addition, there are a great many transit people in the area and it is extremely difficult to obtain information concerning this type of person. Credit reports on prospective jurors have been made available to attorneys representing both plaintiff and defendants, and to the United States Attorney's office, for a stated sum on each juror. These reports, for the most part, include the addresses, employment histories, and general credit standings of the prospective jurors, and information as to the juror's general character. The reports have been limited to attorneys at law requesting the reports, in the interest of clients, having cases pending, during the term of Court which the reports are rendered.

The Credit Bureau of Greater Charleston does not wish to be in violation of the Consumer Credit Protection Act, and pursuant to Rule 1.1 of the Federal Trade Commission, we are requesting that the Credit Bureau of Greater Charleston, Inc., be authorized to furnish such reports to attorneys for a stipulated fee, and we are further requesting that you furnish us an opinion as to whether or not the

furnishing of said reports would be in violation of the Consumer Credit Protection Act.

We would appreciate hearing from you at the earliest possible date.

Very truly yours,

/S/ PAUL N. URICCHIO, Jr.

Legality of Institute's By-Laws—Proposal To Establish Standards and Accreditation Procedures for the Purpose of Improving the Reliability of Field Interviewing Work Done in Consumer Research Projects. (File No. 703 7063)

Opinion Letter

NOVEMBER 21, 1972.

DEAR MR. KINTNER:

This is in response to your letter request for an advisory opinion dated August 2, 1972, regarding the bylaws of the Market Research Institute (MRI).

In brief, MRI proposes to establish standards and accreditation procedures for the purpose of improving the reliability of field interviewing work done in consumer research projects. Manufacturers, retailers, advertising agencies, media representatives and market data researchers would comprise the membership of MRI; however, the Board of Directors probably would be controlled by the market research members. The objective of the association would be to raise the standards of reportage but not to discourage exercise of independent judgements and initiatives by market researchers. This objective would be accomplished by fostering, developing and encouraging use of techniques which would provide reliable and professionally responsible research data and information. Education, guidelines, standards, accreditation, publications and similar methods would be used to upgrade market research so that more reliable data would be gathered and reported.

Based on its understanding of the plan as it is outlined above and detailed in your letter, it is the Commission's opinion that putting the plan into effect, in and of itself, would not be violative of Commission administered law.

The Commission is of the view, however, that great care must be used in implementing the plan to avoid its becoming illegally coercive either on market data researchers or the users of information those researchers provide. Special care must be used to prevent the program

being used to boycott, to establish a blacklist, or to intimidate particular researchers or any other association members.

Participation by members must be completely voluntary and membership in the association must be reasonably available to all eligible for such membership.

Lastly, you are advised that the Commission intends to examine the actual operation of the program after a reasonable period of time to determine whether anticompetitive effects have resulted from implementation of the plan.

By direction of the Commission.

Letter of Request

AUGUST 2, 1972.

DEAR MR. TOBIN:

On behalf of a group of clients identified at the close of this letter, we submit this request for advisory opinion pursuant to Rule 1.1 of the FTC Procedures and Rules of Practice. This advisory opinion request relates generally to the formation of a trade association, the Market Research Institute, and its proposed program of standards and accreditation for the field of consumer market research activities.

Earlier Requests for Advisory Opinion

On November 25, 1969, we submitted a request for advisory opinion on behalf of the same client group, but involving a different form of proposed bylaws and proposed standards, accompanied by extensive legal analysis supporting the request. The Commission, by letter of February 2, 1970, declined to issue an advisory opinion "because an informed decision cannot be made since the effects of the proposed plan cannot be predicted without an extensive investigation."

On April 20, 1970, a renewed request for advisory opinion was made. Guided by the Commission's comments and opinion rendered on an analogous program, FTC Advisory Opinion No. 350, our request embodied modified bylaws and standards assigned to stress more clearly the voluntary and nondiscriminatory purpose and operation of the Institute and its programs. At that time, extensive documentation was provided to stress the nature of the industry practices, problems and needs. That request was not granted by the Commission. In its letter of July 27, 1970, the Commission said that "no advisory opinion will be rendered thereon since the competitive effects of your clients' proposed program cannot be predicted."

Subsequent Commission Developments Forming the Basis of This Request

Since our last request was refused, the Commission clarified its position on standards making and certification in response to a request for advisory opinion from the American National Standards Institute (File No. 713 7002, March 8, 1971*, FTC News Release, March 22, 1971) and at that time expressed its sympathy "to the growing interest in the development of plans for self-regulation which will avoid the strictures of the antitrust laws." Chairman Kirkpatrick publicly expressed his views on industry self-regulation in a speech before the New York State Bar Association on January 28, 1971 (FTC News Release, July 28, 1971). The former General Counsel Martin addressed this issue in a speech before the American National Standards Institute (FTC News Release, June 24, 1971). Executive Director Mezines dealt with the topic in a speech before the American Society of Association Executives on August 23, 1971. General Counsel Dietrich spoke to related issues in a speech before the International Law Section of the 1972 Mid-America World Trade Conference (FTC News Release, March 1, 1972). On April 20, 1972, the Commission appointed a task force on industry self-regulation (FTC News Release, April 20, 1972), and released its Preliminary Staff Study on Self-Regulation and Accreditation.

In summary, there has been growing public recognition by the Commission over the past year of the procompetitive role which standards may and can play in the United States economy, and a detailed articulation of the kinds of safeguards needed to comply with the letter and spirit of the federal antitrust laws.

In this climate of an enhanced Commission awareness of the procompetitive role of standards and accreditation, our client group has revised the bylaws of its proposed Institute with a view to meeting all conceivable objections reasonably capable of being met at the inception of any such program. The revised program on its face is designed to meet the necessary criteria described by Commission and individual Commission officials, for the reasons we elaborate below.

The Market Research Institute and its proposed program

In the consumer market research industry, the role of field personnel—interviewers and their supervisors—is one of surveying segments of the consumer public with respect to any particular market research program. This interviewing function is commonly contracted

*See 78 F.T.C. 1628.

out to independent organizations or field personnel. A major problem area in this industry is the relative unreliability of the work in the field—ranging from improper interviewing to outright failure to conduct interviews at all, filling in falsified reports—and generally shoddy conduct which independent market research organizations and corporations with their own market research departments endeavor to minimize through post-survey verification practices. The extensive abuses which exist in field interviewing were documented in our letter request of April 20, 1970. A number of concerned manufacturer-retailers and market research interests determined that the most constructive way to deal with these problems was to help form an association of market research organizations and national manufacturers and retailers who rely on market research to test-market products and services together with representation from the Market Research Trade Association and communications media and advertising agencies. The purpose of this membership association would be to bring to the field of market research a level of standards, education, and accreditation which would upgrade the quality and reliability of the field activities which effective market research requires. In short, the membership organization and its purpose is one where competitive forces are distinctly secondary if existent at all.

Stated differently, the active members of the Institute, pursuant to the bylaws, are organizations which share a common interest in the quality and reliability of market research, an interest which benefits the consuming public to the extent that decisions to redesign or to add or drop products or services are based in no small measure on the accuracy of field survey activities.

This membership association provides the opportunity to publish and disseminate standards of performance which market researchers or industry clients may specify—or may not specify—as they wish. Field interviewers and the like may have an opportunity to be accredited. Educational programs and literature can be implemented to disseminate the best available know-how on the ways this category of work can be performed most effectively and efficiently. The entire field of market research stands to benefit from this proposed program.

However, before the commitment of time and expense to such an ambitious program, the client group desires the qualified approval of the program by the Commission with respect to the documentary basis of the membership association reflected in the proposed bylaws. This is the narrow scope of the advisory opinion request.

Antitrust safeguards built into the proposed bylaws provide a reasonable basis for a qualified, favorable advisory opinion

The bylaws of the Market Research Institute (Appendix A) as now revised make a change in the Board of Directors "control" over the nonprofit organization. Whereas the prior submission of proposed bylaws provided for a Board of Directors weighed in favor of manufacturer-retailer users of market research services (manufacturer-retailers), the revised bylaws provide for greater representation on the Board of Directors by the outside industry members (market research organizational interests), as is the more conventional trade association practice. The number of members of the Board of Directors has been reduced from 19 to 11 (Art. IV § 4: 1) and the composition of the Board has been modified as follows:

Category	Board of directors under prior submission	Board of directors under present submission
Manufacturer-retailer members	11	3
Advertising agency members	2	1
Communications media members	2	1
Market research company members	3	5
Market Research Trade Association	1	1
Total	19	11

Comparable bylaw changes may now be effected by two-thirds of all active members (Art. X), rather than two-thirds of the manufacturer-retailer members.

We emphasize here the built-in antitrust safeguards of a membership association Board of Directors composed of industry competitors (market research companies) as well as customer-users of the industry service and organizations with in-house market research capability (manufacturers, retailers, advertising agencies, communications media) as constituting a composition which is highly favorable in assessing the antitrust safeguards capable of being built into a trade association organization. Trade associations presenting the greater area of antitrust responsibility are obviously those composed of competitors alone, whose actions could adversely affect customers or suppliers or intertype competition. Here the field survey interests are represented on the Board, together with organizations which engage in the commerce of market research, or which use the services of the industry.

A key section of the bylaws (Art. IX) deals topically with the safeguards which must be built into any standards/accreditation program of the Institute. These safeguards are designed to reflect the

most current areas of concern expressed by the Commission through its formal actions, as well as through informal expression by individual Commission members and staff. Specifically, the bylaws expressly provide safeguards to ensure that any standards/accreditation program is voluntary, is nondiscriminatory in its application to members and nonmembers, involves procedural public notice of proposed standards, with an opportunity to be heard, provides for reasonable fees and for procedural safeguards with respect to any form of remedial action for failure to comply, including the affirmative opportunity for arbitration.

Standards

The proposed standards (Appendix B) remain unchanged from the prior submission. While these standards reflect the current thinking on fairness and reasonableness of industry field practices designed to ensure truthful results and responsible survey techniques, nevertheless these proposed standards would not be implemented in all events until these proposed standards receive the publicity and opportunity for industry comment and response, pursuant to the bylaws (Art. IX § 9:1).

The program in its present form raises fundamental questions about the realistic availability of the advisory opinion procedure to proposed business conduct which includes the following considerations:

(a) generally comparable business conduct was the subject of a favorable, albeit qualified, Advisory Opinion No. 150;

(b) the underlying documents upon which a favorable advisory opinion is based in themselves contain the built-in limitations on business behavior which the Commission itself has espoused in its response to the American National Standards Institute, and through staff speeches and papers;

(c) any advisory opinion is limited by the nature of the proposal itself. The Commission need assume only that the program would be implemented and carried out as it is proposed;

(d) if the Commission refuses to give a favorable, though qualified advisory opinion on this program which, as presented, contains no antitrust defects or areas of antitrust vulnerability, then the advisory opinion program is illusory to the extent that, realistically, it is simply not available in the category of business conduct here in issue.

The issue, therefore, is whether the Commission is now willing, in light of the knowledge which it has accumulated involving trade association standards and accreditation to grant a qualified favorable advisory opinion confined to the program as presented, with built-in

antitrust safeguards reflecting current knowledge of standards and accreditation. We submit the answer should be in the affirmative and an action to this effect is solicited.

Respectfully,

ARENT, FOX, KINTNER, PLOTKIN & KAHN.
By /S/ EARL W. KINTNER.
By /S/ JACK L. LAHR.
By /S/ RUTH P. ROLAND.

Attorneys for a Manufacturers Marketing Research Group composed of:

Beech-Nut, Inc.
Carter Products, Inc.
Chesebrough-Pond's Inc.
Coca Cola Company, U.S.A.
Johnson & Johnson
S. C. Johnson & Son, Inc.
Kraft Foods Corporation
Thomas J. Lipton Inc.
The Mennen Company
Miles Laboratories, Inc.
Mobil Oil Corporation
Noxell Corporation
Sears Roebuck & Company, Inc.
Scott Paper Company
Warner-Lambert Pharmaceutical Co.
Xerox Corporation

APPENDIX A

BYLAWS OF MARKET RESEARCH INSTITUTE

ARTICLE I. CORPORATION, OFFICES

1:1 The name of the corporation is MARKET RESEARCH INSTITUTE, and is a non-profit membership corporation.

1:2 The corporate offices of the Institute shall be established in such city or cities of the United States and elsewhere as the Board of Directors may from time to time determine.

ARTICLE II. PURPOSES AND OBJECTIVES

2:1 The purposes and objectives are: to foster, develop and encourage the development of reliable and professionally responsible consumer market research data and information through educational programs, guidelines, standards and criteria, publications and related activities, which will serve to foster and improve the quality and service of market research in the United States.

ARTICLE III. MEMBERSHIP

3:1 *Active Membership.* Business organizations including corporations, firms, or partnerships, engaged in (a) consumer goods or services manufacturing, supply or retailing activities, (b) market research organizations, (c) advertising agencies, (d) communications media, having a business interest in consumer market research are eligible for active membership in the applicable category (a)–(d) set forth above.

3:2 *Associate Membership.* Corporations, organizations, firms and individuals which, though not engaged in consumer market research, are nevertheless interested in consumer survey education and training, shall be eligible for associate membership. This shall include entities and persons in federal, state or local governmment, public opinion research organizations and university level schools and personnel thereof.

3:3 *Active Member Representatives.* Each active member shall designate a person to be known as the active member representative who shall represent such active member in the affairs of the Institute. An active member representative shall be an official or employee of the active member and such designation shall remain in effect unless revoked by the active member or unless the active member is more than 90 days in arrears on membership dues.

3:4 *Voting.* Each active member representative in good standing shall be entitled to one vote in the affairs of the Institute as provided by these bylaws. Associate members are entitled to the same rights and privileges as active members, except for the right to vote.

3:5 *Membership Obligations.* Any party accepting membership in the Institute shall be deemed by doing so to have agreed to be bound by the bylaws and shall not represent compliance with Institute standards or accreditation unless this is a fact.

ARTICLE IV. BOARD OF DIRECTORS

4:1 *Members.* The Board of Directors shall be eleven in number composed of active member representatives in good standing elected from the following active membership categories by the active members of each respective category:

Category:	*Number*
Manufacturer-retailers	3
Advertising agencies	1
Communications media	1
Market research organizations	5

In addition, the Market Research Trade Association shall have the right to appoint one representative to the Board of Directors, which representative shall have the same rights and privileges as all other directors including the right to vote. In the event that such representative is not appointed following reasonable notice, the Board of Directors shall select a person employed as a supervisor of market research interviewers in lieu thereof and with the same rights and privileges.

4:2 *Election and Term.* The term of office for Directors representing active members in good standing shall be three years, until a successor is elected, except that during the initial election one manufacturer-retailer active member representative shall be elected, respectively for a term of one, two and three years and one market research organization active member representative shall be elected for a term of one year, two such members for two years and two such members for three years. No active member shall be represented on the Board of Directors for more than two consecutive terms.

4:3 *Meetings.* Meetings of the Board of Directors shall be held at least annually, at a time and place designated by the Board of Directors. Special meetings of the Board of Directors may be called by the Executive Secretary or by any three members of the Board.

4:4 *Notice.* Notice of the time, place and agenda of meetings of the Board of Directors shall be mailed to each Director at least 15 days in advance of the meeting date, except that by consent of a majority of the Directors, for good cause, special meetings may be held without 15 days notice.

4:5 *Quorum, Conduct of Business.* A quorum for the transaction of business shall be a majority of the Directors in office actually present at the meeting of the Board of Directors. There shall be no proxy votes at a Board of Directors meeting. In periods between meetings, the Board of Directors may take action pursuant to a mail referendum of all Directors.

4:6 *Interim Vacancies.* If the active member representative resigns, dies or otherwise withdraws from the Board of Directors following election thereto, then the active member so represented shall have the power to designate a successor active member to complete the unexpired term. If the active member so represented ceases to be in good standing, then that active member representative shall no longer be entitled to serve the remainder of the term. In such event, a vacancy shall arise which may be filled by the Board of Directors by an active member representative in the same category, subject, however, to ratification by the active members in that category at the next election.

ARTICLE V. CONVENTIONS

5:1 *Annual Conventions.* The Board of Directors shall set the time and place of an annual convention and provide timely notice to the membership thereof. At the annual convention, the members shall be provided an annual report of the activities and financial position of the Institute.

5:2 *Convention Voting.* At the annual convention, the active members in good standing shall be provided the opportunity to elect members of the Board of Directors, as provided herein. Each such active member shall be entitled to one vote through its designated active member representative.

5:3 *Nominations.* Prior to the annual convention the Board of Directors shall appoint a Nominating Committee of five persons, three from the Board of Directors, each in a different active member category, and two from the active membership not represented on the Board of Directors. The Nominating Committee shall select nominees for the Board of Directors pursuant to the bylaws and shall notify membership of its selection at least 60 days in advance of the annual convention.

For the first convention, this provision is suspended and the incorporators shall appoint a Nominating Committee generally consistent with the spirit and purpose of these bylaws which Nominating Committee shall select nominees for members of the initial Board of Directors.

5:4 *Additional Nominees.* Fifteen percent (15%) of the active members in each category shall, by petition, be entitled to have additional nominees for the Board of Directors placed on the ballot for vote at the annual convention, provided, however, that such petition must be presented to the Institute at least 10 days in advance of the annual convention.

5:5 Except as provided by these bylaws, the procedures for conduct of the business at the annual convention shall be in accordance with Roberts' Rules of Order, latest revision.

ARTICLE VI. MANAGEMENT

6:1 The responsibility and authority for management of the Institute shall vest with the Board of Directors.

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6:2 The Board of Directors may select an Executive Secretary who shall be responsible to the Board of Directors for the staff operations of the Institute. The terms and conditions of such employment shall be determined by the Board of Directors.

ARTICLE VII. MEMBERSHIP DUES AND STANDING

7:1 The Board of Directors shall have the power to set the annual or special dues for the membership, and the terms for loss of good standing for failure to pay membership dues.

ARTICLE VIII. PUBLICATIONS, EDUCATIONAL PROGRAMS

8:1 The Institute may publish periodicals, literature and educational materials relating to the Institute and market research affairs in the manner and form prescribed by the Board of Directors.

8:2 The Institute may arrange and conduct educational programs, seminars and workshops on market research affairs in the manner and form prescribed by the Board of Directors.

ARTICLE IX. STANDARDS, ACCREDITATION

9:1 The institute shall have the power to develop, establish, and implement reasonable standards and accreditation procedures relating to consumer market survey and research practices and procedures subject to the following conditions and limitations:

(a) Prior to implementing any proposed standards or accreditation procedures there shall be provided reasonable public notice of proposals with respect thereto and an opportunity for interested persons to present their views.

(b) Standards and accreditation shall be voluntary, nondiscriminatory, available to nonmembers as well as members, and no charges or fees incurred thereby shall operate unreasonably to foreclose the opportunity of interested parties, otherwise qualified, to secure the benefits thereof.

(c) Standards shall be kept current and adequately upgraded to allow for industry and scientific advances and innovation.

(d) Audit programs aimed at fostering and monitoring compliance with standards and accreditation shall be fair, reasonable and nondiscriminatory.

(e) Prior to any warning, suspension, deaccreditation or other action for failure to abide by standards, the party so charged shall be given a statement of the grounds for such action, together with an opportunity to be heard. Any action taken by the Institute with respect thereto shall include a notification of the party of the basis and reasons therefor. At the option of the party so charged the party shall be afforded a reasonable opportunity to have the merits of the charge adjudicated by compulsory arbitration by the American Arbitration Association in accordance with the rules thereof.

9:2 The Board of Directors shall have the power to delegate to a Standards and Accreditations Committee the implementation of this program on terms and conditions consistent with the bylaws hereof.

ARTICLE X. AMENDMENTS

10:1 These bylaws may be amended by the following procedures:

(a) By a vote of two-thirds of the Board of Directors provided, however, that such amendment shall thereafter be subject to ratification by two-thirds vote of the active membership at the next annual convention, the membership to be provided 30 days advance notice of such amendment to be ratified.

(b) Upon petition by 15% of the active membership received by the Institute at least 60 days in advance of the annual convention, a proposed bylaw amendment shall be publicized to the membership at least 30 days in advance of the annual convention and enacted by two-thirds vote of the active membership.

APPENDIX B

PROPOSED MARKETING RESEARCH INSTITUTE MINIMUM STANDARDS DEFINITIONS

Client

A manufacturer, advertising agency, publisher, broadcaster, retailer, etc., who contracts with outside independent companies to conduct some or all phases of individual market research studies.

Research Company

An independent company that contracts with clients for the performance of some or all phases of individual market research studies, including the sub-contracting of specific study phases.

Field Supervisor

Independent firms or individuals usually working in only single metropolitan areas to whom Research Companies and/or clients may sub-contract the execution of the data collection activities for individual studies.

Interviewer

Independent sub-contractors and/or employees of supervisors who collect raw data from respondents through personal, telephone or mail interviews.

Verification, Validation

The procedure for determining the accuracy of field interviews.

Coding

The procedure for evaluating the strength or weakness of the response of a person interviewed.

Audit

The procedure for evaluating a completed market research project to determine compliance with agreed standards, specifications and procedures.

1. *Market Research Study Specification Standards*

A. All of the objectives of a market research study should be clearly and carefully spelled out in writing at the outset or confirmed in writing.

B. All of the desired information requirements to be included in the questionnaire should be clearly and carefully spelled out in writing at the outset or confirmed in writing.

C. In carrying out A and B above, the following details of the type of sample to be utilized and its content should be indicated by the client:

Specific sample selection procedure to be employed.

Any special or unusual requirements for selection of specific respondents.

The universe of respondents to be interviewed and the specific subgroups with the desired number of interviews of each group.

The specific maximum number of callbacks to be utilized.

Anticipated incidence rates for both the total universe and specific subgroups.

The specific cities or areas to be included and the number of interviews in each, as well as a precise definition of the specific areas to be covered.

D. The details of the methodology to be employed, including the method of interview on each phase of the study and the number of phases to be conducted, should be specified.

E. The probable length of the questionnaire and the approximate number of open-ended questions should be specified.

F. Final questionnaire should be approved by the client.

G. Specifications for pre-test should be spelled out and include the following:

Number

Where conducted

When conducted

With whom conducted

How conducted

How to be reported

H. Any unusual interviewer briefing requirements should be specified.

I. Any unusual validation requirements should be specified.

J. Any unusual tabulation specifications and statistical routines should be specified.

K. The specific type of report format should be indicated.

L. The cost of the study and the schedule of payment should be specified.

M. The desired timetable for scheduling and reporting of the study should be agreed upon including an indication of the necessity for a written or verbal presentation.

N. Any subsequent changes in any of the specifications should be provided in written form.

2. *Project Acknowledgment*

A written acknowledgment to proceed with the project should be provided to the research company.

3. *Written Instructions For The Field Supervisor*

A. Written instructions should be furnished to the Field Supervisor and a copy furnished to the client.

B. These instructions should contain, at a minimum, the name, number, and purpose of the study; sample specifications; quotas, verification requirements, editing requirements, schedule for return of completed questionnaires, emergency contacts; and description of allowable expenses.

C. Supervisor should not be informed of client's identity unless specifically authorized by the client.

4. *Written Instructions For The Interviewer*

A. Written instructions should be furnished to the Interviewer and a copy of these furnished to the client.

B. These instructions should contain, at a minimum, the name, number, and purpose of the study; sample specifications; quotas; explanation of the questionnaire and its handling (including probing instructions where necessary); time schedules and delivery requirements for completed questionnaires; and responsibilities to the Field Supervisor.

5. *Recruiting Field Supervisors*

In recruiting Field Supervisors, preference should be given to those subscribing to the applicable M.R.I. standards.

6. *Distribution of Material*

The client should allow the Research Company a reasonable length of time in planning so as to allow efficient distribution of materials, and the Research

Company, in turn, should allow a reasonable length of time for distribution to the field.

7. *Selection of Interviewers*

In the selection of Interviewers, preference should be given to those who have been certified as meeting applicable M.R.I. standards. Substitutes should be briefed on M.R.I. standards and they should agree to these standards by signature.

8. *Interviewer Briefing Sessions*

Interviewer briefing sessions must be held unless otherwise specified by the client of the Research Company. A report of these briefing sessions should be furnished to the Research Company and should include dates, times, names of interviewers in attendance, name of instructor, and whether conducted by telephone or in person. All interviewers must be properly briefed.

9. *Interviewing Standards*

A. Disclosures of the client's name by the interviewer in order to gain respondent cooperation or for any other reason is strictly prohibited unless specifically authorized by the client.

B. The amount of time required for the interview should not be misrepresented to the respondent.

C. Strict adherence to the sample design is required.

D. Questionnaires should be read as written and in the order in which questions are listed.

E. The entire questionnaire should be completed with the respondent. No incomplete questionnaire should be submitted without explanation nor should it be counted in the quota.

F. Completed questionnaires should be returned on schedule.

G. No interviews should be conducted with acquaintances, friends, neighbors, relatives, or anyone interviewed by the same interviewer in the past six months.

10. *Return of Material*

A. First day questionnaires should be forwarded to the Research Company by the fastest means within 24 hours.

B. The balance of the questionnaires should be returned on an agreed upon schedule that will permit timely validations.

11. *Validation Standards*

A. Verification certificates supplied by M.R.I. or embodying M.R.I. guidelines should be used.

B. Validation should be conducted by phone or in person.

C. Validation should be conducted only once with any particular respondent, and a notation made on the verification certificate.

D. A positive attitude should be used in validating.

E. Validating calls will not be made prior to 9 A.M. local time nor later than 9:30 P.M. local time on weekdays and Saturdays and Sundays. Sunday validating calls are not to be made prior to 11 A.M.

F. A minimum of 15% of each interviewer's work randomly selected over the active study period should be completely validated. A greater proportion of validating should be done wherever substantial discrepancies are found. A greater proportion will usually have to be attempted in order to achieve this percentage.

G. The specific responsibility for validation is to be agreed upon in writing between the client and Research Company.

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12. *Editing Standards*

A. Editing should be a separate function from coding; it is desirable but not essential to utilize different personnel than in coding.

B. The supervisor should check questionnaires for completeness. Client procedures should clarify whether or not and how the supervisor is to fill in missing answers. All supervisor corrections should be indicated in a different color pencil.

C. The Research Company should count and number all completed questionnaires and then sort by city and interviewer. All incomplete or special situation questionnaires should be kept in a separate group with a decision as to how to handle them as soon as possible.

D. Screening question(s) should be checked for proper qualification.

E. All questionnaires should be checked for completeness, consistency, and legibility.

F. Editing instructions for each study should be reviewed by the person responsible for the study.

G. Editing should be done in a different colored pencil than those already used in the questionnaire.

13. *Coding Standards*

A. The objectives of the study should be communicated to the coding supervisor before receiving completed questionnaires. These same objectives should be communicated to each code builder for the questions they are working on.

B. A minimum of 25% of all questionnaires should be sampled when building a code.

C. All codes to be utilized in a study should be approved by the coding supervisor and the person in the Research Company responsible for the study and/or the client, if he so desires.

D. A coding supervisor should be assigned to each project.

E. The code should be typed and explained to the coders. The coders should be given copies of all exhibit cards and other visual aids used in the project. All rotations or other variations of the questionnaire should be completely explained.

F. Batch or control slips should be assigned to batches of questionnaires. The batch sheets should have the question numbers listed and a place for the coder's initials and the check coder's initials next to each question.

G. The project should be organized so that certain coders only code certain questions or sections of the questionnaire.

H. The coding supervisor should have the responsibility of answering all the questions which arise during coding. Coders should be encouraged to ask questions when they are in doubt of the meaning of an answer or the way an answer should be coded.

I. Any changes or additions to the code must be communicated to all coders at once.

J. The code building and coding functions should be performed by people who have been properly trained in these endeavors.

K. 25% of all coding should be checked before work is tabulated.

L. A new coder should have 100% of her work checked.

M. Check coding should be done by simply recoding the questions and comparing the coder's work with the check coder's work.

N. If a coder has made consistent errors, 100% of the coder's work should be check coded.

O. The check coder should put her initials next to the coder's initials on the batch slip.

P. A 5% error in coding in each individual question by an individual coder should be the maximum allowable error.

14. *Keypunching/Card Cleaning*

A. A minimum of 25% of all cards should be key verified 100%. A record should be kept of the number and type of errors found when verifying the cards.

B. Keypunch operators should be experienced in working with marketing research data, or properly trained in that field.

C. Checks should be made to verify that:

a. Single columns have single punches

b. Skip patterns have been followed correctly

c. Logic checks are made to make sure that question sequence has been followed correctly.

D. If errors or inconsistencies are found when the cards are cleaned, the questionnaire should be referred to for corrections.

15. *Tabulating Standards*

A. All tabulating plans should be approved by the client and/or person in the Research Company responsible for the study prior to the start of tabulating.

B. The tabulating plan should include the following:

A list of all runs and cross runs with the qualifications for each run.

The specific base on which questions will be percentaged for each run.

Specific instructions for each question that is to be weighted should be provided.

C. If the tabulating is to be done using a card sorter, the following checks should be made:

Checks should be made on cards as they are sorted.

All hand calculations such as adding, subtracting, percentaging, should be doubled checked.

All typed tables are to be double checked for typographical errors.

D. If tabulating is to be done by a computer, program errors can be checked by taking a minimum sample of 15% of the cards, and comparing answers against the total sample for each question.

16. *Data Storage Standards*

A. The I.B.M. cards and/or tapes should be stored for a minimum of one year. The minimum for questionnaire storage should be 6 months.

At the end of the stated length of time, the Research Company should alert the client to the fact that the data will be destroyed unless the client elects to store the data himself, or pay the storage charge.

B. The Field File at the Research Company should include the following forms:

a. Contact Sheet

b. Briefing Session Form

c. Check-in Sheet

d. Interviewer Field Validation

e. Validation Questionnaire or Certificate

f. Interviewer Field Instructions

g. Supervisor Instructions

h. Sampling Instructions

i. Any Reports to M.R.I. on certified Interviewer's and/or certified Supervisor's noncompliance with standards.

C. The Coding File at the Research Company should include the following forms:

a. Coding Record Sheet
b. Control Batch Coding Sheet
c. Sampled responses used to build codes
d. All codes
e. "Other Mentions" list
f. All correspondence with the Tabulating Company
g. Editing Instructions
h. Master Questionnaire
i. Key Punch Control Sheets
j. Cleaning Record (Computer) Sheet

17. *Reporting Standards*

In those cases where the Research Company supplies analysis and report writing services, a copy of the tabulations will also be supplied.

18. *Payments*

A. Payments for satisfactory work should not be delayed beyond two weeks from completion of the job or receipt of the invoice.

B. Payment to intreviewers should be on an hourly basis rather than on a per interview basis.

19. *Auditing Standards*

A. The auditor should be a disinterested party with no financial relationships with the parties to the market research project being audited.

B. If the audit is not pursuant to an M.R.I. field investigation, the auditor should be compensated solely by the party requesting the audit, unless other arrangements are made in writing and disclosed to the other party to the transaction.

C. The auditor should maintain the details of the project being audited in confidence and disclose the results of his audit solely to the party requesting the audit unless the requesting party directs otherwise, or unless the audit is pursuant to an M.R.I. field investigation.

D. The auditor will review the documents relating to the market research project to determine conformance with the above M.R.I. standards, or such other standards as may have been specified by the client, as applicable, and shall prepare a written report of his findings.

E. If the services of an M.R.I. auditor are requested by a person or organization, the M.R.I. auditor will conduct an audit only in situations where the client has specified M.R.I. standards, to determine compliance therewith.

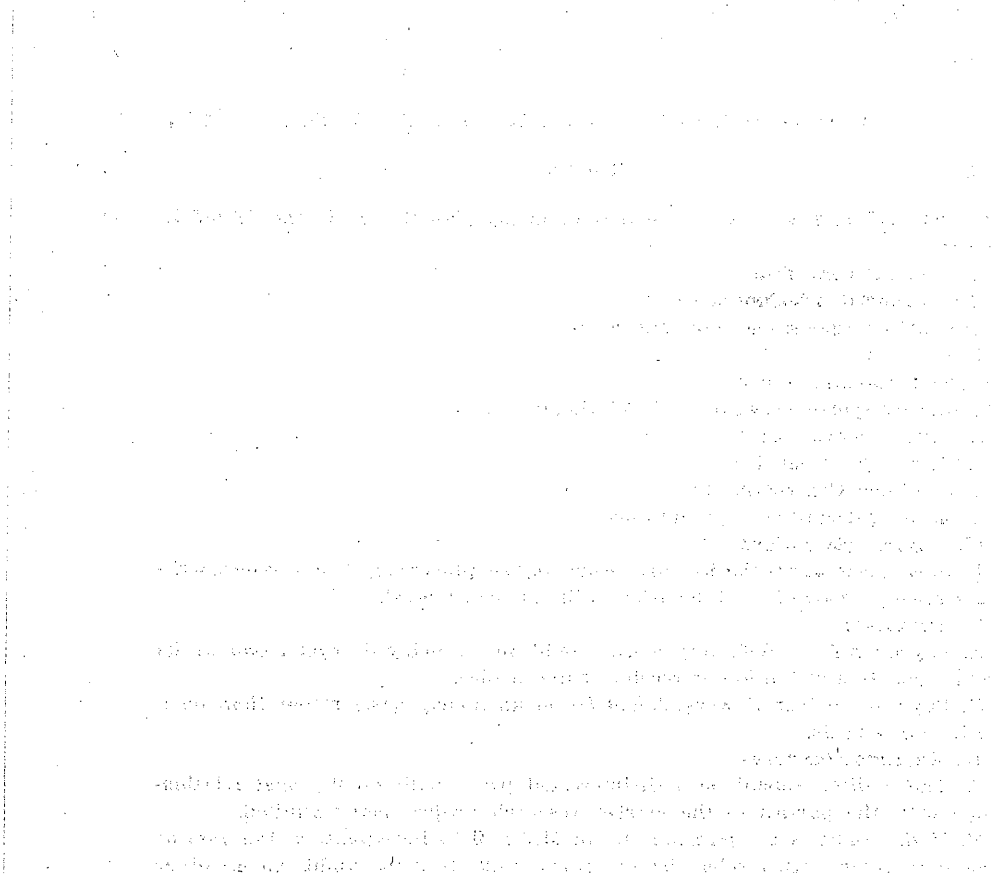


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