

in detail the manner and form in which they have complied with the order to cease and desist.

Commissioner Nye not participating.

IN THE MATTERS OF
WHIRLPOOL CORPORATION—Docket C-2515
DOYLE DANE BERNBACH, INC.—Docket C-2516

CONSENT ORDERS, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE FEDERAL TRADE COMMISSION ACT

Complaint, June 25, 1974—Decisions, June 25, 1974

Consent orders requiring a Benton Harbor, Mich., seller and distributor of air conditioners and its advertising agency in New York City, among other things to cease misrepresenting air cooling products as having unique features, and the cooling, circulation or dehumidification capabilities of such products as well as the amount of electric power used by such products. The seller and distributor is further required to cease failing to maintain and produce records in support of claims for its air cooling products.

Appearances

For the Commission: *Patrick E. Power.*

For the respondents: *Arnstein, Gluck, Weitzenfeld & Minow*, Chicago, Ill., for Whirlpool Corporation. *Davis, Gilbert, Levine & Schwartz*, New York City for Doyle Dane Bernbach, Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Whirlpool Corporation, a corporation and Doyle Dane Bernbach, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Whirlpool Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at Benton Harbor, Mich.

Respondent Doyle Dane Bernbach, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 20 W. 43rd Street, New York, N.Y.

The aforementioned respondents cooperate and act together in carrying out the acts and practices herein set forth.

PAR. 2. Respondent Whirlpool Corporation Inc. is now and has been engaged in the advertising, offering for sale, sale and distribution of Whirlpool air conditioners.

PAR. 3. Respondent Doyle Dane Bernbach, Inc. is now and has been an advertising agency for Whirlpool Corporation; it has prepared and now prepares and places advertising, including but not limited to the advertising referred to herein, for the purpose of promoting the sale of the products of respondent Whirlpool Corporation.

PAR. 4. In the course and conduct of its aforesaid business, respondent Whirlpool Corporation now causes and has caused its air conditioners, when sold, to be transported from its place of business in the State of Michigan to purchasers thereof located in various States of the United States, and in the District of Columbia. Respondent Whirlpool Corporation therefore maintains, and at all times mentioned herein has maintained, a substantial course of trade in said air conditioners in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business as aforesaid, and at all times mentioned herein, respondent Whirlpool Corporation has been, and is now, in substantial competition in commerce with corporations, firms and individuals engaged in the sale of air conditioners of the same general type as that sold by respondent.

In the course and conduct of its business as aforesaid, and at all times mentioned herein, respondent Doyle Dane Bernbach, Inc., has been, and is now, in substantial competition in commerce with corporations, firms and individuals in the advertising business.

PAR. 6. In the course and conduct of their business as aforesaid, and for the purpose of inducing the sale of the said air conditioners in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents have disseminated, and caused to be disseminated, certain advertisements of said air conditioners, including but not limited to, advertisements printed in magazines and newspapers, and advertisements transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines.

PAR. 7. Typical of the statements and representations contained in said advertisements, but not all inclusive thereof, is the following segment of the audio portion of a network television commercial for Whirlpool air conditioners:

On one of those particularly hot days, when its a real struggle just moving around and you have all you can do to keep going, it's nice to come home to a Whirlpool air conditioner.

*You see only Whirlpool has the special Panic Button to cool you off extra fast * * *.*
(Emphasis supplied)

PAR. 8. By and through the use of the aforesaid statements and representations, respondents have represented, directly or by implication, that the "Panic Button" is a unique feature of Whirlpool air conditioners, not found on other air conditioners.

PAR. 9. In truth and in fact the "Panic Button" is not a unique feature of Whirlpool air conditioners. In fact, the "Panic Button" is merely a control which activates the highest of the three fan speeds on said air conditioners, and in that respect is substantially similar to controls on comparable air conditioners made by other companies.

Therefore, the statements and representations referred to in Paragraphs Seven and Eight were and are false, misleading, and deceptive, and the advertisements referred to in Paragraphs Six, Seven and Eight were and are unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. By and through the use of the aforesaid statements and representations, respondents have also represented, directly or by implication, that at the time the aforesaid statements and representations were made, respondents had a reasonable basis from which to conclude that Whirlpool air conditioners, operating at the fan speed activated by the "Panic Button," had an initial cooling capability which was substantially greater than that of comparable air conditioners made by other companies.

PAR. 11. In truth and in fact, at the time the aforesaid statements and representations were made, respondents had no reasonable basis from which to conclude that Whirlpool air conditioners, operating at the fan speed activated by the "Panic Button," had an initial cooling capability which was substantially greater than that of comparable air conditioners made by other companies.

Therefore, the statements and representations referred to in Paragraphs Seven, Ten and Eleven were and are false, misleading and deceptive, and the advertisements referred to in Paragraphs Six and Seven were and are unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 12. By and through the use of the aforesaid statements and representations, respondents have also represented, directly or by implication, that Whirlpool air conditioners, operating at the fan speed activated by the "Panic Button," have an initial cooling capability which is substantially greater than that of comparable air conditioners made by other companies. At the time said statements and representations were made, respondents had no reasonable basis from which to conclude that such was the fact.

Therefore, the statements and representations referred to in Paragraphs Seven and Twelve were and are false, misleading and deceptive, and the advertisements referred to in Paragraphs Six and Seven were and are unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 13. The use by respondents of the aforesaid unfair or deceptive acts or practices has had, and now has, the capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts or practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Docket C-2515—WHIRLPOOL CORPORATION
DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Whirlpool Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State

of Delaware with its principal office and place of business located at Benton Harbor, Mich.

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

ORDER

I

It is ordered, That respondent Whirlpool Corporation, its successors and assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of Whirlpool brand room air cooling products or Whirlpool brand central air cooling systems, hereafter referred to as "such products," in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. representing, directly or by implication, that the button which activates the highest fan speed on any of Whirlpool brand room air cooling products is a unique feature of such room air cooling products;

2. representing, directly or by implication, that any such products have a button, control, device or other feature which is unique, unless such is the fact;

3. representing, directly or by implication, that any such products are unique in any other material respect unless such is the fact;

4. representing, directly or by implication, that any such Whirlpool brand room air cooling products have an initial cooling capability which is substantially greater than that of comparable room air conditioners made by other companies, unless, at the time such representation is made, respondent has a reasonable basis for such representation, which shall consist of competent scientific, engineering, or other similar objective material (For the purposes of this paragraph, the term "initial cooling capability" shall refer to the speed with which a room air conditioner, upon initial activation of the unit, is able to lower the temperature to a given temperature in the area being cooled);

5. making, directly or by implication, any other statements or representations as to:

- (a) the air cooling, circulation, or dehumidification capabilities of such products, unless, at the time such representation is made, respondent has a reasonable basis for such

representation, which shall consist of competent scientific, engineering or other similar objective material; and

(b) the efficiency of use of electric power of such products, unless, at the time such representation is made, respondent has a reasonable basis for such representation, which shall consist of competent scientific tests, or industrywide standards based on such tests established by the Association of Home Appliance Manufacturers, the Air Conditioning and Refrigeration Institute, or a similar organization, or by an agency of the Government of the United States.

II

It is ordered, That respondent Whirlpool Corporation do forthwith cease and desist from failing to maintain and produce accurate records which may be inspected by duly authorized representatives of the Federal Trade Commission upon reasonable written notice by the Commission:

1. which consist of documentation in support of any claims covered under any paragraph of Section I of this order which are included in advertising or sales promotional material for any such products;

2. which provided the basis upon which respondent relied as of the time those claims were made;

3. which shall be maintained by respondent for a period of three years from the date such advertising or sales promotional material was last disseminated by Whirlpool Corporation.

It is further ordered, That the provisions of this Section II shall expire ten years from the date this order becomes final.

III

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondent corporation notify the Commission at least thirty (30) days prior to the effective date of any proposed change in corporate identity, such as dissolution, transfer or sale of assets or merger or consolidation resulting in the emergence of a successor corporation or the creation or dissolution of subsidiaries, if such proposed change may affect compliance obligations arising out of this order.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

DOCKET C-2516—DOYLE DANE BERNBACH, INC.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Doyle Dane Bernbach, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 20 W. 43rd Street, City of New York, State of New York.

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

ORDER

I

It is ordered, That respondent Doyle Dane Bernbach, Inc., its successors and assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any room air cooling product or central air cooling system, hereinafter referred to as "such products," in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. representing, directly or by implication, that the button which activates the highest fan speed on any room air cooling product is a unique feature of such room air cooling product;

2. representing, directly or by implication, that any such products have a button, control, device or other feature which is unique, unless such is the fact;

3. representing, directly or by implication, that any such products are unique in any other material respect, unless such is the fact;

4. representing, directly or by implication, that any such room air cooling products have an initial cooling capability which is substantially greater than that of comparable room air conditioners made by other companies, unless, at the time such representation is made, respondent has a reasonable basis for such representation, which shall consist of competent scientific, engineering, or other similar objective material. (For the purposes of this paragraph the term "initial cooling capability" shall refer to the speed with which a room air conditioner, upon initial activation of the unit, is able to lower the temperature to a given temperature in the area being cooled);

5. making, directly or by implication, any other statements or representations as to:

(a) the air cooling, circulation, or dehumidification capabilities of such products, unless, at the time such representation is made, respondent has a reasonable basis for such representation, which shall consist of competent scientific, engineering or other similar objective material; and

(b) the efficiency of use of electric power of such products, unless, at the time such representation is made, respondent has a reasonable basis for such representation, which shall consist of competent scientific tests, or industrywide standards based on such tests established by the Association of Home Appliance Manufacturers, the Air Conditioning and Refrigeration Institute, or a similar organization, or by an agency of the Government of the United States.

Provided, however, That it shall be a defense under Paragraphs (1), (2) and (3) of this part that respondent can establish that it neither knew nor had reason to know of the falsity of the representation of uniqueness.

II

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

ADVISORY OPINIONS

Rescission of Advisory Opinions

The Commission has reconsidered and rescinded and/or revoked the following opinions for the reason that the advice given in these matters no longer conforms to the Commission's view of the law as expressed in the recently amended Guides for Advertising Allowances and Other Merchandising Payments and Services (specifically Guide 9 and/or Guide 11): Sept. 11, 1973.

Digest No.	File No.	Volume	Digest No.	File No.	Volume
103 -----	673 7012	70 F.T.C. 1886.	379 -----	703 7033	76 F.T.C. 1112*.
195 -----	683 7082	73 F.T.C. 1310.	418 -----	703 7083	77 F.T.C. 1709.
346 -----	693 7077	75 F.T.C. 1123.	423 -----	703 7097	77 F.T.C. 1713.
356 -----	693 7077	76 F.T.C. 1098.	438 -----	703 7106	77 F.T.C. 1743.
367 -----	693 7077	76 F.T.C. 1104.	442 -----	703 7109	77 F.T.C. 1762.
354 -----	693 7122	76 F.T.C. 1096.	460 -----	713 7022	78 F.T.C. 1649.
387 -----	703 7031	76 F.T.C. 1116.	470 -----	713 7027	79 F.T.C. 1040.

*The file numbers for Digests 378 and 379 were erroneously reversed and are as follows: Digest 378, File No. 703 7020; Digest 379, File No. 703 7033.

IN THE MATTER OF

**Legality of domestic corporation, owned or otherwise controlled
by foreign interests, being a member of an export association,
Webb-Pomerene Act. (Digest 484, File No. 743 7001)**

Opinion Letter

December 6, 1973

Dear Mr. Augur:

This is in response to your request for an advisory opinion which was contained in a letter to the Bureau of Competition dated July 20, 1973.

The Commission is of the opinion that membership in an export (Webb-Pomerene) association by a United States corporation, which is owned or controlled by foreign interests, in and of itself, would not violate the laws administered by the Commission.

By direction of the Commission.

Letter of Request

July 20, 1973

Dear Sirs:

We represent a client interested in forming an export association as provided for in the Export Trade Act of 1918 (16 U.S.C. §61-65).

In discussing the qualifications for membership in the association, a possible question has arisen for which we seek your advice in the form of an advisory opinion. The question is as follows:

It is a violation of the antitrust laws of the United States for an export association to include as a member of that association a corporation, incorporated in one of the states of the United States, which is owned or otherwise controlled by foreign interests.

We appreciate your willingness to review this matter.

Very truly yours,

/s/ Harrison H. Augur

Proposal of Debt Collectors, Inc. to locate its offices on or adjacent to the premises of its clients. (File No. 743 7002, released January 4, 1974, Digest 485)

Letter of Opinion

December 19, 1973

Dear Mr. Russell:

This is in response to your letter dated October 1, 1973, in which you requested an advisory opinion regarding a proposal of Debt Collectors, Inc. (DCI) to locate its offices on or adjacent to the premises of its clients.

It is the Commission's understanding that DCI is a debt collection agency as that term is defined in the Commission's Guides Against Debt Collection Deception (16 C.F.R. 237). It performs routine debt collection services for its clients such as serving notices, collecting payments and transmitting the funds to the client.

DCI proposes to locate its offices on or adjacent to premises of some of its clients but will make every effort to affirmatively disclose the fact that DCI is independent of them by doing such things as placing its corporate name on the entrances to the office, on the notices to debtors and on the stationery it uses.

Based on its understanding as outlined above, the Commission is of the view that debtors probably would not be deceived as to the true nature of the DCI offices on or adjacent to the client's premises. Accordingly, it is the Commission's opinion that implementation of the plan would not be violative of laws administered by the Commission, provided no evidence comes to light that debtors may be deceived.

By direction of the Commission.

Letter of Request

October 1, 1973

Dear Mr. Tobin:

We hereby request the Federal Trade Commission for an Advisory Opinion stating that, assuming the propriety of all other aspects of our client's debt collection activities, the fact that it locates its offices on or adjacent to the offices of its clients would not in itself result in a violation of the Guides Against Debt Collection Deception, 16 C.F.R. §237, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45.

(a). Present Activities

We represent Debt Collectors, Inc., ("DCI") which is a debt collection agency incorporated in Delaware and qualified to do business in Illinois and Florida. Its numerous clients are completely independent of and unaffiliated with DCI, its officers, directors, stockholders and employees.

DCI performs routine debt collection services that have never been challenged by the Federal Trade Commission, and are clearly permitted under the Commission's Guides Against Debt Collection Deception. DCI's services include serving notices, either in writing or by telephone, on slow or delinquent accounts submitted for collection by its clients, collecting funds remitted by such debtors and transmitting such funds to its clients. Delinquent accounts which are not collected by DCI are referred by DCI to DCI's local agents in the debtors community for further collection efforts.

DCI employs a full-time staff of clerical and supervisory personnel who are unconnected with DCI's clients. DCI also independently incurs telephone, postage, rent, printing and related business expenses. DCI performs its services on a fee-plus-cost basis, with fees generally based on a fixed amount per month or per account submitted for collection, and with all other expenses incurred by DCI being billed at cost.

(b) Proposed Activities

Our client now proposes the sole change of placing its personnel performing such lawful debt collection services for a particular client on or adjacent to the premises of the client. The office space required would be leased by DCI from its client or the owner of the building. In nearly all cases the public would have direct access to DCI's proposed offices.

Closer physical proximity will not in any way affect DCI's independence, or the pattern of services described above. DCI will retain complete control of and be wholly responsible for the debt collection services as an independent contractor of the client. In fact, in appropriate circumstances, DCI may, and most likely will, perform services for other clients from its offices on the premises of a particular client.

DCI will retain its total independence from its clients. DCI's officers, directors and shareholders will remain independent of the clients. All clients will be required to agree not to hire the employees of DCI. No activities of DCI will in any way suggest that the collection activities are those of the client. DCI will make every effort to present clearly the fact that DCI is independent of its clients and DCI will place on the doors to its offices and on all notices and stationery its corporate name and the phrase "An independent collection agency."

ADVISORY OPINIONS

(c) Business Rationale

The proposed change in office locations to gain physical proximity between DCI and its clients rests on five legitimate business reasons. The change would:

- (1) Facilitate better and more rapid communication between DCI and its clients. Convenient and immediate access to files and needed information would result. DCI's staff would be better able to become familiar with the peculiar needs of specific clients, their industries and applicable government regulation.
- (2) Foster economy and efficiency.
- (3) Permit DCI to readily demonstrate to its clients the proper manner with which it deals with debtors.
- (4) Permit the receipt by DCI's clients of daily collections on the day of receipt by DCI thus speeding up the cash flow of DCI's client.
- (5) Facilitate faster adjustments of accounts where debtors claim such adjustments are warranted.

To date, our client has not engaged in the proposed activity on the premises of any of its clients and we know of no pending investigation or litigation concerning the proposed activity by either the Federal Trade Commission or by any other governmental agency.

As our client has several outstanding proposals to service its clients on their premises, the Commission's prompt consideration of this request would be greatly appreciated.

Very truly yours,
/s/ Tomas M. Russell

**Digest 483. "Backhaul" Allowances advisory opinion affirmed.
(File No. 683 7026, released December 26, 1973)**

The Commission has completed reconsideration of its advisory opinion on "backhaul" allowances [Digest 147, 72 F.T.C. 1050] and concluded that it should not be rescinded.

The Commission announced that:

- (1) It intends to scrutinize delivered price systems in the food products industry in order to determine whether such systems are unfair to customers or to ultimate consumers, in violation of Section 5 of the Federal Trade Commission Act.
- (2) It intends to develop empirical information on the impact on food prices of delivered pricing systems which will enable it to make this determination.
- (3) It is taking this action in view of representations made by interested parties, including the Cost of Living Council.

(4) It is of the view that questions probably would not arise under the laws it administers if sellers, using valid uniform, zone delivered pricing systems, offer to all customers, on a nondiscriminatory basis, in lieu of a delivered price, the option of purchasing at a true f.o.b. shipping point price.

Financial format plan for companies in the wood industry (picture frames and moldings). (File No. 743 7003 Digest 486)

Opinion Letter

February 22, 1974

Dear Mr. Levine:

This letter is in response to your request for an advisory opinion concerning a proposed financial format plan to be undertaken by you as accountant for approximately fifteen companies in the wood industry (picture frames and moldings).

It is the Commission's understanding that you propose to compile an average profit and loss statement for the fifteen companies. That statement would then be available to each of the companies to allow it to determine its status in regard to each category of the statement.

The Commission would not initiate proceedings against the companies you represent if such a program were adopted providing the reporting data was kept strictly confidential and that the information provided by each company is not disclosed to any other company except through the average figures. You are advised, however, that the plan must not be used to secure adherence to prices, quotas of production, quotas of sales, or to create other unlawful trade restraint.

By direction of the Commission.

Letter of Request

[undated]

Gentlemen:

As a private accountant who works with approximately 15 companies in the wood industry (picture frames and moldings), I am seeking counsel concerning a plan I wish to implement.

Using each company's latest Profit and Loss Statement, I would combine and average the Gross Sales for the 15 companies. A similar procedure would apply to the other expenses, and as a final result, we would have an average P & L statement for the 15 companies.

At a subsequent meeting the combined statement would be discussed where upon each company could compare their statement to an Industry

figure and determine their status in regard to each category of expense.

For example, materials used might represent 40% of Sales; Officers Salaries may be 20% of Sales, etc.

Before proceeding with such a proposal it is, of course, necessary to determine if this plan is in violation of any FTC Guidelines and would be permissible.

A copy of the financial format is enclosed.

Any assistance you can render will be greatly appreciated.

Yours very truly,

James B. Levine

GROSS SALES	\$ _____
Less Returns & Allowances	_____
Less Freight Allowances	_____
Net Sales	_____
COST OF SALES	
a. Total Materials Used	_____
b. Direct & Indirect Labor	_____
c. Fringe Benefits	_____
d. Manufacturing Expenses	_____
e. Inventory Adjustment	_____
Total Cost of Sales	_____
GROSS PROFIT ON SALES	_____
ADMINISTRATIVE EXPENSES	
Officers Salaries	_____
Office Salaries	_____
All Other Administrative Expenses	_____
Total Administrative Expenses	_____
SELLING EXPENSES	
Salesmens' Salaries	_____
Commissions	_____
Travel and Entertainment	_____
All Other Selling Expenses	_____
Total Selling Expenses	_____
NET PROFIT FROM OPERATIONS	_____
Other Income and Expense	_____
NET PROFIT BEFORE TAXES	_____

Option of refund or substitute publication to subscribers to a magazine that has never been published. (File No. 743 7006, Digest 489)

Opinion Letter

March 4, 1974

Dear Ms. Claffey:

This letter is in response to your letter of January 23, 1974, request-

ing an advisory opinion from the Commission.

It is the Commission's understanding that North American Publishing Company, publishers of "Media and Methods," will send the attached letter to all subscribers of "Involvement." By virtue of the letter, you propose to offer all subscribers of "Involvement" the choice of one year of "Media and Methods" (or one year extension of a present subscription to "Media and Methods") or a refund to be obtained from the publishers of "Involvement."

The Commission would not initiate proceedings against North American Publishing Company if each subscriber is given the opportunity to communicate directly to you his choice between a refund and a subscription to "Media and Methods." All subscribers should have a reasonable time in which to make an election (at least three weeks); those subscribers who make no election within the required time should be deemed to have elected to receive a refund.

By direction of the Commission.

Letter of Request

January 23, 1974

Dear Sir:

We have an urgent request that requires your immediate attention.

A reading of the enclosed letter will essentially familiarize you with the problem. Specifically, our question is: may we substitute our own publication for another, since we give the reader full option to say "NO" should he desire his money back. Both publications are similar in content and scope.

The original subscription "Involvement" was sold at \$5.00; our own rate is \$7.00 (to rise to \$9.00 March 1st). We are willing however, to fulfill all commitments made at the lesser rate.

We feel confident that this is a proper procedure, but would appreciate a confirmation from you as quickly as possible.

Sincerely,

Mary Claffey
Circulation Director

January 18, 1974

Dear Subscriber:

Several months ago you subscribed to a brand new magazine "Involvement" dedicated to more effective education through open classrooms, schools without failure, high motivation environment, self-motivated learning experiences.

You and the few thousand other concerned committed educators, regrettably not a

sufficient number of produce a periodical in these days of sky rocketing paper, printing and postage costs.

Dr. Glasser and the "Involvement" people contacted us at Media and Methods since we are so close in educational philosophy and journalistic style. Would we agree to fulfill these subscriptions, to send one year of Media and Methods (\$7.00 pr. year now \$9.00 beginning March 1, 1974) to the original "involvement" subscribers. Yes we would and if you are already subscribing to Media and Methods we will extend your subscription one year (at no additional cost of course).

A sampling of "Involvement" subscribers were reached by phone and readily agreed to this exchange. We offer this same arrangement to you. On February 15 we shall add your name to Media and Methods subscription roster or extend your present subscription to Media and Methods.

If for any reason this exchange is not satisfactory you may apply to the publisher of "Involvement" for a refund. . . . before February 15.

Dr. Glasser's article on discipline will appear in the early issue of Media and Methods. Other "Involvement" manuscripts are on the way. We hope "Involvement" subscribers will find Media and Methods a most pleasing and most helpful experience.

Enthusiastically,

Roger Damio

Statistical reporting program by manufacturers of tricot knit fabrics. (File No. 743 7004, Digest 487)

Opinion Letter

March 7, 1974

Dear Mr. Korzenik:

This letter is in response to your request for an advisory opinion concerning a proposed statistical reporting program to be undertaken by a subdivision of the Knitted Textile Association (Association), comprised of manufacturers of tricot knit fabrics.

It is the Commission's understanding that the reporting program involves the collection from manufacturers of data on production, purchases, shipments, inventory, and unfilled or open orders. The collected data will be held in confidence and reported to the Association's attorney or an outside accounting firm which will collate them and issue aggregate figures only. No individual firm's figures will be disclosed to any other participant; nor will data on prices, future projections or estimates be collected.

The Commission would not initiate proceedings against the Association if such a program were adopted providing the reported data was collected only by an independent accounting firm. You are advised, however, that the program must not be used to secure adherence to prices, quotas of production, quotas of sales or to create other unlawful trade restraints.

By direction of the Commission.

Letter of Request

July 26, 1973

Dear Sir:

Request is here made in behalf of the Knitted Textile Association for an advisory opinion of the Federal Trade Commission with respect to the following:

The Knitted Textile Association is an unincorporated association of knitted fabric manufacturers. Among its activities is the gathering of statistical information on the industry's operations. Pursuant to this purpose it has contracted with the Bureau of Census of the United States Department of Commerce for the publication of statistical data on a quarterly basis on the shipments of knitted fabrics and, by reason of the Association's support, such reports have been regularly published (Series MQ-22K of the Bureau of Census, United States Department of Commerce). However, these reports sometimes suffer delay and consequently are less valuable than they might be. Moreover, it would be more valuable if statistical data could be made available not only more promptly, but on a monthly basis.

By reason of these considerations, therefore, one subdivision of the industry, namely manufacturers of tricot knit fabric, proposes to embark upon a statistical program which will report regularly at intervals of four and five weeks (three times each quarter) statistical data on:

- (1) Production
- (2) Purchases
- (3) Shipments
- (4) Inventory
- (5) Unfilled or open orders.

These data will be reported and compiled by types on the tricot fabric according to fiber and yarn and in classifications common in the market.

Each individual participant's statistics will be held in confidence. For this purpose they will be reported to the Association's attorney or to an outside firm of certified public accountants who will collate them and issue aggregate figures reflecting only totals for each class of data. A copy of the form on which statistics are to be reported by the individual firm participants is enclosed and submitted herewith. The reports consisting of totals will be issued in substantially the same form.

No individual firm's figures will be disclosed to any other participant. No data on prices or even value of shipments are called for, and none is contemplated. No future projections or estimates are to be issued orally or in writing.

No statistics have yet been gathered. The program is now at its threshold.

This program and this request are virtually identical to one which we filed with your office dated November 10, 1969, requesting an advisory opinion with respect to a statistical program then being prepared for another component group of manufacturers, namely those producing industrial circular knit jersey (for coating and laminating). In response to that request we were informed that the Commission would not object to our implementation program. It has been functioning on that basis since then.

The program referred to herein is similar and would provide the same kind of statistical data for another group of our members.

Your advisory opinion on the propriety of this program is requested. Your prompt consideration and action will be appreciated.

Yours very truly,

/s/ Sidney S. Korzenik
Counsel

Provisions regarding admission to and dismissal from membership in modeling association. (File No. 743 7005, Digest 488)

Opinion Letter

March 8, 1974

Dear Ms. Callas:

This is in response to your letter of October 1, 1973, in which you requested an advisory opinion regarding the revised draft of the Constitution and Bylaws of the Modeling Association of America, International.

It is the Commission's opinion, based on its reading of the proposed Constitution and Bylaws of MAAI, that the provisions regarding admission to and dismissal from membership in the association, if implemented, would raise questions regarding unfair methods of competition under Section 5 of the FTC Act. The law is well established that whenever membership in a trade association is a vital competitive factor for a business, then arbitrary or discriminatory refusal of membership to a qualified applicant, or arbitrary or discriminatory dismissal from membership, constitutes an unfair method of competition.

The service that is the purpose of your organization to perform for its members and the privileges of membership—such as the opportunity to participate in the contests at the annual convention—indicate that membership in your organization is indeed advantageous. Yet the proposed bylaws would allow arbitrary and discriminatory decisions regarding who may become or remain a member. The Supreme Court has

condemned similar membership provisions under the antitrust laws. *Associated Press v. United States*, 326 U.S. 1 (1945). The Commission has also required that membership in a trade association must be offered on a fair and nondiscriminatory basis to all qualified applicants. FTC Advisory Opinion, Digest No. 373.

The membership provisions contained in the bylaws could be made acceptable with a few revisions. For example, an active member should not be given the right to block a non-member competitor from membership. The provision in Article I, §1(B)(5), under which active members within a given area must approve new membership applicants, should be eliminated. Membership should be open on the same basis to everyone who meets the general membership criteria described in Article II, §1 of the MAAI Constitution.

The bylaw provisions regarding dismissal from membership should also be revised. Under Article I, §4 and Article 5, 1(E), a member can be dismissed or asked to resign for having engaged in unethical practices or unbecoming personal actions as determined by the Ethical Practices Committee. Article 4, §3 and Article 5, §1(D) reinforce the impression that members will be forced to conform to a certain, undefined standard of behavior in order to retain membership in the association. However innocent the intention behind these provisions may be, as written they would allow arbitrary or discriminatory determinations of what constitutes satisfactory conduct. Dismissal from membership should be allowed only for failure to comply with specific, nondiscriminatory, objective criteria that adhere closely to the requirements of the law. Once drafted, such criteria could be submitted to the Commission to determine their legality under Section 5 of the Federal Trade Commission Act.

By direction of the Commission.

Letter of Request

October 1, 1973

Dear Mr. Buck:

Following our conversation of a few days ago about the FTC giving us an advisory opinion on the proposed Constitution and By-Laws of the Modeling Association of America, International, enclosed with this letter of transmittal is a copy of the document in question.*

The proposed enclosed By-laws are not presently being used by MAAI, but are to be presented to our Executive Board and membership after we have the benefit of your advisory opinion on their contents as

*A copy of this document is available upon request to the Division of Legal and Public Records, FTC, Wash., D.C. 20580.

those contents may relate to complying with the FTC guidelines and regulations.

We appreciate your courtesy in giving us the requested advisory opinion. We will find it much more expedient to be in compliance with the FTC through your good services, than to assume the burden of revisions after publication and or membership acceptance.

The purposes and intents of MAAI are drawn forth in the Constitution.

Thank you for your interest and response.

Yours truly,
Georgette K. Callas,
Member, Parliamentary Committee
Constitution and By-Laws, MAAI

**Utilization of drop shipments by Southern California Jobbers, Inc.
from its suppliers to its jobber members of initial stock orders
and very heavy equipment. (Docket No. 6889,* Digest 490)**

Opinion Letter

April 1, 1974

Dear Mr. Hart:

This is in reference to your "Request For An Advisory Opinion Concerning Drop Shipping" filed on October 10, 1973 wherein you request on behalf of Southern California Jobbers, Inc. (SCJ) an advisory opinion from the Commission. Advice is sought whether utilization of drop shipments by SCJ from its suppliers to its jobber members involving: (1) Initial stock orders; and (2) Very heavy equipment, would not be violative of the order in the above referenced matter in which SCJ is a respondent.

The Commission has considered your submission and supporting material and based solely upon the information and representations set forth therein, has determined that the utilization of drop shipments of initial stock orders or very heavy equipment where the products are not normally stocked by a warehouse distributor would not be considered to be violative of the order herein. However, the Commission notes that the items listed in Exhibit A to your submission are normally stocked by

*Material submitted by the requesting party (including Exhibit A) is available upon request to the Federal Trade Commission's Division of Legal and Public Records, Washington, D.C. 20580.

warehouse distributors and to that extent do not fall within the permissible circumstances.

By direction of the Commission.

Program of "individualized product catalogs" showing the name of product and manufacturer, description of product, and product number for ordering purposes. (Docket No. 5979, Digest 491)

Opinion Letter

April 5, 1974

Dear Sir:

The Commission has considered the request in your letter of October 17, 1973, together with your clarifying letter of December 14, 1973, for advice as to whether your client, American Surgical Trade Association, may engage in a proposed course of action without violating the cease and desist order issued by the Commission in the above-captioned matter on August 19, 1952.

Your October 17 letter states that ASTA is seeking permission to sponsor a program of "individualized product catalogs." The catalog would show the name of the product and manufacturer, a description of the product, and a product number for ordering purposes.

The publisher would print master negatives of pages listing the products of the various manufacturers, and the individual dealer would select those listing the products which he wished to carry. The dealer would also have the option of having individualized covers, and could have "overprints" on the inside pages which would include such information as the name, address, and phone number of the particular dealer. There would be no price information contained in the catalogs either directly or indirectly as prepared by the association and the publishers with whom the publishing of these catalogs was arranged.

It is our understanding that this catalog could be ordered by non-member dealers as well as ASTA member dealers. We further understand that any manufacturer of surgical equipment and related products could arrange to have his products included in this catalog. It would not be necessary that he be a member of any trade association or that his products be carried by an ASTA dealer. Rather any dealer in surgical equipment and supplies could order this catalog and request that certain manufacturers' products be included. The only condition would be that those manufacturers provide the necessary pictures, negatives, or other information to the designated publisher.

Based upon the information which you have provided in your October

17, 1973 and December 14, 1973 letters, as well as the sample Karel Medical Inc. catalog sent in connection with your request and our understanding as expressed herein, it is the opinion of the Commission that sponsorship by ASTA of such a catalog would not in and of itself violate the order issued in the above matter.

By direction of the Commission.

Letter of Request

October 17, 1973

Dear Mr. Gercke:

On behalf of the American Surgical Trade Association, ("ASTA"), we hereby request a Report of Compliance, pursuant to 16 C.F.R. §3.61(c), as to whether the proposed course of action outlined in this letter will be in compliance with the order entered in Docket No. 5979 against the Association and others. The activity which is being considered by the Association has not been instituted pending the advice of the Commission.

The American Surgical Trade Association, a Delaware corporation, is a trade association whose membership is composed of surgical dealers who transact business primarily at the wholesale level. The members provide medical supplies and equipment to the medical profession, nursing homes, clinics, hospitals and others in the health care industry and to the laity. The members of the Association, for the most part, are small, independent businessmen. It is the desire of the Association to undertake a program by which its members and non-members may purchase, through the Association individualized product catalogs.

Presently, there is no efficient or economical way for many dealers, especially smaller ones, to obtain a catalog listing the various products they sell. For the most part, the only catalogs now in circulation are either very expensive or are prepared by the large dealers organizations or national chains, for use by their branch dealers with whom the typical small distributor must compete. However, it is possible to obtain, in volume, for members of the Association and others, catalogs at low cost. Under the proposed program, dealers would select pre-composed catalogs pages representing those products which he presently sells. The catalog would show the name of the product and manufacturer, a description of the product, and a product number for ordering purposes. No price information would be given directly or indirectly in the catalog as prepared by the Association. The individual dealer would prepare his own price list for inclusion in the catalog.

For your information, we have enclosed a catalog which is presently used by one member of the Association. It is similar to what would be

prepared for those who desire to participate in the program. Each participant would have the option of determining the content of the cover pages (both front and back) and also whether he wants certain "overprints" included on the various catalog pages themselves. Other information could be inserted also at the desire of the dealer.

The mechanics of this program would be for the catalog publishing company to set up a master page negative for each manufacturing company with pictures and descriptions of the products. Thus, the dealer would simply select the standard pages that he wishes in his catalog and then personalize the covers and the first pages with specific information on his company, etc.

This standard page approach would reduce the cost of the catalog. Again, I would stress that under no circumstances would the catalog contain price information. Another advantage to this would be that without having price information, the catalog could be updated by periodic revision of price list information by the individual distributor without having to reprint the catalog.

In 1968 and 1971, the Commission held that similar proposed programs in which price information would have been provided, would have been in violation of the cease and desist order. However, because this catalog program would include no price information whatsoever, it is our hope that this program will be approved, and that the objection of the Commission to previous proposals would be vitiated.

Should you require any further information, please do not hesitate to contact me.

Sincerely,
Jonathan T. Howe

Use of "Saver Folders" by Sperry and Hutchinson Company.
(Docket 8671)

Opinion Letter

April 19, 1974

Dear Mr. Abrams:

This is with reference to your letter of March 20, 1974, wherein you request advice for your client, The Sperry and Hutchinson Company, concerning the use of certain Saver Folders. It is our understanding that these Saver Folders were printed without the necessary legend concerning redemption for cash at the option of the holder because of an error of the printer. You suggest printing the legend as an overprint as indicated on an Exhibit submitted with your request, and are seeking

Commission advice as to whether this would occasion a violation of the instant order.

You are advised that due to the paper shortage as alleged in your request, the distribution of the Saver Folders with the overprint as indicated would not violate the order in this instance. However, you are further advised that in all future reprints of the Saver Folders the legend required by the order should appear in a more appropriate location thereon.

By direction of the Commission.

Letter of Request

March 20, 1974

Dear Mr. Ramadhan:

This is with further reference to our telephone conversations on Tuesday and today (Wednesday) relating to Saver Folders which are being issued by The Sperry and Hutchinson Company.

As I have informed you, 2,000,000 copies of the Saver Folder have been printed and are awaiting distribution. In films which went to the printer for use in printing the Saver Folders, S&H included the legend setting forth the availability of cash redemption in the language provided for in the Decision and Order Relating to Count III of the Complaint (Dkt. No. 8671). By reason of an error of the printer in using an earlier film in its possession, this language was not included in the final printed copies of the Saver Folder.

A primary problem presented by the printing already completed is the existing shortage of paper which would require a delay of about two months in reprinting if that should become necessary. Additionally, this would entail the loss of use of a substantial amount of paper at a time when that product is in extremely short supply.

I have earlier today transmitted to you one copy of the Saver Folder, which does not contain the legend relating to cash redemption, and another copy containing the legend as an overprint.

We shall appreciate being informed as quickly as practicable that S&H may proceed to use the Saver Folders, either as they are now printed or with the addition of the overprint. This is a test promotional program which S&H is now in a position to introduce and any delay will be of substantial financial detriment to the company.

Sincerely,
Samuel K. Abrams

Proposal by some members of Independent Bakers Association to include a free object with each loaf of bread. (File No. 743 7008)

Opinion Letter

April 24, 1974

Harold Greenwald, Esquire
Richard Kelly, Esquire
Independent Bakers Association
521 Fifth Avenue
New York, New York 10017

Gentlemen:

This letter is in response to your letter of February 12, 1974, requesting an advisory opinion from the Commission.

It is the Commission's understanding that some members of the Independent Bakers Association propose to include a free sticker or other object with each loaf of bread. The word "free" and a description of the enclosed sticker would be printed conspicuously on the bread wrapper. The price of a loaf of bread with the sticker would be the same as previously offered without the sticker.

Under these circumstances, the Commission would not initiate proceedings against members of the Independent Bakers Association who make the proposed offer. For your further guidance, we are enclosing a copy of the Commission's Guide Concerning Use of the Word "Free" and Similar Representations.

By direction of the Commission.

Letter of Request

February 12, 1974

Dear Secretary Tobin:

As legal counsel to the Association, we respectfully request an advisory opinion from the Commission as expeditiously as possible concerning the use of advertising and packaging by members of this Association.

These members are wholesale bakers (S.I.C. 2051) who sell white bread to grocers.

We have been advised by members that in the immediate future they plan to use advertising, labels, and packaging in the sale of white bread in response to and somewhat comparable to a program now being

utilized nationwide by a wholesale baker that is a competitor (sample bread package enclosed).

The program entails prominently printing on an end label or package end: the word "*Free*" in bright colored letters of approximately three-quarters of an inch ($\frac{3}{4}$ "), and below the brand name and loaf size also in the same size (approx. $\frac{3}{4}$ ") and color lettering. Between the word "free" and brand name in smaller lettering of a different color, approximately one-eighth inch ($\frac{1}{8}$ ") would be an indication of some sort of give away meant to appeal to children. The exact nature of the give away has yet to be determined.

For example:

	<i>Language of Competitor's Loaf</i>	<i>Proposed Language of Independent Bakers Loaf</i>
Red	Free $\frac{3}{4}$ "	Color A Free at $\frac{3}{4}$ "
Blue	Disney character $\frac{1}{8}$ "	Color B Give away $\frac{1}{8}$ "
Blue	Sticker inside $\frac{1}{8}$ "	Color B Give away $\frac{1}{8}$ "
Red	Wonder $\frac{3}{4}$ "	Color A Brand name $\frac{3}{4}$ " Red
Red	Giant $\frac{3}{4}$ "	Color A Size $\frac{3}{4}$ "

It is contemplated that this loaf will be sold at the same price as previously offered to the public.

Because the competitive nature of the situation requires a prompt decision, an immediate response is essential to the membership.

If additional information is required please advise the undersigned.

Yours very truly,
Harold Greenwald, Esq.
Richard Kelly, Esq.

**Discount incentive plan proposed by Baumgold Bros., Inc., a
wholesaler of diamonds and precious jewelry. (File No. 743
7007)**

Opinion Letter

May 14, 1974

Dear Mr. Winard:

This is in response to your letters dated July 23 and November 6, 1973, as elaborated in a telephone conversation on January 24, 1974, requesting an advisory opinion concerning the discount incentive program of Baumgold Bros., Inc.

It is the Commission's understanding that Baumgold Bros., Inc., diamond cutters, a New York corporation, having its principal office at 580 Fifth Avenue, New York, New York 10036, is engaged in the

wholesaling of diamonds and precious jewelry in all 50 states of the United States as well as in foreign countries. Baumgold sells its merchandise on the following terms:

- (a) 4% discount if merchandise is paid for in cash;
- (b) 3% discount if merchandise is paid for within 30 days; and
- (c) 6 months net.

Baumgold presently is borrowing money from its banks and paying 8½% per annum with a requirement for compensating balances. "Compensating balances" means that the borrower must maintain a deposit with the banks equal to a certain percent of the money loaned. Baumgold wishes to eliminate, if possible, the immediate 4% discount for cash and the term "6 months net" which is offered to all of its customers, and at the same time, wishes to increase its sales.

The new policy Baumgold proposes is to announce the following to all its customers:

With respect to our customers who either pay cash upon delivery of merchandise or who discount their bills under the provisions of our standard invoice permitting a discount of 3% if the invoice is paid within 30 days, Baumgold Bros., Inc. has adopted a policy effective——which shall be applicable to all of its customers.

Under the policy, Baumgold customers who either pay cash for merchandise or who discount their bills within the 30 day period, under which they obtain a 3% discount, will be offered an additional discount which will be keyed into their total volume of purchases from Baumgold in the calendar year. As to such customers, Baumgold's letter would provide that:

(a) An additional credit of 1% shall be granted as of December 31, 1974, payable within 3 months of that date, to the extent that purchases of 1974 exceeded purchases of 1973, provided, further,

(b) If purchases in 1974 as above outlined exceed purchases of 1973 to the extent of 50% or more, the discount which will be granted as of December 31, 1974 shall be 2% to the extent that 1974 purchases exceed 1973 purchases.

This policy shall not be applicable to customers of Baumgold Bros., Inc. who did not discount their bills in 1973. As to such customers, and new customers, the new policy shall be applicable in the year following any year in which bills are paid for in cash or bills are discounted within the thirty day period as aforesaid.

Baumgold desires to reduce the amount of interest it is presently paying to banks with respect to merchandise which is being held by its customers but not paid for within six months. In other words, "carrying" its customers who take advantage of the "six months net term offered" under its present procedure costs Baumgold in excess of 4¼%

(i.e., 6 months at an annual rate of 8½%), the interest charge they are presently paying, without taking into consideration the bank's requirement that compensating balances must be maintained by Baumgold.

As outlined above, the subject incentive plan as proposed by Baumgold would result in a price discrimination cognizable under Section 2(a) of the Robinson-Patman Act. Granting a 1% rebate on increases in purchases would discriminate against a new customer who paid cash or within 30 days, but who had not been a customer during the prior year. It also would discriminate against a customer who paid cash or within 30 days but who did not increase his purchases. Such discrimination would be illegal if the effect may be substantially to lessen competition or to tend to create a monopoly.

With regard to giving a total of 2% as a discount to a customer who increases his purchases by 50%, Baumgold further discriminates against those customers who increase their sales by a significant amount which probably would not be attainable by all customers, but do not reach the 50% increase level. For example, a customer who increased his purchases by 45% would only earn 1% on his increase. Such discrimination would also be illegal if the effect may be substantially to lessen competition.

By direction of the Commission.

Propriety of the Beauty and Barber Supply Institute compiling a list of the terms of delivery offered by various suppliers to BBSI members. (File No. 743 7009)

Opinion Letter

June 5, 1974

Dear Mr. Flanagan:

This is in response to your letter requesting an advisory opinion regarding the propriety of the Beauty and Barber Supply Institute (BBSI) compiling a list of the terms of delivery offered by various suppliers to BBSI members.

It is the Commission's understanding, in essence, that the BBSI plan calls for preparation of a list of suppliers of beauty products which would include information as to whether sales are made (1) F.O.B., (2) freight prepaid—minimum required, (3) freight—deduct from invoice, (4) full freight paid—minimum required, (5) half-freight paid—minimum required, (6) merchandise given to cover the cost of freight, (7) full freight allowance—minimum required, (8) half-allowance—minimum required, (9) the number of days within which freight would be allowable, and (10) whether the supplier offers other allowances. In other words, the list

will consolidate delivery terms information which suppliers now provide to their customers on an individual basis.

Based on its understanding of the BBSI proposal as outlined above, the Commission is of the opinion that the plan itself, if implemented, would not necessarily raise antitrust questions. You are cautioned, however, that the plan should not be used in such a manner that it leads to a boycott, to the blacklisting of certain suppliers or to rigidification of prices or terms of delivery. If it does, questions under Section 5 of the Federal Trade Commission Act could arise.

Lastly, this opinion should not be construed as relating in any way to the suppliers' terms of delivery in and of themselves because those terms of delivery have not been examined in connection with rendition of this advisory opinion to the Institute.

By direction of the Commission.

Letter of Request

October 22, 1973

Gentlemen:

We represent Beauty and Barber Supply Institute, a national trade association with its office at 551 Fifth Avenue, New York City. Its membership consists of 800 wholesalers of "beauty" products.

The members of the association are concerned with the distribution of all "beauty" products. The members of the association have performed the typical "wholesaler" functions: stocking, warehousing, delivering, extending credit, travel salesmen and maintaining the inventory of their customers.

The association is desirous of providing its membership with a benefit that would insure their having knowledge and therefore the ability to take advantage of freight allowances that are due to them. It feels that a comprehensive chart showing how the wholesaler must order to accrue the benefits offered by manufacturers would be of substantial benefit.

It is proposed that a chart such as that submitted herewith would be a material aid to its members. Therefore, I request an advisory opinion as to whether or not, under existing laws and decisions, the dissemination of such a chart to its members would in any way be a violation of the law.

The proposed course of action is not currently followed by the association and is not the subject of any pending investigation or other proceedings by the Federal Trade Commission or any other governmental agency.

Very truly yours,

James F. Flanagan

Fuel reservation program proposed by National Business Aircraft Association, an association of owners of business and executive aircraft. (File No. 743 7010)

Opinion Letter

June 24, 1974

Dear Mr. Powell:

This is in response to your request of February 14, 1974, on behalf of the National Business Aircraft Association, for an advisory opinion.

Your request states that NBAA is an association of owners of business and executive aircraft. Because of the regulations imposed by the Federal Energy Office under the Emergency Petroleum Allocation Act, NBAA members and other segments of general aviation have experienced some difficulty and uncertainty in purchasing aviation fuel away from their home airports. This is because the aviation service organizations and fixed base operators (inclusively ASO's) which operate airport fueling businesses have insufficient and uncertain amounts of fuel for transients who must refuel away from their home bases. The result of this uncertainty, according to your request, is that NBAA members and other segments of general aviation cannot plan their flight itineraries properly, because they cannot know if they will be able to refuel at airports where they are unknown.

To cope with this problem, NBAA seeks to develop a call-ahead fuel reservation program for transient aircraft in general aviation. In concert with other organizations interested in general aviation, NBAA would develop and disseminate a suggested fuel reservation system for voluntary adoption by participating ASO's. Any transient pilot could call a participating ASO within a specified time of his estimated arrival, tentatively 48 hours, and reserve necessary fuel; the ASO would hold the fuel for a specified period after the reservor's estimated arrival time, tentatively 6 hours, before selling it to any other customer.

The plan, according to your request, would be voluntary and non-discriminatory. It would be available to all segments of general aviation, and would be disseminated in all available communications channels, including an advisory circular from the Federal Energy Office.

Subsidiary to the main plan would be a recommended list of fuel amounts to be made available by an ASO when shortages forced it to curtail sales. Under the subsidiary plan, in shortage situations each ASO would limit sales to two hours cruising time for each plane serviced. This would entail selling differing amounts to each customer, depending upon the size of each particular plane.

Based on its understanding of the NBAA proposal, the Commission advises that no objection will be raised to NBAA's meeting with the other associations mentioned in your letter for the purpose of discussing and implementing a voluntary call-ahead fuel reservation program, subject to the conditions detailed below. *National Macaroni Mfrs. Assn.*, 65 FTC 583, 612 (1965), *aff'd* 345 F.2d 421 (7th Cir. 1965).

However, you are cautioned that if such meetings have any anticompetitive purpose or effect, including but not limited to the fixing of prices or a concerted refusal to deal, or if they are otherwise used to develop an anticompetitive plan, NBAA would be in violation of Section 5 of the Federal Trade Commission Act.

As to the main plan, concerning call-ahead fuel reservations, the Commission is of the view that the procedures you propose, if truly voluntary and non-discriminatory, would not raise questions under Commission administered law if the procedures do not result in any anticompetitive effects. *See, e.g.*, Advisory Opinion Digest Nos. 64, 133, 332. However, because of the potential for abuse, the Commission conditions its advice on the following:

First, in order to avoid concerted refusals to deal with nonparticipating ASO's, and to avoid the possibility of conspiracy among participating ASO's, the proposed plan must be voluntary and be limited solely to dissemination of information. Although the names of participating ASO's may be disseminated, any attempt to impose sanctions for non-participation would not be permissible.

Second, since the plan is premised on dislocations caused by the FEO's fuel allocation regulations, the Commission cannot extend approval beyond the life of those regulations without a re-evaluation of the program.

Third, the Commission explicitly reserves its right to proceed against NBAA and other participants, if in practice the plan proves to be anticompetitive. Because of the fast-changing conditions in the petroleum industry, the Commission requests that you submit a report in six months outlining the plan's working and effect. If you choose not to file such a report, the Commission's advice will expire.

The Commission cannot approve of the subsidiary plan for acute shortage situations, which recommends a two hour flight time limitation. The specificity of the recommended list—down to the gallon—suggests strongly that it amounts to an allocation program for an entire industry administered by the NBAA. The Commission will not accept a plan for an extra-governmental agency to undertake such a governmental function. *See Fashion Originators' Guild v. FTC*, 312 U.S. 457, 465 (1941). Rather, specifics of an allocation method in time of shortage

should be left to the judgment of each ASO operator, instead of being prepared in concert by the whole industry.

The Commission offers no opinion on the applicability of the antitrust exemption contained in Section 6(c) of the Emergency Petroleum Allocation Act, P.L. 93-159, to the activities and meetings which you envision.

By direction of the Commission.

Proposal by some members of National Electronics Service Dealers Association, Inc. to offer lower repair rates to consumers who purchase appliances from them. (File No. 743 7011)

Opinion Letter

June 27, 1974

Dear Mr. Couch:

This letter is in response to your request for an advisory opinion concerning a proposal by some members of your association to offer lower repair rates to consumers who purchase appliances from them.

It is the Commission's understanding that some of your association's members propose to issue a coupon discount book to consumers who purchase an item from them. This would entitle the consumer to a discount off the dealers regular rates on repairs. The purpose of this discount is to induce consumers to purchase products from those dealers who engage in this practice.

The Commission would not initiate proceedings against any members of your association if such a program were adopted providing that members do not act in concert in adopting such a program and adoption of the program does not become a policy of the association or a condition of membership. You are further advised that the association must not suggest or prescribe a uniform discount rate to be used by its members.

Nothing in this opinion authorizes any NESDA member to discriminate in the repair or service of appliances under manufacturers' service or warranty programs or, directly or indirectly, to foreclose access to repair parts to local competitors.

By direction of the Commission.

Letter of Request

March 8, 1974

Dear Sirs:

As president of the National Electronic Service Dealers Association,

better known as NESDA, I would like to ask for guidance in behalf of some of our members.

Many of the members of NESDA both sell and service consumer products in the electronics industry. As an inducement for the consumer to purchase a product from them, they have come up with the idea of issuing a coupon discount book. This would entitle the consumer who purchases a product from them to a discount off their regular repair rates. This gives the dealer a selling point, i.e. he will repair the product sold by him at a cheaper price since he made a profit on the original sale.

This means the consumer who has *not* purchased a product from this member would pay the regular repair rate for this dealer. In this way this member would have another promotional reason why to purchase from them.

The members of NESDA are ethical, honest, and of highest integrity. In this operation, they want to make sure they are operating within the law at all times. Could you advise whether this is within the bounds of legality.

Your suggestions will be greatly appreciated by the members of NESDA.

Yours very truly,

Charles R. Couch, Jr., CET
President